BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

January 26, 2024

Bill: SB-118 **Sponsor:** Senator Gregory A. Baca and Senator Joshua A. Sanchez

Short Title: Dyed Agricultural Diesel Fuel Tax Credit

Description: This bill adds a new section to the Gross Receipts and Compensating Tax Act that provides a deduction from gross receipts, prior to July 1, 2029, for receipts from the sale and use of special fuel dyed in accordance with federal regulations that is used for agricultural purposes. The deduction is required to be separately reported by the taxpayer in the manner required by the department.

Effective Date: July 1, 2024

Taxation and Revenue Department Analyst: Pedro Clavijo

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2024	FY2025	FY2026	FY2027	FY2028		
--	($70,800)	($73,400)	($75,500)	($79,500)	R	General Fund
--	($47,200)	($48,900)	($50,300)	($53,000)	R	Local Governments

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Methodology for Estimated Revenue Impact: Tax & Rev collected data on dyed special fuel reported during Fiscal Year 2023 to estimate the future volumes by applying the most recent State Road Fund forecast produced by the Department of Transportation. Tax & Rev assumes all dyed special fuel is utilized for agricultural purposes. To estimate the prices, Tax & Rev collected diesel prices reported by the U.S. Energy Information Administration and produced a projection of prices based on the Chained Price Index for consumer fuel produced by the firm S&P. A statewide effective Gross Receipts Tax (GRT) rate was applied to calculate the estimated revenue impact.

Policy Issues: Currently, receipts from special fuels are subject to the gross receipts and compensating tax due to the language of Section 7-9-26 NMSA 1978 that only exempts receipts from special fuels on which the special fuels excise tax has been paid. Because receipts from dyed special fuels are deductible from taxable receipts when applying the special fuels excise tax pursuant to Section 7-16A-10(E) NMSA 1978, such receipts are not receipts on which the special fuels excise tax has been paid and are therefore subject to the gross receipts and compensating tax under Section 7-9-26 NMSA 1978.

If this legislation is enacted, receipts from the sale or use of the subset of dyed special fuels used for agricultural purposes will not be subject to any tax at all. Tax & Rev understands that the purpose of the legislation is to encourage the use of dyed special fuels in agriculture. However, the creation of a special exemption for the sale or use of a particular category of fuels goes against sound tax policy by: (i) distorting the market for agricultural fuels generally; (ii) adding complexity to the tax code for both taxpayers, increasing the burden of tax compliance, and for Tax & Rev, increasing administrative costs; and, (iii) violates principles of horizontal equity by favoring consumption of certain fuels that are otherwise similar in application and use to other fuels. Furthermore, allowing one kind of fuel to escape all taxation encourages abuse of the deduction through miscategorization and misreporting, especially as deductions are self-reported, rather than needing to be claimed like a credit. Adding this deduction would therefore also increase the burden and complexity of audits.

GRT rests upon the general presumption that all receipts of a person engaged in business in New Mexico are subject to the gross receipts tax and that this rate represents the rate upon which the State collects taxes on transactions.[1] GRT represents the largest recurring revenue source for the state General Fund at around 34%, about 80% of municipal revenue, and 30% of county revenue.

Technical Issues: None.

Other Issues: Tax & Rev suggests specifying the federal regulation mentioned in Section 1 Subsection A.

Administrative & Compliance Impact: Tax & Rev will update forms, instructions, and publications and make information system changes. Tax & Rev's Administrative Services Division (ASD) anticipates this bill will take approximately 20 hours and two existing full-time employees (FTE). Tax & Rev's Information Technology Division (ITD) estimates that implementing the bill will require approximately 220 hours or about a month and a half and $12,210 of staff workload costs.

Estimated Additional Operating Budget Impact*				**R or NR****	**Fund(s) or Agency Affected**
FY2024	**FY2025**	**FY2026**	**3 Year Total Cost**		
--	$1.2	--	$1.2	NR	Tax & Rev – ASD – staff workload cost
$12.2	--	--	$12.2	NR	Tax & Rev – ITD – staff workload cost

* In thousands of dollars. Parentheses ( ) indicate a cost saving. ** Recurring (R) or Non-Recurring (NR).

[1] Section 7-9-3.5(A)(1) NMSA 1978.