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

SPONSOR Jeff **ORIGINAL DATE** 02/15/11 **LAST UPDATED** **HB** 287

SHORT TITLE Special Fuel Tax Deduction on Indian Land **SB**

ANALYST Burrows

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	($14,384.0)	($15,269.0)	Recurring	State Road Fund (90.48% of special fuel)
	($1,513.0)	($1,607.0)	Recurring	Local Governments Road Fund (9.52% of special fuel)

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$14.0	$0.0	$14.0	Nonrecurring	TRD Operating Budget

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 287 creates a new deduction from the special (diesel) fuel tax if: (1) the gallons are sold on the tribal lands of an Indian nation, tribe or pueblo; (2) the gallons are placed into the fuel tank of a motor vehicle on the tribal lands; and (3) the tribal government has imposed an equivalent tribal tax.

The actual number of deductible gallons is determined by multiplying the gallons placed in the tank times a ratio equal to the rate of tribal tax divided by the state tax rate or 1, if the ratio exceeds 1. This bill is similar to the gasoline tax deduction.

The effective date of the provisions of this bill is July 1, 2011.

FISCAL IMPLICATIONS

TRD reports the estimated revenue impact is highly uncertain, and the actual revenue effects might vary considerably from those shown in the table. The large majority of special fuel consumed in the state is associated with interstate truck traffic, and the majority of that traffic is along I-40. Tribally-operated truck stops, particularly those with the added attraction of a casino, probably account for a very significant volume of special fuel. Special fuel is taxed at the distributor level, and TRD has no readily-compiled information regarding distributor deliveries to tribal retail locations.

The Department of Transportation (DOT) estimates 504 million gallons of special fuel sales in FY12, which at $0.21 per gallon produces approximately $106 million in revenue. The $0.21 is split $0.19 to the State Road Fund and $0.02 to the Local Government Road Fund (LGRF). With the addition of some other smaller sources of revenue, the forecast for FY12 totals $96.1 million to the Road Fund and $10.1 million to the LGRF. Estimated revenue losses are roughly 15 percent of these totals.

The state could experience an additional revenue loss of the petroleum products loading fee (PPL fee), if taxpayers fail to apply the PPL fee to tribal sales (see Technical Issues). The estimated annual revenue loss in such circumstances would be approximately $1 million to the Corrective Action Fund and $400,000 to the LGRF.

SIGNIFICANT ISSUES

According to DOT, the special fuel tax is used for the construction, maintenance, and rehabilitation of the New Mexico road system infrastructure. These dollars are received primarily from trucking and other commercial transportation activities, and are also used to match federal monies to provide a multiplier of state funds. This revenue source is currently the second largest to DOT after the gasoline tax.

DOT reports the number of commercial miles driven in New Mexico is double the national average because New Mexico is a common pass-through for interstate trucking. The heavy pounding of the trucks and the required maintenance expenses on the interstates would be directly impacted by the loss of these large, directly-related revenue sources.

According to TRD, fuel tax deductions for tribal retailing of gasoline have been in place since 1999, and those provisions appear to be working well, although with an accompanying revenue loss to the state. Extension of such provisions to special fuel (diesel), however, presents a significantly more complex question, since the majority of diesel is consumed by trucks engaged in interstate commerce that participate in the International Fuel Tax Agreement (IFTA) (see Other Substantive Issues).

ADMINISTRATIVE IMPLICATIONS

TRD states slight changes to tax forms, GenTax system changes, and changes to the e-filing application may be required. TRD will need to review certifications of Indian nations, tribes and pueblos to identify the qualifying reservations and tribal tax rates. TRD estimates a one-time IT systems impact of 160 hours ($14,400).

TECHNICAL ISSUES

DOT suggests that the language of the bill should ensure that the tax deduction apply only to retail sales on tribal land. This is important to prevent distribution off reservation, as occurred with the gasoline tax. DOT states the language seems to be clear and specific, but should have adequate review.

TRD reports the bill does not amend the Petroleum Products Loading Fee Act. The PPL Fee is imposed on all volumes of special fuel that are not exempted under Section 7-13A-4 (exports and sales to the U.S. government). Therefore, the PPL fee would technically apply to the deducted tribal volumes. However, it is anticipated there would be considerable confusion regarding this issue, and it is uncertain whether all distributors would correctly report the PPL fee on tribal retail gallons.

According to TRD, the July 1, 2011 effective date may not allow sufficient time for tax form changes, system implementation, notification to special fuel users (truckers), and implementation and certification of the tribal special fuel taxes.

OTHER SUBSTANTIVE ISSUES

TRD reports that under provisions of the International Fuel Tax Agreement (IFTA), trucks engaged in interstate commerce pay state fuel taxes through a clearinghouse that compares and equalizes the fuel taxes paid in each state to the miles driven in each state, transferring tax payments to other states when appropriate. As configured, the IFTA program does not distinguish purchases on tribal lands from total purchases as reported on trucker's IFTA tax reports, though such purchases might be discovered through audit. Thus, if there exists some inequality between fuel purchases and mileage driven in New Mexico, this bill could inadvertently transfer tax that was never received to another state. In general, however, aggregate fuel purchases and miles driven in the state correspond fairly closely.

To avoid potential difficulties associated with the IFTA tax system, the bill could be amended such that the state continues to collect taxes for sales on tribal land, but makes payment directly to the tribe, pueblo or Indian nation of tax revenue collected from those sales.

DOT reports that House Bill 287 decreases state revenue that would otherwise be matched with federal highway dollars. Therefore, the total loss to the state is greater than the tax deduction alone. The possibility that tribes may use the special fuel tax revenue for purposes other than highway projects may also contribute to this loss.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Special fuel sales on tribal land will continue to be subject to the state excise tax.

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

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