Preliminary Research Plan: House Bill 1962, Topic: Shipper Excise Credit

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Deputy Executive Director Approval:	Initial:	Date: 4/14/16	
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Purpose

To study the effect of creating an excise tax credit of 2% of expenditures for shippers with internal turn-around policies.

Background

The House Transportation Subcommittee asked the Commission to study House Bill 1962 by Camper, which would have established a franchise and excise tax credit equal to 2% of qualified transportation expenditures made by a shipper who establishes a turn-around policy that meets certain requirements. Its companion, Senate Bill 2587 by Norris, was assigned to the general subcommittee of the Senate Finance Review Subcommittee.

The bill defines "shipper" as a person that enters into a contract for transportation services with a motor carrier, and it clarifies that in order to qualify for the credit, the shipper would have had to establish a uniform and internal turn-around policy for assuring that pickups and deliveries are performed during the period of time agreed upon by a motor carrier and a shipper and for preventing delays in the timely transportation of goods over the public highways. It would have required to have met certain minimum requirements to qualify for the credit and would have authorized the commissioner to conduct audits or require the filing of additional information necessary to substantiate or adjust the amount of the credit allowed by this bill, and to determine that the shipper has complied with all statutory requirements so as to be entitled to the credit. The credit would have been available only upon a determination by the commissioner, with approval by the commissioner of economic and community development, that the qualified transportation expenditures and the credit were in the best interests of the state. It would have prohibited the total credit claimed for any taxable year, including the amount of any carryforward credit claimed, from exceeding 50 percent of the combined franchise and excise tax liability shown by the return before any credit is taken. The bill also would have allowed any unused credit to be carried forward but not for more than 15 years.

Step 1. Define the Problem

Is an excise tax credit for shippers with an internal turn-around policy in the best interests of the state?

Step 2. Assemble Some Evidence

- Review referred legislation.

  Review House Bill 1962 and related statutes and regulations to determine what the bill does.

  Review committee hearings on the bill and summarize comments and concerns of committee members, the bill sponsors, and others speaking for or against the bill.

  Interview the bill's sponsors, proponents, and other stakeholders to determine what is driving this issue.

  Review the fiscal note. Consult with Fiscal Review Committee staff and follow up with agencies submitting support forms to determine the estimated cost and the method and rationale for the estimates.

- Collect any necessary additional information on franchise and excise tax collections, particularly for potentially affected shippers.
- Consult with departments of revenue, labor and workforce development, and transportation, and others as required, to identify the number of potentially affected shippers.
- Review relevant federal statutes and regulations.
- Review similar laws or regulations in other states.
- Review relevant literature and data sets.

Step 3. Construct Alternatives

Alternatives will be based on

- current law,
- proposed changes in the current law, and
- any additional alternatives drawn from the research and analysis in Step 2.

Each alternative will be described specifically enough to project outcomes in Step 5.

Step 4. Select Criteria

- Cost
  - Direct and indirect to state

    - Businesses
    - Individuals
- Economic effect
    - In general
    - To the shipping industry
- Estimate receptiveness of
    - State government
    - General public
    - Other stakeholders

Step 5. Project Outcomes

- Estimate costs.
- Estimate effect on economy and on the shipping industry
- Estimate the acceptability to the state and local governments, the general public, and other affected stakeholders.

Step 6. Confront Trade-offs

- How will the differences between the current law and the other alternatives affect Tennessee?
- What are the pros and cons of the potential solutions?

Step 7. Decide which alternatives to present to the Commission

Based on the results of Step 6, choose the alternatives that most practically and realistically resolve the problem.

Step 8. Produce the Draft Report

Develop and present a draft for review and comment to the Commission.

Revisit Steps 5 through 8.

- Respond to feedback from Commission regarding outcome projections, trade-offs, and selection of alternatives.
- Revise and edit the draft to reflect comments of the Commission.
- Submit final report to the Commission for approval.

- **Problem Statement and Research Plan**
  - May 2016
- **Research**
  - Step 2 (May 2016 through August 2016)
  - Steps 3-4 (August 2016)
  - Steps 5-7 (September 2016)
- **Storyboard, Outline, and Write the Report**
  - Step 8 (September 2016 through October 2016)
- **Draft Report to the Commission for Comments**
  - November 2016 Commission Meeting
- **Final Report to Commission for Approval**
  - January 2017 Commission Meeting

SENATE BILL 2587
By Norris

HOUSE BILL 1962

By Camper

AN ACT to amend Tennessee Code Annotated, Title 55 and Title 67, relative to tax credits for shippers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, Part 21, is amended by adding the following as a new section:

67-4-2122.

(a) As used in this section:

(1) "Accessorial services":

(A) Means any service that is incidental to transportation services;

(B) Includes storage, packing, unpacking, hoisting or lowering, waiting time, overtime loading and unloading, and reweighing;

(2) "Best interests of the state" means a determination by the commissioner, with approval by the commissioner of economic and community development, that the qualified transportation expenditures are a result of the credit provided in this section;

(3) "Freight motor vehicle" means a motor vehicle that is designed and used primarily to transport goods for hire or for commercial purposes;

(4) "Goods" means personal property that is treated as movable for the purposes of a contract for transportation services;

(5) "Line haul services" means the movement of goods over the public highways from the point of origination to the final destination;

(6) "Motor carrier" means a person who operates or causes to be operated a freight motor vehicle on a public highway for the purpose of performing transportation services;

(7) "Qualified transportation expenditures" means the total charges incurred by a shipper for line haul services, transportation services, and accessorial services performed by a motor carrier for shipments picked up at points of origination within this state or delivered to final destinations within this state;

(8) "Person" means every individual, firm, association, joint-stock company, syndicate, partnership, corporation, or other business entity;

(9) "Shipper" means any person that enters into a contract for transportation services with a motor carrier;

(10) "Transportation services" means the pickup or delivery, or both, of goods at the point of origination or final destination; and

(11) "Turn-around policy" means the uniform and internal policy established by a shipper that meets the requirements of subsection (c).

(b) There shall be allowed to any shipper that establishes a turn-around policy pursuant to subsection (c) a credit against the sum total of the franchise taxes imposed by this part and the excise taxes imposed by part 20, equal to two percent (2%) of qualified transportation expenditures.

(c) To qualify for the credit provided by this section, the shipper shall establish a uniform and internal turn-around policy for assuring that pickups and deliveries are performed during the period of time agreed upon by a motor carrier and a shipper and for preventing delays in the timely transportation of goods over the public highways. The policy shall include the following minimum requirements:

(1) That pickups and deliveries shall be accomplished on the date scheduled for pickup or delivery, that pickups must be completed within the

period of time agreed to by the shipper and the motor carrier, which period shall not exceed two (2) hours, and that deliveries must be completed within the period of time agreed to by the shipper and the motor carrier, which period shall not exceed two (2) hours; and

(2) That for each shipment of goods for which transportation services of the motor carrier is requested by a shipper, the shipper shall provide the motor carrier with contact information for:

(A) Any person who may authorize pickup or delivery of any goods to be transported if the shipper designates such a person;

(B) The shipper and any person receiving the pickup or delivery, if different from the shipper; and

(C) Any person to whom notification of delays or that goods are available for pickup or delivery, shall be given.

(d)

(1) To request a credit, the shipper shall file an application with the commissioner on a form prescribed by the commissioner, and include the following with the application:

(A) A copy of the turn-around policy established pursuant to subsection (c);

(B) An audited cost report issued by a public accountant licensed by this state confirming the amount of qualified transportation expenditures incurred by the shipper; and

(C) A written statement signed by the shipper on a form prescribed by the commissioner certifying that each pickup and delivery that resulted in the qualified transportation expenditures for which the credit is requested was accomplished within the time period required by the shipper's turn-around policy.

(2) The commissioner may conduct audits or require the filing of additional information necessary to substantiate or adjust the amount of the credit allowed by this section, and to determine that the shipper has complied with all statutory requirements so as to be entitled to the credit.

(3) The commissioner shall review the documentation submitted by the shipper and notify the shipper of the approved credit.

(e) The credit in this section shall only be available upon a determination by the commissioner, with approval by the commissioner of economic and community development, that the qualified transportation expenditures and the credit are in the best interests of the state.

(f) The credit provided by this section shall apply only in the tax year in which the shipper establishes a turn-around policy meeting the criteria in subsection (c), incurs qualified transportation expenditures, and otherwise meets the requirements of this section.

(g) The shipper shall maintain a copy of the following to establish entitlement to the credit:

(1) Contract for transportation services, orders for service, or other written documentation prepared by the motor carrier and approved by the shipper that requests and authorizes line haul services, transportation services, and accessorial services from a motor carrier and lists the costs of the services to be rendered;

(2) Invoices or other written statements given to the shipper that describe the costs of the services rendered, including rates, number of miles driven within

this state, points of origination and final destinations, and actual pickup and delivery dates and times; and

(3) All other pertinent records made with respect to the transportation of a shipment to or from points within this state.

(h) The documentation required to be maintained pursuant to subsection (g) shall be available for examination upon request of the commissioner. The shipper shall supply any information as deemed necessary by the commissioner to verify the amount of the credit.

(i) The total credit claimed for any taxable year, including the amount of any carryforward credit claimed, shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before any credit is taken. Any unused credit may be carried forward in any tax period until the credit is taken; provided, however, that the credit may not be carried forward for more than fifteen (15) years.

(j) The commissioner is authorized to promulgate rules to effectuate the purposes of this section. All such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. For purposes of promulgating rules and creating forms and applications, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2017, the public welfare requiring it.

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 1962 - SB 2587

March 12, 2016

SUMMARY OF BILL: Authorizes a franchise and excise (F&E) tax credit equal to two percent of qualified transportation expenditures of any shipper that establishes a uniform and internal turn-around policy for assuring that pickups and deliveries are performed during the period of time agreed upon by a motor carrier and a shipper and for preventing delays in the timely transportation of goods over the public highways. Prohibits the credit from exceeding 50 percent of the combined F&E tax liability in any given year. Defines "qualified transportation expenditures" as total charges incurred by a shipper for line haul services, transportation services, and accessorial services performed by a motor carrier for shipments picked up at points of origination within this state or delivered to final destinations within this state.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue – Exceeds $13,901,800/FY17-18 and Subsequent Years

Increase State Expenditures – $1,455,900/FY17-18
$1,376,200/FY18-19 and Subsequent Years

Other Fiscal Impact – Secondary economic impacts may occur as a result of this bill. Such impacts may be reflected as improvements in shipment delivery times for Tennessee businesses, an increase in the state's competitiveness in retaining existing shipping companies and recruiting other shipping companies to locate in the state, and additional commercial activity in the state as a result of qualified companies reinvesting their savings in the state's economy. Due to multiple unknown factors, fiscal impacts directly attributable to such secondary impacts cannot be quantified with reasonable certainty.

Assumptions:

- The Department of Revenue reports that freight trucking sales for general freight trucking companies were $1,893,776,000 in FY14-15; such sales for specialized freight trucking companies were $886,589,000 in FY14-15.
- Total freight trucking sales for the purposes of this fiscal note are assumed to be $2,780,365,000 in any given year ($1,893,776,000 + $886,589,000).

- At least 50 percent of these companies will qualify and receive the F&E tax credit. At least 50 percent of such sales represent qualified transportation expenditures as defined by this bill.
- The resulting recurring decrease in state revenue is estimated to exceed $13,901,825 ($2,780,365,000 x 50.0% x 50.0% x 2.0%). The first year impacted by this bill will be FY17-18.
- The Department reports that 16 new audit positions will be required for the implementation of this bill. The one-time increase in state expenditures associated with such positions will be $79,700; the recurring increase in state expenditures will be $1,376,163.
- The total increase in state expenditures is estimated to be $1,455,863 in FY17-18 ($79,700 + $1,376,163), and $1,376,163 in FY18-19 and subsequent years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista M. Lee

Krista M. Lee, Executive Director

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