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

SPONSOR Roberts **DATE TYPED** 2/12/2004 **HB** 574

SHORT TITLE Gas Tax Administration Changes **SB**

ANALYST Valenzuela

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	NFI		NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	$5.5 million	$5.5 million	Recurring	State Road Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Environment Department
Taxation and Revenue Department

No Responses Received From
Department of Transportation

SUMMARY

Synopsis of Bill

House Bill 574 makes several revisions or additions to the Gasoline Tax Act. A section-by-section analysis of the bill follows:

Section 1. Clarifies the definitions for "distributor" and "rack operator". Allows for distributors to be retailers/importers and rack operators, and allows rack operators the equivalent opportunity;

Section 2. Changes definition of when gasoline is "received" in New Mexico by a rack operator to when it is loaded into vehicles for transportation. The present law provisions that allow "shifting" the liability to a distributor to whom the gasoline is subsequently transferred are repealed. It changes the definition of when gasoline is received by an importer, eliminating the shifting of the tax to any subsequent distributor to whom the fuel is transferred. Gasoline initially received within an Indian reservation or pueblo grant and subsequently moved off the Indian land is received when it leaves Indian land, with no shifting to subsequent distributors.

Section 3. Taxpayers are required to file a surety bond in an amount set by the department, with a minimum of $1,000. Once a taxpayer can demonstrate that they have not been delinquent in payment for a 24-month period, they can request an exemption from the bonding requirement.

Section 4. Deletes distributor or wholesaler from gas tax exemptions, and deletes the gas tax exemption for federal government-licensed vehicles;

Section 5. Adds a new section outlining reimbursement protocol for distributors and wholesalers. A new presumption of taxability is adopted, under which a distributor would have to provide evidence that any gasoline on which tax is not paid was sold, exported or used for one of the following nontaxable purposes:

a. Exported from the state, including proof that the destination state's tax was paid;
b. Sold to the U.S. government including into a government vehicle;
c. Sold to an Indian nation, tribe or pueblo;
d. Dyed and used off-road;
e. Sold at retail by an Indian distributor when a similar tax was paid to the tribe or pueblo;
f. Sold at wholesale by eligible Indian distributors; and
g. Sold at retail on Indian lands when a similar tax was paid to the tribe or pueblo.

Upon a satisfactory showing, a distributor could apply for a reimbursement of any tax paid on gasoline eligible for the above nontaxable purposes;

Section 6. Adds a new section requiring certificates of eligibility;

Section 7. Replaces the word "distributor" with "taxpayers". Conforms the language governing who files a tax return with the new statute;

Section 8. Conforms the requirements for transporters to provide evidence that tax has been paid;

Section 9. Makes the effective date January 1, 2005.

Significant Issues

The overall impact of the bill would be to implement a "tax at the rack" model for collecting tax on gasoline before the fuel is distributed to wholesalers and others. The proposal is an attempt to address the concern that there is significant non-compliance with the gasoline tax under present law. According to TRD, the concern exists because distributors who receive gasoline can avoid paying the tax by citing one of a variety of deductions available under present law. The department can only determine the validity of the deduction through a lengthy process of auditing.

Due to a statutory cross reference, the deductions for gasoline tax are automatic for the petroleum products loading fee. The deletion for gasoline delivered into the supply tank of a U.S. government-licensed vehicle will increase revenues into the corrective action fund.

FISCAL IMPLICATIONS

HB574 could increase revenues into the state road fund. Other states that have moved to tax at the rack have seen increases in gasoline tax revenues of 3 percent to 5 percent.

A 5 percent increase could generate $5.5 million for the state road based on FY03 actual revenues from gasoline tax.

ADMINISTRATIVE IMPLICATIONS

TRD reports significant administrative implications for implementing the provisions of the bill. Though the department acknowledges simplified collections, it asserts that the refund process associated with current gas tax exemptions would require substantial effort.

The current TRD computer systems are not designed for tax at the rack.

TECHNICAL ISSUES

TRD reports the following technical issues:

- For completeness, the modifications to the definition of “distributor” on page 2 line 6 should read “transports, distributes, resells or sells…”

- Section 5 of the bill sets up a mechanism for reimbursement of tax when sold for a non-taxable purpose. Because the term “reimbursement” is used rather than “refund,” it is not clear whether the various statutes governing the handling of refunds by the department would apply.

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