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

NSOR: Begaye   DATE TYPED: 01/21/02   HB 29

SHORT TITLE: Tribal Distributors Tax Deduction   SB

ANALYST: Smith

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY02	**FY03**			
	0.1		Recurring	State Road Fund
	0.1		Recurring	Local Road Funds

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

Taxation and Revenue Department

SUMMARY

Current law allows deductions for sales to an Indian tribe or pueblo for retail sales on the reservation (Section 7-13-4(E) NMSA 1978), and for sales by an Indian distributor (Section 7-13-4(F))--would be made contingent on the tribe or pueblo entering into a joint powers agreement with the Taxation and Revenue Department. The agreement would allow both parties to verify information contained in the gasoline tax returns of distributors or wholesalers who deliver gasoline to the Indian facilities. The effective date is July 1, 2002.

FISCAL IMPLICATIONS

By improving the flow of information between Indian tribes and the State, the proposal should help to insure that gasoline tax deductions are limited to those entities for which they were intended. This could prevent the erosion of the gasoline tax base over time. Although the amount

of avoided erosion is uncertain, the total volume of gasoline currently being deducted is over 100 million gallons per year.

ADMINISTRATIVE IMPLICATIONS

TRD notes that it has become clear over the last two years that the Department must commit additional resources to the task of tracking and verifying the deductions being taken against gasoline tax liabilities. Implementation of this measure would be one part of that effort.

OTHER SUBSTANTIVE ISSUES

Under present law, there are two major categories of gasoline tax deductions related to Indian sales. Section 7-13-4(E) provides a deduction for sales to an Indian distributor when the gasoline is subsequently sold at retail on the reservation, pueblo grant or trust land of the distributor's nation, tribe or pueblo. In this case, the deduction is limited to the amount of excise, privilege or similar tax imposed by the tribe. Section 7-13-4(F) provides a deduction for sales by certain Indian distributors for resale outside the distributor's reservation, pueblo grant or trust land. The Department has seen a dramatic increase in the volume of gasoline deductions claimed over the last three fiscal years. Most of the deductions appear to be due to legitimate claims by tribal distributors and/or sales to retail outlets on tribal land. However, the Department has not received information from all of the tribal enterprises involved in the sale of gasoline. The proposal should help the Department to trace the chain of transactions from the point at which fuel is brought into the state to the ultimate point of retail sale. In addition, in the case of retail sales on Indian lands, the proposed joint powers agreements should help the Department to identify the amount of Indian tax being imposed and therefore the legitimate amount of deductions from the State's tax.

As a practical matter, it is probably impossible to regulate retail sales on reservations that share a common exterior boundary with the state. For example, the Navajo nation can simultaneously "receive" (the taxable act) and import gasoline without it leaving tribal lands.

POSSIBLE QUESTIONS

How does this bill relate to the concept of tribal sovereignty?

SS/ar