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

SPONSOR Silva **DATE TYPED** 2/21/05 **HB** 424/aHTRC

SHORT TITLE Gas & Special Fuels Requirements **SB**

ANALYST Moser

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		None

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
GASOLINE TAX:				
None	none	See Fiscal Implications	Recurring	State Road Fund (76.27%)
None	none	See Fiscal Implications	Recurring	Municipal & County Road Funds (10.38%)
None	none	See Fiscal Implications	Recurring	County Roads (5.76%)
None	none	See Fiscal Implications	Recurring	Municipal Roads (5.76%)
None	none	See Fiscal Implications	Recurring	Municipal Arterial Program (Local Govt Road Fund) (1.44%)
None	none	See Fiscal Implications	Recurring	State Aviation Fund (0.26%)
None	none	See Fiscal Implications	Recurring	Motorboat Fuel Fund (State Park Boating Facilities) (0.13%)
SPECIAL FUELS TAX:				
none	none	See Fiscal Implications	Recurring	State Road Fund (90.48%)
none	none	See Fiscal Implications	Recurring	Local Governments Road Fund (9.52%)

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB-226 includes some similar provisions**.**

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Transportation (DOT)

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTTEE

SUMMARY

Synopsis of Amendment

The amendment establishes an effective date of January 1, 2006.

Synopsis of Original Bill

House Bill 424 establishes various "information return" reporting requirements for gasoline and special fuel rack operators, wholesalers and retailers. Electronic filing of information returns, as well as distributor tax returns, could be required so long as exceptions are allowed for small entities dealing in limited quantities of fuel. The Gasoline Tax, Special Fuels Supplier Tax, and Petroleum Products Loading Fee are added to the list of tax programs for which large taxpayers owing $25,000 or more per month must provide immediately available funds on or before the tax due date. A number of other "technical clean-up" changes are made. A section-by-section description is included on page 3.

Significant Issues

- The Governor's "Gasoline Tax Working Group" was convened following the 2003 legislative session to examine the issues of gasoline tax compliance, including the possibility of moving to a rack operator ("tax at the rack") reporting system. The Working Group is comprised of representatives from industry (rack operators and distributors), state government agencies (TRD and DOT), tribal governments, and the Governor's Office. The consensus position reached by the group was that alternatives exist which would be productive and more attractive than a "tax at the rack" system. The "tax at the rack" system appeared to be unacceptable to distributors and tribal interests, presented significant processing challenges to TRD in the processing of tax reimbursements to distributors, and presented difficulties for rack operators in complying with numerous tribal tax impositions. The group concluded that an alternative involving electronic filing of information returns and automated cross-checking for tax compliance would be a preferable approach to deal with the currently undetermined level of gasoline tax evasion.

- The Taxation and Revenue Department is beginning the process of developing new fuel tax processing systems pursuant to a 2003 appropriation. With updated technology and database designs, the TRD should be in a position to make use of more detailed information on fuel transactions to perform automated cross-checking for tax compliance. This bill's provisions relating to electronic filing requirements are crucial for TRD's efforts in this area, since the large volume of information required makes traditional key-entry data capture impractical.

FISCAL IMPLICATIONS

The amount of potential ***gasoline*** tax compliance gain associated with gasoline information reports is not predictable since the extent of current noncompliance and tax evasion is unknown, and since compliance gains would depend on the degree of effort expended by the Taxation & Revenue Department. Other states have cited the Federal Highway Administration, suggesting that from 3% to 5% of nationwide gasoline volume may escape state taxation. It is difficult to assess whether tax gains in New Mexico would approximate this nationwide estimate. For every 1 percent increase in taxable gallons (i.e., for every 9.4 million additional gallons), the state would realize an additional $1,600 thousand, allocated to the beneficiaries shown in the table above.

The amount of potential ***special fuel*** tax compliance gain associated with special fuel information reports is not predictable since the extent of current noncompliance and tax evasion is unknown, and since compliance gains would depend on the degree of effort expended by the Taxation & Revenue Department. The compliance issues in the special fuels tax area are probably different than for gasoline, and special fuel compliance may involve verification of appropriate use by "off-highway users". Thus special fuel compliance may be oriented more toward special fuel users than special fuel distributors and retailers. For every 1 percent increase in taxable gallons (i.e., for every 4.9 million additional gallons), the state would realize an additional $1 million, allocated to the beneficiaries shown in the table above.

Revenue impacts are not shown for FY06 because it is unlikely TRD will be able to develop databases and cross-checking software to generate significant compliance leads before FY07 at the earliest.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB-226 includes some similar provisions.

OTHER SUBSTANTIVE ISSUES

Section 1: Institutes a new $50 penalty for failure to file an information return.

Section 2: The Taxation and Revenue Department's (TRD) "confidentiality" statute is revised to allow information sharing with other state jurisdictions regarding special fuel tax imposed under the International Fuel Tax Agreement (IFTA). A clarification is made that TRD shall not release information regarding whether or not a taxpayer has filed a tax return. TRD would be allowed to release any written ruling on questions of evidence or procedure by a hearing officer so long as the identity of the taxpayer that requested the ruling is kept confidential.

Section 3: The Gasoline Tax, Special Fuels Supplier Tax, and Petroleum Products Loading Fee are added to the list of tax programs for which large taxpayers owing $25,000 or more per month must provide immediately available funds on or before the tax due date.

Section 4: Gasoline retailers shall file information returns. Electronic filing of information returns may be required if there is an exception allowed for small retailers.

Section 5: Rack operators shall file gasoline information returns. Electronic filing of information returns may be required if there is an exception allowed for small rack operators.

Section 6: Gasoline distributors could be required to file tax returns electronically, so long as there is an exception allowed for small distributors.

Section 7: Gasoline wholesalers shall file gasoline information returns. Electronic filing of information returns may be required if there is an exception allowed for small wholesalers.

Section 8: Special fuel "retailer" and "wholesaler" are defined, and the definition of "special fuel" is clarified to exclude gasoline, LPG, CNG, LNG and jet fuel. The special fuel "tax" definition is clarified to include tax paid to another (state) jurisdiction under a cooperative agreement (IFTA).

Section 9: The requirement that special fuel "dealers" (retailers) not change the price of fuel in inventory at the time of a tax rate change is eliminated.

Section 10: Special Fuel distributors could be required to file tax returns electronically, so long as there is an exception allowed for small distributors.

Section 11: Special fuel ***user*** tax return filing provisions are rewritten to correspond to filing requirements under the International Fuel Tax Agreement (IFTA). One

Section 12: Retailers shall file special fuel information returns. Electronic filing of information returns may be required if there is an exception allowed for small retailers.

Section 13: Wholesalers shall file special fuel information returns. Electronic filing of information returns may be required if there is an exception allowed for small wholesalers.

Section 14: Rack operators shall file special fuel information returns. Electronic filing of information returns may be required if there is an exception allowed for small rack operators.

Section 15: Allows the Secretary of the Taxation and Revenue Department to terminate cooperative or multistate agreements involving the taxation of special fuel.

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