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FISCAL IMPACT REPORT

ORIGINAL DATE 01/20/11

SPONSOR Griego, P. LAST UPDATED _____ HB _____

SHORT TITLE Jet Fuel Gross Receipts Credit SB 84

ANALYST Golebiewski

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
		(\$609.0)	Recurring	State Aviation Fund
		(\$288.0)	Recurring	Municipalities
		(\$102.0)	Recurring	Counties
		\$118.0	Recurring	General Fund
		(\$882.0)	Recurring	Total

(Parenthesis () Indicate Revenue Decreases)

Duplicates Senate Bill 46. Senate Bill 84 only differs from SB 46 based on its endorsement by the Revenue Stabilization and Tax Policy Committee.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation
Tax and Revenue Department

SUMMARY

Senate Bill 84 would extend the 55% jet fuel gross receipts and compensating tax deduction for five years, through the end of FY17. Under current statute, the 55% deduction would decrease to 40% beginning in FY13.

FISCAL IMPLICATIONS

The Tax and Revenue Department has estimated the total receipts from jet fuel sales to be approximately \$84 million in FY13. With a 40% deduction, funds deposited to the state aviation fund from jet fuel sales would amount to \$2.414 million (\$50.4 million X 4.79%). With a 55% deduction, the general fund

transfer to the state aviation fund from GRT on jet fuel sales would be \$1.811 million (\$37.8 million X 4.79%). The annual cost to the state aviation fund of extending the 55% deduction is therefore approximately \$609 thousand (including the \$6 thousand that is distributed pursuant to NMSA 1978 7-1-6.7 C), and the bill proposes to extend it an additional 5 fiscal years.

Other entities affected by the 55% jet fuel deduction are the municipalities and counties that would otherwise receive GRT on the deductible jet fuel. The approximate cost of extending the 55% deduction to municipalities in FY13 is estimated to be \$288 thousand and the cost to counties is approximately \$102 thousand. Since the majority of jet fuel sales occur at the Albuquerque International Sunport, the city of Albuquerque and Bernalillo County will be those most impacted by the extension.

The proposed extension will also affect the general fund. The approximate difference between the general fund's proportion of GRT revenue (approximately 3.85%) and the amount that must be transferred pursuant to NMSA 1978 7-1-6.7 A (4.79%) translates to a net positive effect to the general fund of approximately \$118 thousand.

The net effect of the extension of the 55% deduction in FY13, as compared with the alternative of a 40% deduction, is \$882 thousand. Estimates of the net effect for FY14 and FY15 are \$906 thousand and \$932 thousand, respectively, with detail similar to the FY13 detail presented above.

SIGNIFICANT ISSUES

The Department of Transportation notes, in FY04, the rate of distribution to the State Aviation Fund increased from 3.59% to the current 4.79% of taxable gross receipts from the sale of jet fuel. Simultaneously, the gross receipts deduction increased from 40% to 55%. These two changes were designed to offset each other so that revenue to the state aviation fund from the sale of jet fuel would be left unaffected. The 55% deduction was initially intended to sunset in FY07, and there were/are still no provisions to sunset the change in the rate of distribution. The first extension of the 55% deduction, through FY12, was passed during the 2006 regular session.

The Department of Transportation also notes that increased funding to the State Aviation Fund can generate a flow of funds from the Federal Aviation Administration (FAA). Grants to airports are extended by the FAA, provided the state can match these funds. This is potentially another source of lost funding due to the extension of the 55% deduction.

The State Aviation Fund is used to improve infrastructure, such as pavement maintenance and rehabilitation, fuel farms, general aviation terminals, and lighting projects at airports throughout the state of New Mexico.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicate of SB 46

OTHER SUBSTANTIVE ISSUES

The 55% deduction, as current statute provides, does not sunset until the end of FY12.

Additionally, SB 84 narrows the gross receipts and compensating tax bases. It may have important tax policy implications, including a possible stimulation of the commercial airline industry in New Mexico. Please see attached tables for a comparison of jet fuel tax rates across states.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If not enacted, the jet fuel deduction will decrease to 40%.

JAG/bym

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State	Jet Fuel Tax Rate—2011	Comments	Authority
AK	\$.047 per gallon for aviation gasoline; \$.032 per gallon for other fuel for aircraft use	Fuel sold for use in jet propulsion aircraft operating in flights to foreign countries or that continue from foreign countries is exempt	Alaska Stat. § 43.40.010 ; Alaska Stat. § 43.40.100
AL	\$.01 per gallon	N/A	<u>Ala. Dept. Rev. Notice, 08/10/2010</u>
AR	No tax	Jet fuel is exempt from distillate special fuel tax	Ark. Code Ann. § 26-55-207 ; Ark. Code Ann. § 26-56-201(a)(1)
AZ	3.05¢ per gallon	for the first 10 million gallons per calendar year; anything in excess is not subject to tax	<u>Ariz. Rev. Stat. Ann. § 42-5352(A)</u>
CA	2¢ per gallon	N/A	<u>Cal. Rev. & Tax. Cd. § 7360</u>
CO	4¢ per gallon	N/A	<u>Colo. Rev. Stat. § 39-27-102(1)(a)(IV)</u>
CT	45.1¢ per gallon	Jet fuel sold to an owner or operator of an aircraft exclusively for aviation purposes is exempt from the motor vehicle fuels tax and the sales and use tax. In addition, aviation fuel sold to a dealer licensed to purchase exempt aviation fuel, whose place of business is located on an established airport in Connecticut, is also exempt from motor vehicle fuels tax. Companies that sell jet fuels are subject to the petroleum products gross earnings tax.	<u>Conn. Gen. Stat. § 12-458(a)(3)</u>
DC	No tax	N/A	N/A
DE	No tax	N/A	DOT
FL	6.9¢ per gallon	Jet fuel is not specifically taxed; this rate applies to aviation fuel.	<u>Florida Tax Information Publication No. 10(B)05-02, 11/24/2010</u>
GA	7.02%; approximately 15 ¢ per gallon	No Fuel tax, but subject to state sales tax and local option sales tax	N/A
HI	\$0.02 per gallon	Subject to county fuel taxes.	Haw. Rev. Stat. § 243-4(a) ; Haw. Rev. Stat. § 243-1
IA	\$.03 per gallon	N/A	<u>Iowa Admin. Code § 701--68.2(1)</u>
ID	\$0.06 per gallon	N/A	<u>Idaho Code § 63-2408</u>
IL	\$0.003 per gallon	Imposed on receivers of fuel for sale or use; certain exemptions apply	<u>ILCS Chapter 35 § 505/2a</u>
IN	No tax	Indiana does not impose tax on jet fuel	N/A
KS	No tax	N/A	<u>Kan. Stat. Ann. § 79-3408(c)</u>
KY	6%; approximately 13 cents per gallon	Jet fuel is not taxable but is subject to the 6% sales and use tax, though credits may apply.	<u>Ky. Rev. Stat. Ann. § 138.341</u>
LA	\$0.20 per gallon	N/A	La. Rev. Stat. Ann. § 47:818.12 ; La. Rev. Stat. Ann. § 47:711 ; La. Rev. Stat. Ann. § 47:820.1
MA	\$0.109 for 01/01/2011 - 03/31/2011	\$0.110 for 09/01/2010–12/31/2010	<u>Mass. Gen. L. Chapter 64A § 1</u>
MD	\$0.07 per gallon	N/A	Md. Code Ann. Tax-Gen. § 9-101(b) ; Md. Code Ann. Tax-Gen. § 9-101(h) ; Md. Code Ann. Tax-Gen. § 9-305
ME	\$0.034 per gallon	This rate remains in effect until July 1, 2011	<u>Fuel Tax Rates, Maine Revenue Services, 06/01/2010</u>
MI	\$0.03 per gallon	Aircraft using state facilities pay a tax at rate of \$0.03 per gallon, half of which is refundable to those operating interstate.	<u>Mich. Comp. Laws Ann. § 259.203</u>
MN	\$0.05 per gallon	N/A	<u>Minn. Stat. § 296A.09, Subdivision 1</u>
MO	\$0.09 per gallon	N/A	<u>Mo. Rev. Stat. § 155.080</u>
MS	\$.0525 per gallon	N/A	Petroleum Tax Rates ; Petroleum Tax Information Bulletin
MT	4¢ per gallon.	<u>Rate is for each gallon of fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by Mont. Code Ann. § 67-1-301</u>	<u>Mont. Code Ann. § 15-70-204(1)(a)</u>
NC	8.07%; approximately 17 cents per gallon	Motor fuel tax does not apply to jet fuel but they are subject to the general rate of state tax and any applicable local sales or use tax	N/A

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State	Jet Fuel Tax Rate—2011	Comments	Authority
ND	8¢ per gallon	Tax imposed on all jet fuel sold or used in North Dakota	N.D. Cent. Code § 57-43.3-01 ; N.D. Cent. Code § 57-43.3-02
NE	3¢ per gallon	The tax does not apply to fuel bought for and used in connection with a federally approved air school	Neb. Rev. Stat. § 3-148 ; Neb. Rev. Stat. § 3-150
NH	2¢ per gallon	if the aircraft is certified under FAA regulations, the tax is 5¢ per gallon of aviation jet fuel	<u>N.H. Rev. Stat. Ann. § 422:34</u>
NJ	2¢ per gallon	New Jersey also imposes a petroleum products tax at 4¢ per gallon.	<u>N.J. Rev. Stat. § 54:39-103</u>
NM	7% with a 55% deduction; approximately 6.8¢ per gallon	N/A	<u>N.M. Admin. Code § 3.2.114.9(A)</u>
NV	1¢ per gallon	N/A	Nevada motor fuels release, 12/2010 ; Nev. Rev. Stat. § 365.170 ; Nev. Rev. Stat. § 365.180 ; Nev. Rev. Stat. § 365.190
NY	6.8¢ per gallon (effective 01/01/2011)	Kero-jet fuel; Subject to petroleum business tax	N.Y. Tax Law § 301-a ; New York Department of Taxation & Finance Publication No. 908, 01/01/2011
OH	No tax	Even if it could meet definition of motor fuel, provided it is sold exclusively for use in operation of aircraft	Ohio Rev. Code Ann. § 5735.01(E) ; Ohio Rev. Code Ann. § 5735.01(A)
OK	0.08¢ per gallon	N/A	<u>Okla. Stat. 68 § 500.4(B)</u>
OR	1¢ per gallon	N/A	<u>Or. Rev. Stat. § 319.020(2)</u>
PA	\$0.017 per gallon	N/A	<u>Notice, Rates of Tax on Aviation Gasoline and Jet Fuel for 2009; Oil Company Franchise Tax Rate for 2009; Alternative Fuel Tax Rates for 2009, Pa. Bull. Doc. No. 08-2258, Vol 38, No. 50, 12/12/2008</u>
RI	No tax	An exemption applies to fuels used for the propulsion of airplanes	<u>R.I. Gen. Laws § 31-36-1(4)</u>
SC	Not subject to tax	N/A	S.C. Code Ann. § 12-28-310 ; S.C. Code Ann. § 12-28-110(15) ; S.C. Code Ann. § 12-28-110(41) ;
SD	4¢ per gallon	Jet fuel is a special fuel formulated and produced specifically for use in jet aircraft	<u>S.D. Codified Laws § 10-47B-3(21)</u>
TN	No Tax	N/A	<u>Tenn. Code Ann. § 67-3-409</u>
TX	\$0.20 per gallon	Rate is per each net gallon or fractional part	Tex. Tax Code Ann. § 162.202 ; Tex. Tax Code Ann. § 162.001(19)
UT	9¢ per gallon	4¢ for aviation fuel purchased for use by a federally certificated air carrier; 2.5¢ if aviation fuel purchased at Salt Lake International Airport.	Utah Code Ann. § 59-13-401 ; Utah Code Ann. § 59-13-402
VA	\$0.05 per gallon	Upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in a fiscal year; and \$0.005 per gallon is levied on aviation jet fuel in excess of 100,000 gallons. Persons who use, acquire for use, sell, or deliver aviation jet fuel for use in highway vehicles are subject to tax at a rate of \$0.175 per gallon	<u>Va. Code Ann. § 58.1-2217</u>
VT	No tax	N/A	<u>Vt. Stat. Ann. 23 § 3101(a)</u>
WA	\$0.11 per gallon	N/A	<u>Wash. Rev. Code § 82.42.020</u>
WI	\$0.06 per gallon	N/A	<u>Wis. Stat. § 78.555</u>
WV	32.2¢ per gallon	Tax rate is 32.2¢ per gallon for period 1/1/2008 through 12/31/2011. Rate may be adjusted annually.	W. Va. Code § 11-14C-5(a) ; W. Va. Code § 11-14C-2(8) ; W. Va. Code § 11-14C-2(57) ; West Virginia Administrative Notice No. 2010-31, 11/23/2010
WY	5¢ per gallon	N/A	Wyo. Stat. § 39-17-104(a)(ii) ; Wyo. Stat. § 39-17-104(a)(iii)

Source: RIAG Checkpoint