F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 2/19/09
SPONSOR Harden **LAST UPDATED** 3/10/09 **HB**

SHORT TITLE Dyed Special Fuel Gross Receipts **SB** 438/aSCORC

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	**FY10**	**FY11**		
	($896.1)	($1,035.5)	Recurring	Local Governments
	($3,684.3)	($4,257.5)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Energy, Minerals & Natural Resources Department (EMNRD)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to Senate Bill 438 amends the bill to allow only persons engaged in agriculture to receive the gross receipts deduction for receipts from selling special dyed fuel. To claim the deduction a seller must obtain a written statement from the buyer stating that the seller is regularly engaged in the business of farming, ranching or raising animals for their hides or pelts.

Synopsis of Original Bill

Senate Bill 438 provides for a deduction from the gross receipts tax (GRT) for receipts from selling special fuel dyed according to federal regulations if the deduction from the special fuel excise tax pursuant to Section 7-16A-10 NMSA 1978 is claimed. Under current law, special dyed fuel is exempt from the special fuels supplier tax but not the gross receipts tax.

The effective date of this bill's provisions is July 1, 2009.

FISCAL IMPLICATIONS

TRD estimates that in calendar year 2008 there were 197 million gallons of dyed diesel reported in New Mexico; this volume is assumed to grow at only 1 percent annually. Based on state specific New Mexico data from the U.S Energy Information Administration (EIA) for Calendar Years 2003 through 2007 qualifying agricultural uses are estimated to account for 21% of off-highway special fuel consumption. This estimate uses the price of diesel forecasted by the Energy Information Administration (EIA) of $1.80 in FY10. In subsequent fiscal years a combination of EIA predictions and the state consensus revenue estimate for oil is used to forecast the price of diesel. Nine tenths (90%) of dyed diesel is assumed to be purchased outside of municipalities at an average gross receipts tax rate of 5.95% and the remainder (10%) is assumed to be purchased inside municipalities at an average rate of 7.07%.

SIGNIFICANT ISSUES

TRD:
The regular state and federal fuels taxes are not applied to dyed diesel because it is used for off-road purposes and its users do not place an additional burden on our roadways. However, the use and production of dyed diesel does create health and environmental costs for the State of New Mexico and its citizens. Under the proposal dyed diesel would not be subject to any tax. The price paid by users of dyed diesel would not include any of the external costs imposed on others. Applying the gross receipts tax to dyed diesel may be seen as a way to internalize some of the environmental and health costs that the users of dyed diesel impose on New Mexico and its residents.

Certain uses of dyed diesel, such as for construction, mining, and farming equipment, are necessary inputs into the production of a final product. If the final product is subject to the gross receipts tax, then also applying the gross receipts tax to the diesel used to produce that product creates a pyramiding of the tax. Applying the gross receipts tax on diesel fuel used in agriculture does not create pyramiding of the tax because agricultural producers almost never pay gross receipts on their final product.

According to EMNRD, the gross receipts tax is currently passed through to dyed diesel fuel users by the fuel vendor. The dyed diesel fuel vendor would be allowed to deduct receipts of dyed fuel sales from gross receipts, thus enabling the vendor to remove GRT from the fuel price. The price of dyed diesel fuel would continue to include a loading fee, but is already exempt from state and federal special fuel taxes.

LFC notes the proposed deduction narrows the gross receipts tax base. Narrowing the gross receipts tax base increases revenue volatility and requires a higher tax rate to generate the same amount of revenue.

ADMINISTRATIVE IMPLICATIONS

The bill will have a minimal impact on TRD. The taxpayer would need to separately track agricultural purchases of their dyed diesel and maintain the written statements to substantiate the proposed deduction.

The bill does not contain a sunset date and there is no provision for reporting on this deduction. It is important for policy makers to have regular information and an opportunity to review the effectiveness of the deduction.

POSSIBLE QUESTIONS

Does deducting the gross receipts tax from the receipts for special dyed fuel necessarily create a price decrease for the users? Will the fuel vendor pass on that *entire* savings to the user?

BLG/mc

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity****: taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc