NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

The LFC is only preparing FIRs on bills referred to the Senate Finance Committee, the Senate Ways and Means Committee, the House Appropriations and Finance Committee and the House Taxation and Revenue Committee. The chief clerks are responsible for preparing and issuing all other bill analyses.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Room 416 of the State Capitol Building.

FISCAL IMPACT REPORT

SPONSOR: Aragon DATE TYPED: 3-13-99 HB

SHORT TITLE: Tribal Distributors Gas Tax Deduction SB 588/aSWMC/aHTRC

ANALYST: Taylor

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY99	**FY2000**			
N.A.	Uncertain	Uncertain	Recurring	State Road Fund
N.A.	Uncertain	Uncertain	Recurring	Local Govt. Funds
N.A.	Uncertain	Uncertain	Recurring	Other Funds*

* Other funds include State Aviation Fund, Municipal Arterial fund and the Motorboat Fuel Tax Fund.

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates HB-498, SB-432

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD)
State Highway and Transportation Department (SHTD)

SUMMARY

Synopsis of HTRC Amendment

The HTRC amendment to SB-588 allows gasoline received and sold by an Indian Tribal distributor on a Indian reservation, pueblo grant (or trust lands) to be deducted from the state's gasoline tax provided the Indian tribe or pueblo has imposed a gasoline excise, privilege or similar tax on gasoline. The deduction is proportional, with the proportion equal to the ratio of the Indian tax relative to the state tax.

Fiscal Impact of HTRC Amendment

The HTRC amendment has the effect of allowing Indian tribes and pueblos to collect the retail gasoline sales tax for gasoline sales on Indian lands. It also removes any incentive for tribes to have a tax rate different than the state's, thus removing any price differential based on relative tax rates. The

Taxation and Revenue Department FIR does not show any change resulting from the amendment. It still has all beneficiaries of the gasoline tax losing $8.5 million in FY 2000, with the state road fund losing approximately $6.5 million of the total. All of this loss is due to the wholesaling activity. The Department reports that the loss represents the maximum possible loss. The State Highway and Transportation Department report assumes higher levels of Indian wholesale gasoline are already going on, implying that there is less room for additional losses. The Highway Department assumptions implied that the maximum total loss is $3.1 million. In either case, the losses are hypothetical in the sense that current law has not prevented such losses from occurring anyway. Therefore, the losses are uncertain if any.

Synopsis of SWMC Amendment

The SWMC amendment deletes the provisions of the bill amending the petroleum products loading fee and the Special Fuels Supplier Tax Act that provide a deduction for certain volumes sold by tribal suppliers.

Fiscal Impact of SWMC Amendment

The Taxation and Revenue Department (TRD) original FIR never quantified the impact of the special fuels and petroleum product fees, and therefore, the bill does not appreciably change the fiscal impact. These remain highly uncertain due to conflicting assumptions as to the volume of Indian gasoline wholesale activity reported by the TRD and the State Highway and Transportation Department.

Synopsis of Bill

Senate Bill 588 amends the gasoline tax act in the following major ways:

1. The definition of when gasoline is received is struck and a new definition provided. The new definition stipulates that gasoline is received (and thus taxable) when loaded into transportation equipment at the refinery or pipeline terminal or when it is transported into the state. Gasoline transported off an Indian reservation or pueblo grant that has not been taxed is received at the time and place it is transported off the reservation or pueblo.

2. A definition of registered "Indian Tribal distributor" is added. The Indian Tribal distributor includes (a) Indian nations, tribes or pueblos, (b) corporations or business enterprise wholly owned by the Indian nation, tribe or pueblo, (c) corporations or business enterprises wholly owned by one or more members of the Indian nation tribe or pueblo that is registered with the Taxation and Revenue Department (TRD) as a distributor. The Indian nation, tribe or pueblo would have to certify the corporation or other business entity is either wholly owned by them or by one or more of their tribal members before TRD could register the corporation or enterprise as an Indian tribal distributor.

3. Provisions covering gasoline that may be deducted from gasoline received and subject to the gasoline tax is changed in two ways:

    a. A deduction is provided to Indian tribal distributors for resale outside the distributor's reservation or pueblo provided that the distributor sold no less than one million gallons of gasoline for resale during the period between May and July 1988. The deduction is capped at 2.5 million gallons per month (30 million gallons per year).

    b. A deduction is added for gasoline received in New Mexico and sold at retail by registered Indian tribal distributors.

FISCAL IMPLICATIONS

The fiscal implications of the bill are uncertain because determining the magnitude of any loss depends on what the presumed current level of Indian wholesaling activity. Both the analyses provided by the Taxation and Revenue Department and the State Highway and Transportation Department noted that two Indian distributors would qualify for the exemption provided in the bill. Since the bill caps the amount deductible at 30 million gallons for each distributor, the loss would be 60 million gallons of gasoline to tax if no wholesaling activity were already happening.

Both TRD and SHTD report that some wholesaling activity is already happening. However, they report quite different levels of such activity. TRD reports that the assumed level of off-reservation sales is currently about 9.7 million gallons. This means that the potential additional loss would be limited to 50 million gallons taxed at 17 cents per gallon, or $8.5 million, 76% of which goes to the state road fund. SHTD, on the other hand, while reporting the same revenue loss, reports that native American distributors have received 17.3 million gallons of tax pre-empted gasoline in the first five months of the fiscal year. This annualizes to a 41.5 million gallons of gasoline, implying that maximum net additional loss would be 18.5 million gallons, or $3.1 million.

Both TRD and SHTD note that the exemptions provided to retailers may result in some additional losses over time.

ADMINISTRATIVE IMPLICATIONS

TRD reports an initial, moderate administrative impact due to revisions in the computer processing system. The cost associated with the changes is estimated at $20 thousand. See TRD FIR for details.

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