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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/14
 SPONSOR Ingle LAST UPDATED 02/14/14 HB _____
 SHORT TITLE Biodiesel Tax Deduction SB 233/aSCORC
 ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Recurring	Fund Affected
FY14	FY15	FY16		
None	(\$80.0)	(\$80.0)	Recurring	Local Governments Road Fund
None	(\$220.0)	(\$220.0)	Recurring	Corrective Action Fund
None	(\$300.0)	(\$300.0)	Recurring	ALL FUNDS

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Department of Transportation (DOT)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporation and Transportation Committee amendment to Senate Bill 233 changes the word “distributor” to “rack operator.”

The amendment adds two new subsections to SB 233 requiring a taxpayer to report the amount of biodiesel deducted pursuant to Subsection B separately in the taxpayer’s return as prescribed by the Taxation and Revenue Department (TRD). A subsection is added to direct TRD to calculate the aggregate amount of the difference between the amount of the petroleum products loading fees that would have been collected and the actual amount collected. TRD is to compile an annual report of the aggregate amount, number of taxpayers deducting an amount, and any other information necessary to evaluate the deduction. TRD is required to report an analysis annually to the Revenue Stabilization and Tax Policy committee and Legislative Finance Committee beginning in 2019.

Synopsis of Original Bill

DOT summarizes the provisions of the bill as follows:

Senate Bill 233 will allow a deduction for pure biodiesel from the Petroleum Products Loading Fee (a tax of \$0.01875 per gallon) when the biodiesel is “*delivered to a distributor for subsequent blending or resale by a rack operator*”.

This bill follows up on the theme of Laws 2013, Chapter 109 (SB 160) which solved a technical problem in the Special Fuels Supplier Tax Act that had created unintended partial double taxation on diesel fuel manufactured by blending of pure biodiesel with petroleum diesel.

This bill eliminates the double taxation problem under the Petroleum Products Loading Fee by exempting the pure biodiesel from taxation until after it is blended with petroleum diesel; however, tax will still be imposed on pure biodiesel used in its pure form as fuel in a motor vehicle.

FISCAL IMPLICATIONS

Section 7-13A-3 NMSA 1978 establishes a progressive petroleum products loading fee (PPLF) of \$40 per load if the balance in the corrective action fund (CAF) exceeds \$18 million. If the balance the CAF is between \$12 and \$18 million, the PPLF is set at \$80 per load. If the balance in the CAF is between \$6 million and \$12 million, the PPLF is \$120. If the balance in the CAF is less than \$6 million, the PPLF is \$150. Currently, the balance in the corrective action fund is below \$6 million and the PPLF is \$150 per 8,000 gallon load, or .1875 ¢/gallon.

TRD provides the information as follows:

This estimate assumes that all biodiesel manufactured in New Mexico qualifies for this deduction. Currently, two biodiesel plants operate in New Mexico. The first operates in Anthony, NM using cottonseed oil as feedstock and makes about 2,000 gallons of biodiesel a day (0.73 million gallons a year). The second plant operates in Clovis, NM which produces 15 million gallons a year using natural oils, fats and greases as feedstock.

Pursuant to Section 7-1.6.25 NMSA 1978, collections from the PPLF are distributed to the local government road fund (LGRF) in the fraction of the total that \$40 per load bears to the total imposed in Section 7-13A-3 NMSA 1978. Thus, in the current environment, the PPLF is distributed 27 percent to the LGRF and 73 percent to the CAF.

DOT also provides a caveat: “The revenue estimate assumes that one large biodiesel producer may be operating at near its publicized capacity in the near future; however, that has not been confirmed, and the estimate may reflect the maximum expected impact in future years rather than actual current activity. The 2013 Legislative Session estimate for the SB 160 revenue impact was only about 17 percent of the eventual potential impact, and the actual current revenue impact of HB 288 may be far less than shown above.”

SIGNIFICANT ISSUES

DOT further explains: “Under current law, the pure biodiesel (oils and fats) is taxable when either delivered to a fuel blending facility, or when used directly in its pure form as fuel for a motor vehicle. After blending, the blended diesel fuel (2 percent or more biodiesel content) is taxed on the entire volume of the blended fuel. Thus, the *percentage of pure biodiesel* within blended biodiesel (for example, 20 percent for B20 fuel) is subject to a double tax imposition.

This bill eliminates the double taxation problem by exempting the pure biodiesel intended to be used for blending from taxation until after it is blended with petroleum diesel. However, the bill continues to impose tax on pure biodiesel used in its pure form as fuel in a motor vehicle.”

The SCORC amendment will allow better tracking of the fiscal impacts of the deduction proposed in SB 233, but will also require additional work by both the taxpayer and the Taxation and Revenue Department.

EFFECTIVE DATE:

Not stated; assume May 21, 2014. Applicable for biodiesel loaded in or imported into New Mexico on or after July 1, 2014.

PERFORMANCE IMPLICATIONS

Pursuant to the SCORC amendment, the LFC tax policy of accountability is met since TRD is 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.

However, the policy is probably not applicable to the provisions of this bill. The provisions of this bill do not create a tax expenditure. Removing an unintended double tax should be considered conforming the State’s tax structure to a normative scheme, not creating a deviation from that norm.

ADMINISTRATIVE IMPLICATIONS

TRD reports small impact to implement the provisions of this bill.

DUPLICATION

HB 288 is a duplicate.

LG/ds