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

SPONSOR Griego **ORIGINAL DATE** 02/05/13
LAST UPDATED **HB**

SHORT TITLE Locomotive Fuel Gross Receipts **SB** 287

ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue				Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16		
$0.0	($2,975.0)	($2,940.0)	($3,010.0)	Recurring	General Fund
$0.0	($213.0)	($210.0)	($215.0)	Recurring	Municipal Equivalent Distribution
$0.0	($425.0)	($420.0)	($430.0)	Recurring	Small County Assistance Fund
$0.0	($638.0)	($630.0)	($645.0)	Recurring	Small City Assistance Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicate of HB 120

SOURCES OF INFORMATION
LFC Files

Responses Received From
Economic Development Department (EDD)
Department of Transportation (DOT)
Department of Finance and Administration (DFA)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

The law currently provides a deduction from the gross receipts tax (GRT) and compensating tax for locomotive fuel beginning on July 1, 2013, contingent on certification by Economic Development Department (EDD) that the construction of a railroad locomotive refueling facility project in Dona Ana County has commenced by July 1, 2012. According to the EDD, this certification has been met and this deduction will begin on July 1, 2013. This bill does not change the effective date of the deduction.

Senate Bill 287 amends section 7-9-110.3 NMSA 1978 to provide a deduction from gross receipts tax (GRT) and compensating tax for locomotive fuel beginning July 1, 2013. The purpose of the deduction on fuel loaded or used in a locomotive engine from gross receipts and from compensating tax is to encourage construction, renovation, maintenance and operation of railroad locomotive refueling facilities and other railroad capital investments in New Mexico.
Under the existing statute, eligibility for the deduction is still limited to a railroad that after July 1, 2011 made a qualifying capital investment of $100 million or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is loaded. SB 287 amends the qualifying capital investment to include an additional category of qualifying investment, on or after July 1, 2012, of $50 million or more in new railroad infrastructure improvements, including railroad facilities, track, signals and supporting railroad network, located in New Mexico, provided that the new railroad infrastructure improvements are not required by a regulatory agency to correct problems, such as regular or preventative maintenance, specifically identified by that agency as requiring necessary corrective action.

The bill also describes the purpose and requirements of the locomotive fuel deduction, such that the EDD can measure the effects of the deduction. EDD is required to compile an annual report containing information on those who claim the deduction, the number of jobs created as a result of the deduction, and the amount of the tax expenditure. This report is to be used to evaluate the effectiveness of the deduction.

Laws 2011, Chapter 60, Sections 4 and 5 are repealed. Under Section 4, the EDD certifies to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Dona Ana county has commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction. The Taxation and Revenue Department shall notify the New Mexico compilation commission and the director of the Legislative Council Service prior to July 1, 2013 as to whether the certification from the EDD has been received. EDD provided this certification to TRD; therefore this certification is no longer required.

The effective date of the bill is July 1, 2013. There is no sunset date. The LFC recommends adding a sunset date.

FISCAL IMPLICATIONS

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

This estimate was made using information from the Surface Transportation Board including fuel use, fuel costs, and track miles operated for Class I railroads operating in New Mexico. Data from IHS Global Insight forecasting service was also used. Some confidential information from tax filings was also used. BNSF has provided a memo to confirm the amount of compensating use tax paid on fuel (see attachment).

Policy Issues: Not treating similar business activity the same violates the equity principal of good tax policy. Under existing statute, not all railroad companies operating in New Mexico qualify for a gross receipts and compensating tax deduction of locomotive fuel. This legislation would extend benefits received by some members of that industry to a larger portion of its participants thereby satisfying that argument for equity.

The gross receipts tax (GRT) deduction for railroad fuel was adopted by the 2011 legislature in order to encourage development of a new railroad re-fueling facility in southern New Mexico. The proposal would lower the new investment requirements for this GRT deduction.

Detailed Discussion: A possible goal of this bill may be to further stimulate the railroad industry in New Mexico. By reducing fuel costs this bill would make it slightly more profitable for railroads to operate in New Mexico. This bill would also provide an incentive for railroads to purchase fuel from in state vendors as there would no longer be an incentive to structure purchases to pay compensating tax rather than GRT. However, the bill would also add complexity and narrow the gross receipts and compensating tax base. An argument in favor of the proposal is that it would treat similar business activity the same.

On the immediate horizon, only one major rail operator, BNSF Railway, will likely qualify for this prior to the contingent effective date of the current law. As such, data were taken from BNSF's Class I Railroad Annual Report for 2011 submitted to the Surface Transportation Board and available through STB's website to estimate the potential Locomotive Fuel Tax liability, and corresponding revenue impact of the deduction. According to this report, BNSF operates 32,303 total miles of track in the US, of which 1,357 miles (or 4.2 percent) are in New Mexico. Also from that report, BNSF's system-wide expenditure on locomotive fuels was approximately $4.084 billion.

TRD used data on historic and forecasted diesel prices from the U.S. Energy Information Administration's Annual Energy Outlook 2013 Early Release. These data were converted to growth rates for calendar years 2010 through 2017. Applying these growth rates to BNSF's 2011 expenditure yielded an estimated system-wide expenditure on locomotive fuel across relevant years.

The percentage of ton-miles in New Mexico of system wide ton-miles in the most recent reporting period is used as a proxy for the percentage of fuel used in New Mexico. Ton-miles are calculated by multiplying the aggregate weight of each shipment by the number of miles it is carried. The compensating tax rate of 5.125 percent is taken against that total to calculate a total revenue impact, which is further divided between the statutory distributions. The amount is adjusted downward to account for fuel purchased in California, which charges tax on locomotive fuel, used in New Mexico on eastbound trains originating in California.

The $50 million investment necessary for the deduction must occur after July 1, 2012. This analysis assumes that BNSF will meet this threshold prior to the contingent effective date of the existing statute. The analysis also recognizes that other railway operators could eventually reach the $50 million threshold. In that case, the actual fiscal impact in the out years would be larger than this estimate suggests.

Given the estimated expenditure of BNSF on fuel, the approximate 2 percent difference between gross receipts tax at its fueling facility in Belen and the compensating tax is not insignificant. The analysis assumes, therefore, that BNSF has strong incentive to structure its fuel purchases in such a way that they would pay compensating tax rather than GRT. This assumption may not hold for smaller railway operators.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement that the EDD and TRD report annually to the interim Revenue Stabilization and Tax Policy Committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

EDD is required to certify a taxpayer's eligibility for the deductions, promulgate rules for issuance of that certificate of eligibility, and track the jobs created by the deductions. Existing staff will take on the added workload.

TRD reports a minimal administrative impact. The TRD will need to create a new nontaxable transaction certificate (NTTC), and a special application process for the NTTC. The application process will need to be manual, but would be absorbed with existing resources. The NTTC web application will need to be modified to account for the new NTTC. A new flag in GenTax may be necessary. Instructions and publications related to the CRS tax program will need to be modified as well.

OTHER SUBSTANTIVE ISSUES

The Railroad Revitalization and Regulatory Reform Act of 1976 might provide railway operators an avenue to pursue recourse against inequitable tax treatment. Although the 4R Act has historically been used to challenge treatment across transportation industries, it could provide grounds to challenge intra-industry discriminatory practices. If it did, amending the original statute through the legislative process to apply this deduction more equitably might be less costly to the state than litigation.

According to EDD, if this bill does not pass BNSF Railway may choose to make its capital investments in other states.

According to the DFA, in existing legislation the investment requirement is $100 million and is contingent upon construction beginning prior to July 1, 2012. With the reduction of the required investment to $50 million and the deletion of contingent criteria, the barriers to qualification are lowered and left open-ended. This may encourage the construction of additional infrastructure projects in the future by other rail operators, which could increase the impact noted here. From a tax policy perspective, this bill narrows the tax base, increases complexity, and increases differences in truck and rail transportation fuel taxation. Not treating similar business activity the same violates the equity principle of good tax policy.

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

EWM/bm