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FISCAL IMPACT REPORT

SPONSOR Townsend/Scott/ Wooley ORIGINAL DATE 2/6/18 LAST UPDATED _____ HB 168

SHORT TITLE Gas Tax Changes SB _____

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20	FY21	FY22		
--	--	\$1,945.0	\$3,890.0	\$5,835.0	Recurring	State Road Fund
--	--	\$265.0	\$529.0	\$794.0	Recurring	Counties & Municipalities
--	--	\$147.0	\$294.0	\$441.0	Recurring	County Governments Road Fund
--	--	\$147.0	\$294.0	\$441.0	Recurring	Municipal Road Fund
--	--	\$37.0	\$73.0	\$110.0	Recurring	Municipal Arterial Program (LGRF)
--	--	\$7.0	\$13.0	\$20.0	Recurring	State Aviation Fund
--	--	\$3.0	\$7.0	\$10.0	Recurring	Motorboat Fuel Tax Fund
--	--	\$206.0	\$412.0	\$619.0	Recurring	Corrective Action Fund (PPL Fee)
--	--	\$75.0	\$150.0	\$225.0	Recurring	Local Governments Road Fund (PPL Fee)
--	*	*	*	*	Recurring	State Road Fund
--	*	*	*	*	Recurring	Other funds listed above

Parenthesis () indicate revenue decreases

The revenue impact in the table above illustrates the bill's phase-out of the current state tax deduction allowed for gasoline sold on Tribal lands and subject to taxes imposed by an Indian nation, tribe or pueblo. See Fiscal Implications discussion.

* Additional revenue gains associated with improved tax compliance resulting from collection of taxes by rack operators has not been quantified, but may amount to something in the range of 1.2 percent, or about \$3.6 million per year for all funds (about \$2.7 million per year for the State Road Fund). See Fiscal Implications discussion.

* A third component of revenue gain would occur in FY24 and FY25 as a result of failure to renew the Gasoline Tax Sharing Agreements between the State and Nambe Pueblo (January 14, 2024) and Kewa (Santo Domingo) Pueblo (July 1, 2024). The revenue gain to the State Road Fund would amount to \$1 million in FY24, and \$4.1 million in FY25.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
\$100.0	\$200.0	\$200.0	\$500.0	Recurring	Taxation and Revenue Department

Parenthesis () indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)

Taxation and Revenue Department (TRD)

Indian Affairs Department (IAD)

SUMMARY

House Bill 168 revises who is required to act as the taxpayer for gasoline tax, special fuel excise tax, and the petroleum products loading fee (PPL fee) when motor fuel is loaded at a rack or fuel terminal in New Mexico. Under current law, the distributor who receives (purchases) fuel from the rack or terminal is the taxpayer. Under this bill, the rack operator who provides (sells) fuel from the rack or terminal would be the taxpayer. In effect, the bill moves the incidence of gasoline and special fuel excise tax to the rack operator rather than the distributor for fuel received at a rack.

Significant changes are made to tax refund provisions to allow distributors to obtain refunds for tax deductible uses of motor fuel on which tax has already been paid (only taxpayers may claim deductions, and the distributor might not be the taxpayer for fuel purchased at the rack).

The current state tax deduction for gasoline sold on Indian reservations and subject to tribal-imposed gasoline tax is phased-out over a five-year period beginning in FY20, reducing the deduction by an additional 20 percent each year, until the deduction is eliminated in FY24.

The current law allowing NMDOT and TRD to enter into Gasoline Tax Sharing Agreements with the Pueblos of Nambe and Kewa (Santo Domingo) is repealed, but this bill explicitly allows the existing agreements to remain in place unimpaired.

The effective date of this bill is July 1, 2019.

FISCAL IMPLICATIONS

The fiscal estimates were provided by the Department of Transportation (DOT) and are based on DOT’s forecast for the total taxable gallons sold for gasoline and special fuels. It is noted these estimates differ somewhat from the estimated provided by the Taxation and Revenue Department (TRD).

The following analysis was provided by DOT:

As pointed out by the Federal Highway Administration (FHWA) and by the literature (Identifying and Quantifying Rates of State Motor Fuel Tax Evasion, NCHRP - Report 623), taxing at the terminal rack for motor fuel is one key measure a government can take towards increasing motor fuel excise tax compliance. Moving the point of taxation to the terminal rack decreases the opportunity for tax evasion and reduces the numbers of taxpayers, decreasing the administrative and enforcement burden on the collection agency (i.e., TRD).

The traditional, ballpark estimate for tax compliance gains by moving to tax-at-the-rack is in the 2 percent to 5 percent range; however, this gain would be dependent on the existing administrative mechanism prior to moving to tax-at-the-rack. In New Mexico's case, the point of taxation is already at the rack, and consequently the tax compliance gains would be toward the low end of that range (2 percent). However, only about 60 percent of New Mexico fuel is received from a New Mexico terminal, and the 40 percent that is imported would not be affected by provisions of this bill. Thus, $2\% * 60\% = 1.2\%$ compliance gain.

DOT states the 1.2 percent compliance gain may appear overly conservative to some, however, in 2004 Texas shifted the point of taxation to the rack, but because the point of taxation was already close to the rack, Texas did not see any identifiable large increase in revenue as a result. Alternatively, TRD assumes a 2 percent increase in taxable fuel volumes from improved compliance.

According to DOT, the number of taxpayers reporting taxable gallons and paying the tax would be decreased, and only a handful of taxpayers (about 10 major) would report and pay the tax on fuel loaded from racks in New Mexico. However, a significant number of taxpayers (about 75 to 100) would continue to report gallons imported from another state.

This bill eliminates any future renewal of the Gasoline Tax Sharing Agreements between DOT, TRD and the Pueblos of Nambe and Kewa (Santo Domingo). Pursuant to the gasoline tax sharing agreements, the two Pueblos are entitled to receive an amount equal to 40 percent of the net receipts attributable to the gasoline tax paid to the State on 2.5 million gallons of gasoline each month, which represents about \$2 million per year per Pueblo, or \$4.1 million annual total. The repeal of law allowing such agreements does not affect the existing decennial agreements with the two Pueblos (signed in January and July 2014). Consequently, the revenue impact from termination of the agreements occurs in mid-FY24 and FY25.

TRD indicates volumes reported for the petroleum products loading fund are also expected to increase because of the bill. The amount of increase was estimated and shown in the increased revenue to the Environmental Corrective Action Fund.

SIGNIFICANT ISSUES

TRD provides the following statement regarding policy considerations relevant to this bill:

For several reasons, most having to do with taxpayer compliance, moving the incidence of taxation of motor fuels closer to the rack supplier is good tax policy. First, it allows for collection of taxes up front, with refunds for non-taxable usage being applied for later. This helps ensure that taxes get paid on all proper motor fuel usage. Second, where rack transfers

take place, the tax becomes incident on fewer taxpayers, and with explicitly defined reporting by these taxpayers, it streamlines auditing and compliance checking. Third, at the rack taxation is similar to the systems used in neighboring states and the federal government, making compliance easier for taxpayers. All of these compliance improvements help to broaden the tax base.

The following issues were presented for consideration by the Indian Affairs Department (IAD):

Eliminating deductions for gallons of gasoline sold at retail on Indian land may present profitability issues for Native businesses. Extensive case law governs this bill as it is a “frequently dispositive question in Indian tax cases” as to “whether motor [or gas] fuel tax is borne by non-tribal distributors or by Indian retailers to whom the distributors sell the motor fuel.” *Coeur D’Alene Tribe of Idaho v. Hammond*, 384 F.3d 681 (9th Cir. 2004) (quoting *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 458-59, 115 S.Ct. 2214, 132 L.Ed.2d 400 (1995)). The Court of Appeals “conducts a balancing test weighing federal, state, and tribal interests . . . in determining whether the tribe has sovereign immunity from the tax.” *Coeur D’Alene Tribe of Idaho v. Hammond*, 384 F.3d 674 n.3 (9th Cir. 2004). Additionally, In *Coeur D’Alene*, the court stated that “if the legal incidence of an excise tax rests on a tribe or on tribal members for sales made inside Indian country, the tax cannot be enforced absent clear congressional authorization.” *Coeur D’Alene Tribe of Idaho v. Hammond*, 384 F.3d 681 (9th Cir. 2004) (quoting *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 458-59, 115 S.Ct. 2214, 132 L.Ed.2d 400 (1995)).

The court in *Coeur D’Alene* further stated that “the legislatures statement of its own intention is not solely determinative of the legal incidence question . . . ‘In determining who the legislature intends will pay the tax, the entire state taxation scheme and the context in which it operates as well as the express words of the taxing statute must be considered.’” *Coeur D’Alene Tribe of Idaho v. Hammond*, 384 F.3d 682 n.4 (9th Cir. 2004) (quoting *United States v. Cal. State Bd. Of Equalization*, 650 F.2d 1127, 1130-1131 (9th Cir. 1981)).

PERFORMANCE IMPLICATIONS

According to IAD, it is not clear whether Native entities can increase their taxes in step with state increases while preserving any differential they think appropriate as a means of retaining profitability of gasoline sales on the reservation. IAD states the bill may need to include an offset provision to assist in maintaining profitability in the sales of gasoline, special fuels, and petroleum products.

ADMINISTRATIVE IMPLICATIONS

The TRD approach to auditing motor fuel tax deductions may change significantly, shifting some resources to the thorough review of volumes cited for refund claims.

TRD states the impact on the Revenue Processing Division (RPD) and Audit and Compliance Division (ACD) will be high, requiring four full time employees to be added to handle processing and auditing of the new refund system. TRD estimates the recurring impact at \$200 thousand per year.

TECHNICAL ISSUES

DOT points out that, in Section 12, Subsection B (on page 33), the refund of the Petroleum Products Loading Fee (PPL Fee) on fuel that is exported is contingent on proof that the other “state’s gasoline or equivalent fuel tax” has been paid. For purposes of the PPL Fee refund, DOT states it may be more appropriate to simply specify the other “state’s equivalent fuel tax” which might relate to a gasoline excise, special fuel excise, or other environmental loading fee. If so, the words “gasoline or” might be stricken on lines 14, 16, and 19.

According to TRD, auditing a refund-based system will require significant resources to develop and maintain in order to ensure that refunds are processed properly and a revenue increase to the state is indeed realized. TRD notes that refunds will often be given to persons other than the person paying the taxes, an unusual configuration for New Mexico.

Does the bill meet the Legislative Finance Committee tax policy principles?

- 1. Adequacy:** Revenue should be adequate to fund needed government services.
- 2. Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
- 3. Equity:** Different taxpayers should be treated fairly.
- 4. Simplicity:** Collection should be simple and easily understood.
- 5. Accountability:** Preferences should be easy to monitor and evaluate

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