



MEMORANDUM

TO: Council members and Mayor Prussing

FROM: Mike Monson, chief of staff

DATE: Oct. 19, 2010

RE: Local Motor Fuel Tax, bulk users

Introduction

When the Mayor proposed a 2-cent per gallon local motor fuel tax last spring, the intention was for the tax to apply to a broad base of users just as the state motor fuel tax does.

Bulk users are businesses, governments or utilities that purchase fuel for storage in bulk storage facilities. For example, a business that maintains its own fuel pumps for its vehicle fleet would be a bulk user.

After city council approval of the local motor fuel tax ordinance on Aug. 16, there was some staff debate about whether or not the ordinance included bulk users. After further study, our legal department has recommended a clarification to explicitly include bulk users in an ordinance amendment.

This proposed ordinance amendment would take effect Dec. 1.

Issues

Urbana's 2-cent local motor fuel tax was approved by the city council this summer and took effect Oct. 1. The ordinance includes a provision calling for an annual 0.4-cent escalator that would take effect each July 1 for the first three years, unless the city council specifically votes to suspend the increase beforehand. The tax was initially projected to generate about \$340,000 annually.

According to city records, entities with their own underground and/or above-ground fuel storage tanks in Urbana include:

- AmerenIP at 1112 W. Anthony Drive.
- The Champaign County Highway Department facilities at 1705 E. Main St. and 1605 E. Main St.
- The MTD facility at 801 E. University Ave.
- The Cunningham Children's Home at 1301 N. Cunningham Ave.
- The Peoria Charter Coach Co., 2003 N. Federal Drive.
- Central Illinois Produce, 500 S. Glover Ave.
- Illinois American Water Co., 201 N. Lincoln Ave.
- Open Road Asphalt Co., 1414 W. Anthony Drive.
- Ryder Truck Rental Inc., 1405 W. Kenyon Road.

William Volk, executive director of the Champaign-Urbana Mass Transit District, told city officials that the district uses 842,000 gallons of diesel fuel annually and would pay \$16,840 to the city if its bulk purchases became subject to the 2-cent per gallon tax. He said he would prefer that the city not extend the tax to include MTD fuel purchases, but he acknowledged that MTD vehicles do cause wear and tear to city streets and it would not be an undue burden for MTD to pay the tax.

County Administrator Debra Busey estimated that the county would pay just under \$700 annually in local motor fuel taxes. She also said her preference would be for the city to exclude local governments from the tax, but noted the amount would be small.

The local motor fuel tax is essentially a user fee to help offset the rising cost of maintaining city streets. Since the tax is quite small there appears to be no reason to exempt bulk users.

The current ordinance, it should be noted, does not exempt local, state or federal governments from the local motor fuel tax when that fuel is purchased at an Urbana retail gas station. Not-for-profits are also not exempted from the tax.

Other Illinois Cities

A survey of several other downstate and non-Chicago-area cities shows that many of them do include bulk users in their local Motor Fuel Tax, including Peoria, Galesburg, Moline, Rock Island and Freeport. Galesburg is the only one that does not exempt local governments' bulk purchases from the local gas tax.

A brief summary of each city's practices follows:

Galesburg: Galesburg includes bulk users in its local motor fuel tax of 2.5 cents per gallon. Tax income from Galesburg's 12 bulk users, which includes local governments, totaled \$6,400 out of the \$403,000 raised by the local Motor Fuel Tax in 2009, according to City Engineer Wayne Carl.

Carl said that bulk users in Galesburg have the option of choosing to pay \$750 annually, rather than 2 cents per gallon, if they are a large user of fuel.

Moline: Moline levies a local Motor Fuel Tax of 1 cent per gallon and includes bulk users, but bulk users generate negligible income for the city, according to Keith Verbeke, Moline's finance manager. Local governments are exempted. Moline collected \$142,000 from its local Motor Fuel Tax in 2009.

Rock Island: Nearby Rock Island in the Quad Cities has a local Motor Fuel Tax of 2 cents per gallon and generates significant income from bulk users. Rock Island expects to collect \$282,000 from its local Motor Fuel Tax this fiscal year. For the months of April, May and June of this year, 12 bulk users generated 39 percent of Rock Island's local motor fuel tax income during that period, according to Donald Reichert, the city's budget coordinator.

The bulk users included six over-the-road trucking companies, two bus companies, a local beverage distributor, a local utility and a food distribution company. Rock Island exempts federal, state and local governments from its motor fuel tax.

Danville: Danville does not tax bulk users of fuel. The city council gave serious consideration to doing so a few years ago, according to Mayor Scott Eisenhauer, but backed away at the strong urging of Vermilion Advantage, the city's economic development corporation. The concern was that Danville had attracted several distribution companies over the past 15 years and that a new tax might drive them away and/or make the city less attractive to companies considering locating in Danville, Eisenhauer said.

Carbondale: Carbondale does not tax bulk users of fuel, except in a roundabout way, according to city Finance Director Ernie Tessone. He explained that the city of Carbondale has its own fuel island for city vehicles, which is also used by other local governments. "We sell them fuel at our cost, plus 3 cents (Carbondale's local Motor Fuel Tax rate)," he said.

Peoria: Peoria does tax bulk users of fuel, such as Caterpillar, but exempts governments from the 2-cent local Motor Fuel Tax, according to Peoria Budget Coordinator Jan Little.

Freeport: This city of 26,000 in northwest Illinois taxes bulk users of fuel, but "doesn't have any" such users within the city limits, according to City Accountant Duane Price. He said Freeport exempts governments from having to pay its 2-cent Motor Fuel Tax, which generates \$250,000 annually for the city.

Recommendation

It is recommended that the city council approve An Ordinance Amending Article III of Chapter 22 of the Urbana City Code. The amendment would clarify the ordinance and eliminate a potential loophole.

ORDINANCE NO. 2010-10-101

AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 22 OF THE URBANA
CITY CODE
(Bulk Motor Fuel Tax)

WHEREAS, the Mayor and City Council heretofore have adopted Article III of Chapter 22 of the Urbana City Code establishing a tax upon the purchase of each gallon of motor fuel sold at retail within the City; and

WHEREAS, the Mayor and the City Council find that the best interests of the City are served by amending said Article.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

Urbana City Code Chapter 22, "Taxation," Article III, "Local Motor Fuel Tax," is hereby amended with the underlined text indicating new language and the strikethrough text indicating deletions as follows:

ARTICLE III.

LOCAL MOTOR FUEL TAX

Sec. 22-30. Definitions.

For the purposes of this article, the following definitions shall apply:

Bulk user means any person who purchases motor fuel for storage in bulk storage facilities located within the city, which facilities are owned, leased, or controlled by the person, for subsequent dispensing into the supply tanks of internal combustion engines operated by the person.

Motor fuel means all volatile and inflammable liquid produced, blended, or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles.

Person means any natural person, trustee, court-appointed representative, syndicate, association, limited liability company, partnership, firm, club, company, corporation, business trust, institution, agency, contractor, supplier, vendor, vendee, operator, user or owners, or any officer, agents, employees, or other representative, acting either for himself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular, or plural is included in any and all circumstances.

Retail gasoline dealer means any person who engages in the business of selling motor fuel in the city, to a purchaser for use or consumption, and not for resale in any form.

Sale, resale, or selling means any transfer of ownership or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever for a valuable consideration.

Sec. 22-31. Tax imposed.

~~(a)~~

~~(1) There is levied and imposed upon the purchase of each gallon of motor fuel, or fraction thereof, sold at retail within the corporate limits of the city, irrespective of the unit of measure in which it is actually sold, a tax at the rate of two cents (\$0.02) per gallon from and after October 1, 2010.~~

~~(2) Effective July 1, 2011, the tax imposed under this subsection shall be increased by four tenths of one cent (\$0.004). On July 1 of each year thereafter, until and including July 1, 2013, the tax rate in effect in the preceding year shall be increased by four tenths of one cent (\$0.004). Each increase shall be automatic unless the city council by ordinance foregoes or waives an increase prior to said July 1 date. Beginning in the year 2014, the annual increase, if any, shall be determined by the city council in conjunction with a review of the annual adjustment of city fees.~~

~~(3) The tax herein levied shall be paid in addition to any and all other taxes and charges. The tax herein imposed is not based on the selling or purchase price or gross receipts from the sale or purchase of motor fuel.~~

~~(b) The ultimate incident of and liability for payment of the tax is to be borne by the retail purchaser of motor fuel. Nothing in this subchapter shall be construed to impose a tax upon the occupation of persons engaged in the retail sale of motor fuel.~~

~~(c) It shall be the duty of every retail gasoline dealer to secure the tax from the purchaser at the time the dealer collects the purchase price for the motor fuel and to pay over the tax to the Finance Department, as provided in this subchapter.~~

(a) There is levied and imposed upon the purchase of each gallon of motor fuel, or fraction thereof, sold at retail within the corporate limits of the city, irrespective of the unit of measure in which it is actually sold, a tax at the rate of two cents (\$0.02) per gallon from and after October 1, 2010.

(b) Effective July 1, 2011, the tax imposed under this subsection shall be increased by four-tenths of one cent (\$0.004). On July 1 of each year thereafter, until and including July 1, 2013, the tax rate in effect in the preceding year shall be increased by four-tenths of one cent (\$0.004). Each increase shall be automatic unless the city council by ordinance foregoes or waives an increase prior to said July 1 date. Beginning in the year 2014, the annual increase, if any, shall be determined by the city council in conjunction with a review of the annual adjustment of city fees.

(c) The tax herein levied shall be paid in addition to any and all other taxes and charges. The tax herein imposed is not based on the selling or purchase price or gross receipts from the sale or purchase of motor fuel.

(d) The ultimate incident of and liability for payment of the tax is to be borne by the retail purchaser of motor fuel. Nothing in this article shall be construed to impose a tax upon the occupation of persons engaged in the retail sale of motor fuel.

(e) It shall be the duty of every retail gasoline dealer to secure the tax from the purchaser at the time the dealer collects the purchase price for the motor fuel and to pay over the tax to the Finance Department, as provided in this article.

Sec. 22-32. Tax and return transmittal.

(a) Every retail gasoline dealer shall transmit to the finance department for receipt by the department, no later than the 25th day of each calendar month, a sum of money equal to the amount of motor fuel tax imposed by this article and collected for the preceding calendar month, accompanied by a return upon forms supplied by the finance department, indicating the gross gallons of motor fuel sold for the preceding calendar month, and such other information as the department may require for enforcement of this article.

(b) Every bulk user shall transmit to the finance department for receipt by the department, no later than the 25th day of each calendar month, a sum of money equal to the amount of motor fuel tax owing for the preceding calendar month, accompanied by a report upon forms supplied by the finance department indicating the gross gallons of motor fuel purchased for the preceding calendar month, and such other information as the department may require for enforcement of this article.

~~(b)~~(c) In case any person who is required under this article to file a tax return with the city fails to file the return and pay the tax when and as required by this article, such person shall pay to the city, in addition to the amount of tax required to be transmitted, a penalty of two (2) percent per month, or part thereof, from the day of delinquency.

~~(e)~~(d) Any officer, employee, partner, member or manager of any entity which is an owner subject to the provisions of this article, and who has the control, supervision or responsibility for collecting tax proceeds, filing returns, and transmitting collected tax proceeds of the tax imposed by this article, and who willfully fails to file such return or transmit to the city any tax proceeds so collected, shall be personally liable for any such amounts collected, including interest and penalties thereon, if after proper proceedings for the collection of such amounts such entity is unable to pay such amounts to the city, and the personal liability of such officer, employee, partner, member or manager, as provided in this article, shall survive dissolution of the entity. For purposes of this article, a person willfully fails to act if he takes any conscious and voluntary action intending not to perform any of the entity's duties hereunder, including but not limited to the utilizing of tax proceeds collected under this article to pay any other obligations of the entity.

~~(d)~~(e) As compensation for services rendered in the collection and prompt payment of this tax, the person filing the tax return may retain an amount equal to 1% of the tax due.

~~(e)~~(f) Any payment which is returned because of insufficient funds may result in the finance department requiring that all future payments be made by cashier's check or money order.

Sec. 22-33. Records; inspection.

(a) Every retail gasoline dealer shall keep complete and accurate records, including a daily sheet showing the gross gallons of motor fuel sold for each day, and the amount of motor fuel tax collected for each day.

~~(a)~~(b) Every bulk user shall keep complete and accurate records of purchases of motor fuel, including the dates of purchases, the gross gallons purchased on each of the dates, and the names and addresses of the retail gasoline dealers from whom each of the purchases were made.

~~(b)~~(c) For the purpose of administering and enforcing this ~~subchapter~~ article, the finance department shall have the right to inspect all books, records and reports of retail gasoline dealers and bulk users during their normal business hours.

Sec. 22-34. Motor fuel tax funds.

The finance department shall deposit the proceeds of the motor fuel tax imposed by this article, including penalties, into a separate fund designated as the "Street Maintenance and Road Safety Improvement Fund." During the annual budget process, the list of projects to be financed by this fund shall be approved by the city council.

Sec. 22-35. Collection.

Whenever any person shall fail to file any return or pay any tax as provided in this article, the city attorney shall, upon the request of the city comptroller, bring or cause to be brought an action to enforce the filing of such return or payment of such tax on behalf of the city in any court of competent jurisdiction. Any judgment entered thereon shall include the city's reasonable attorney's fees and costs of litigation.

Sec. 22-36. Penalty.

(a) The penalties provided herein shall be in addition to and may be imposed in conjunction with any other penalty or action taken or which may be taken against the person.

(b) Any person found guilty of violating any provision of this article, upon conviction thereof, shall be punished by a fine of not less than \$50 nor more than \$750 and shall also be ordered to pay all of the costs and fees incurred by the city in prosecuting the violation, which shall include but shall not be limited to the costs of an administrative adjudication proceeding or court proceeding and reasonable attorney's fees. A separate and distinct offense shall be regarded as committed each day on which a person shall continue any such violation.

Section 2.

This ordinance shall take effect on Dec. 1, 2010.

Section 3.

Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 4.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 5.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor