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FISCAL IMPACT REPORT

ORIGINAL DATE 03/04/13

SPONSOR Strickler LAST UPDATED _____ HB 626

SHORT TITLE Special Fuels Gross Receipts SB _____

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
	(\$782.0)	(\$789.0)	(\$794.0)	(\$793.0)	Recurring	Counties and Municipalities (excl. P&I)
	(\$5,746.0)	(45,799.0)	(\$5,836.0)	(\$5,830.0)	Recurring	State Road Fund
	(\$434.0)	(\$438.0)	(\$441.0)	(\$440.0)	Recurring	County Govt. Road Fund
	(\$434.0)	(\$438.0)	(\$441.0)	(\$440.0)	Recurring	Municipal Road Fund
	(\$108.0)	(\$109.0)	(\$110.0)	(\$110.0)	Recurring	Municipal Arterial Fund
	(\$20.0)	(\$20.0)	(\$20.0)	(\$20.0)	Recurring	Aviation Board (excl. P&I)
	(\$10.0)	(\$10.0)	(\$10.0)	(\$10.0)	Recurring	Motor Boat Fuel Tax Fund
	(\$7,534.0) ***	(\$7,603.0) ***	(\$7,651.0) ***	(\$7,643.0) ***	Recurring	Total Gasoline Tax
	(\$4,839.0)	(\$4,909.0)	(\$4,975.0)	(\$5,073.0)	Recurring	State Road Fund (Special Fuel)
	(\$509.0)	(\$516.0)	(\$523.0)	(\$534.0)	Recurring	Local Governments Road Fund
	(\$5,348.0) ***	(\$5,425.0) ***	(\$5,498.0) ***	(5,606.0) ***	Recurring	Total Special Fuels
	(12,882.0) ***	(13,028.0) ***	(13,149.0) ***	(13,250.0) ***	Recurring	Total Gasoline & Special Fuels Tax

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

House Bill 626 amends Section 7-13-4 to include gasoline previously received in New Mexico by another taxpayer, upon which the gasoline tax has been paid by that other taxpayer, as eligible for the deduction. Sections 7-13A-2 and 7-16A-2 are amended to add a definition of “taxpayer” to each of those Sections. A new Section is added to the Petroleum Products Loading Fee Act, to provide a deduction for gallons of gasoline on which another taxpayer has already paid the petroleum products loading fee. A new Section is also added to the Special Fuels Supplier Tax Act to provide a deduction for special fuel previously received in New Mexico by another taxpayer upon whom the tax has been paid by another taxpayer.

Effective Date: July 1, 2013

FISCAL IMPLICATIONS

Both TRD and DOT believe that this bill would result in a decline of gasoline, special fuel and the petroleum product loading fee revenue. However, the information about gallons previously received in New Mexico by another taxpayer, upon whom the gasoline or special fuel excise tax has been paid by that other taxpayer is not available. Consequently, there is no base to calculate the deduction of the petroleum products loading fee. The fiscal impacts have been estimated based on consultation with the economists at the Department of Transportation, and has been identified as a reasonable estimate of the potential impacts and is based on a 5 percent reduction in the fuel taxes.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure’s fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

This genesis of this bill is a court decision which essentially forced a taxpayer to pay fuels tax twice.

TRD notes that this bill provides a deduction for fuel that is acquired by a person where tax has already been paid on that fuel. If the fuel is subsequently sold without combining with other like fuel, then the deduction could possibly be verified upon audit. If the fuel is combined with other like fuel, it loses its character or distinctive qualities and allowing a deduction for the person who acquired the fuel becomes difficult if not impossible for the department to trace. It is possible that companies may take the deduction without sufficient proof of deductibility, reducing the amount of tax owed the state and thereby reducing the monies in the road fund.

“Acquired gasoline” means gasoline that comes into the possession of a person but which is not “received” within the meaning of Section 7-13-2.1 NMSA 1978 by that person pursuant to Regulation 3.16.1.7 NMAC. The bill will give a deduction for all gallons of gasoline and special fuel acquired in New Mexico and subsequently a deduction of the petroleum products loading fee.

Acquired gasoline or special fuel is commonly referred to as “tax paid” gasoline or special fuel. The special fuels tax act does not state a definition for acquired fuel. However, the Taxation and Revenue Department (TRD) administers the gasoline and special fuel program for acquired fuel the same as gasoline.

- A registered distributor who received gasoline is responsible for reporting and paying the gasoline tax. The distributor receiving the gasoline may not shift obligation to report and pay gasoline tax to any other person, even if the gasoline is subsequently sold to another registered distributor per Section 3.16.3.9 NMAC.
- If the first receiver sells the gasoline to a registered distributor in this state, the incidence of the tax remains with the first receiver. The law allows the shift of the gasoline tax from the first receiver to another registered distributor upon import of gasoline but not upon the import of special fuel. The first receiver is responsible for reporting and paying the gasoline tax. The registered distributor who purchases gasoline from the first receiver has acquired “tax paid” gasoline.
- If the registered distributor acquired tax paid gasoline and subsequently sold the gasoline in a nontaxable transaction pursuant to Section 7-13-4, TRD will only refund the “taxpayer”.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD states that this bill would make it nearly impossible to track and verify acquired fuel sold to export, US and tribal government, New Mexico government, Registered Indian Tribal Distributor, and off road sources. It would also make it extremely difficult to determine how acquired fuel is used in New Mexico.

Currently, TRD receives electronic reporting of all purchases and deductions following the Combined Fuel Tax report format. If all acquired fuel was an allowed deduction there would be

no identification of the sales to export, US and tribal government, New Mexico government, Registered Indian Tribal Distributor, and off road.

When 'tax paid' fuel is deducted there will be no accounting for gasoline sold to retail stations to complete a distribution report for the purpose of distributing monies to counties and municipalities

TECHNICAL ISSUES

TRD believes that the language in lines 3-5, on page 5, lines 4-10, on page 7, and lines 22-25, on page 11 are not clear. It appears that this is a deduction of the gasoline tax, special fuel excise tax and the petroleum products loading fee for all acquired gallons of gasoline and special fuel where tax has been previously paid. While this bill says there is a deduction for fuel where tax has been paid, the person taking the deduction does not actually know whether the tax has been paid. If the department determines the tax had not been paid, the language does not give the department the authority to disallow the deduction.

POSSIBLE QUESTIONS

Does the bill meet the Legislative Finance Committee tax policy principles?

- 1. Adequacy:** Revenue should be adequate to fund needed government services.
- 2. Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
- 3. Equity:** Different taxpayers should be treated fairly.
- 4. Simplicity:** Collection should be simple and easily understood.
- 5. Accountability:** Preferences should be easy to monitor and evaluate

SS/blm