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## FISCAL IMPACT REPORT

**SPONSOR** Martinez, K. **ORIGINAL DATE** 02/25/11  
**LAST UPDATED** \_\_\_\_\_ **HB** 465  
**SHORT TITLE** Tax on Special Fuel Shipments **SB** \_\_\_\_\_  
**ANALYST** Burrows

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(\$7,192.0)	(\$7,634.0)	Recurring	State Road Fund (90.48% of special fuel)
	(\$756.0)	(\$804.0)	Recurring	Local Govts Road Fund (9.52% of special fuel)
	(\$520.0)	(\$552.0)	Recurring	Corrective Action Fund (73.33% of PPL Fee)
	(\$190.0)	(\$200.0)	Recurring	Local Govts Road Fund (26.67% of PPL Fee)

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB568, HB287, and SB507

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

#### Responses Not Received From

Department of Transportation (DOT)

### SUMMARY

#### Synopsis of Bill

House Bill 465 amends Section 7-16A-2.1 of the special fuel excise tax to specify that shipments of special fuel from one pipeline or refinery to another pipeline or refinery are not “received” and are therefore not subject to the special fuel excise tax.

The existing term “shipped” is expanded to specify loading into tank trucks or any type of transportation equipment, and the involved entities (refineries or pipeline terminals) are expanded to include any “other facility that produces, refines, manufactures, distills and blends or compounds special fuel.”

In effect, the bill expands the current law tax-exempt status to apply to shipments between any two entities that can be defined as “any other facility that produces, refines, manufactures, distills and blends or compounds special fuel.”

Because no effective date is provided in the bill, its provisions will become effective 90 days after the 2011 Legislative Session adjourns, on June 17, 2011.

## **FISCAL IMPLICATIONS**

TRD notes the estimated fiscal impact is highly uncertain. Under the new definition, special fuel facilities located on tribal land that are currently subject to the excise tax may be eligible for the tax exemption. TRD is aware of at least one facility located within tribal boundaries that would qualify for the exemption under the new definition. The exemption would also apply to non-tribal distributors with qualifying “refining” facilities. The estimate assumes that under the new definition, additional entities might qualify for untaxed purchases from a refinery or pipeline terminal.

Because the petroleum products loading (PPL) fee is assessed on volumes of special fuel “received,” changes that reduce through redefinition the amount of fuels “received” could lead to a decrease in PPL revenue.

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 currently taxed at the distributor level, so tax is collected on fuel sold through tribal outlets. However, the department has no readily-compiled information regarding distributor deliveries to tribal retail locations.

## **SIGNIFICANT ISSUES**

According to TRD, the state currently defines the taxable event for special fuel as the moment the rack operator first loads the special fuel at the refinery or pipeline terminal into any type of transportation equipment or retail storage container. The state’s current structure for fuel “received” allows the distributor to be the taxpayer. It also allows an exporting distributor to deduct export volumes before paying tax on volumes sold within the state. One advantage of “tax at the rack,” in which the rack operator is the taxpayer, is strict tax compliance. However, significant volumes of exported fuel would also be taxed under such a system, necessitating refund to the exporting distributor or transfer to the state receiving the exported fuel.

A “rack operator” as defined in statute is any operator of a refinery in the state, any person who blends special fuel within the state or the owner of fuel in a pipeline terminal in the state.

## **ADMINISTRATIVE IMPLICATIONS**

TRD reports there could be a significant negative impact on the state’s ability to enforce compliance of the special fuel tax. A greater effort would also be necessary to track the movement of fuel within the state. Both inter-distributor sales as well as sales to retailers would have to be carefully monitored on an on-going basis. The cost of such an audit effort has not been quantified at this time, but this issue would certainly detract from audit coverage for other tax programs like gross receipts taxes.

**RELATIONSHIP**

House Bill 287 proposes a deduction from special fuel tax for diesel sold within tribal boundaries that is subject to a tribal fuel tax.

House Bill 568 proposes to change the basis of the special fuel excise tax from volume to value sold.

Senate Bill 507 proposes to index and increase the special fuel excise tax by increments.

**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. Any changes to the current tax structure would need to comply with the IFTA tax reporting structure.

**THAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The definitions related to the special fuel excise tax will remain as in current statute.

LKB/mew