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

SPONSOR Rainaldi **DATE TYPED** 2/01/2005 **HB**

SHORT TITLE Tax Gas At Rack & Gas Tax Filing Requirements **SB** 226

ANALYST Moser

APPROPRIATION

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

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

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

(Parenthesis ( ) Indicate Revenue Decreases)

Conflict with/duplicates: HB-424 addresses some of the same issues as this bill.

SOURCES OF INFORMATION

LFC Files

Responses Received From
Department of Transportation

Responses not received from:
Taxation and Revenue Department

SUMMARY

Synopsis of Bill

Senate Bill 226 revises the imposition of the Gasoline Tax, changing the taxpayer to be the "rack operator" (currently gasoline "distributors" file tax returns). Distributors and retailers would be required to file information returns, and a $50 penalty could be imposed for failure to file an information return. The Gasoline Tax is 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. The exemption from the current taxpayer bond requirement is adjusted to require a bond for all taxpayers for at least 24 months before new exemptions from the bond requirement are allowed. Distributors selling gasoline for state tax exempt uses would be allowed to file for a reimbursement of the tax already paid on that gasoline. A section-by-section description is provided beginning 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.

FISCAL IMPLICATIONS

The amount of potential gasoline tax compliance gain associated with "tax at the rack" is not predictable, since the extent of current noncompliance and tax evasion is unknown. 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.

ADMINISTRATIVE IMPLICATIONS

While the number of taxpayers would be reduced from a few hundred distributors to a lesser number of rack operators and fuel importers, fuel distributors would be expected to file for a very large number of gasoline tax reimbursements for fuel used in non-taxable situations. The Taxation and Revenue Department will probably find the processing of tax reimbursements to require considerably more resources than the processing of tax returns under current law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB-424 addresses some of the same issues as this bill.

TECHNICAL ISSUES

- Section 1 provides a penalty for failure to file an information return by a (retailer or distributor) "taxpayer". Since the bill revises the gasoline tax taxpayer to be rack operators, the reference on page 1, line 22 to "*taxpayer*" might be revised to specify a "*person required to file but*"

- Section 9 of the bill states that "Rack operators shall file gasoline tax returns ...". This should probably be reformulated to also provide that importers of gasoline shall file gasoline tax returns.

- Section 12 requires distributors file information returns, but does not suggest that the department may require electronic filing by distributors as it may in the case of retailer information returns. Section 12 should probably be revised to include the electronic filing language similar to that found in Section 11 of the bill.
- Section 13 of the bill specifies the EFFECTIVE DATE of the bill to be January 1, 2005. The section probably should have specified July 1, 2005 or January 1, 2006. Language in Section 5 (page 13, line 12) may imply an effective date of July 1, 2005.

- The bill should also amend Section 7-13-4.4 NMSA 1978 in a manner consistent with Section 6 of the bill, since distributors would no longer be paying the tax or claiming deductions.

OTHER SUBSTANTIVE ISSUES

- Illustration of Taxable and Deductible Gasoline Volume

Gallons of Gasoline Reported					
	Giant & Navajo Refining		Distributors & Others		Total
Total "Received"	215,228,005	19%	945,382,326	81%	1,160,610,331
Export Deductions	105,364,170	40%	155,968,520	60%	261,332,690
Other Deductions	2,284,836	2%	114,668,415	98%	116,953,251
Taxable Gallons	107,578,999	14%	667,655,975	85%	782,324,390

Notes: Navajo Refining's exports by pipeline are never "received" in New Mexico and are not reported as export deductions.

- Distributors other than the state's two large refining companies account for 60% of export deductions and 98% of other deductions. This implies that the administrative impact on TRD for processing reimbursement claims could be quite substantial

SECTION-BY-SECTION DESCRIPTION

Section 1: Institutes a new $50 penalty for failure to file an information return (see Sections 11 and 12).

Section 2: The Gasoline Tax is 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 3: Redefines "distributor" (distributors would no longer be the taxpayer and would no longer "receive" gasoline).

Section 4: Revises the taxpayer from the distributor to be the rack operator or importer.

Section 5: The exemption from the current taxpayer bond requirement is adjusted to require a bond for all taxpayers for at least 24 months before new exemptions from the bond requirement are allowed.

Section 6: Existing gasoline tax deductions could be claimed by the taxpayer (rack operator or importer) only. Distributors and wholesalers generally would no longer claim "deductions" but would file for a reimbursement of tax for non-taxable use of gasoline (see Section 7). Gasoline delivered into the fuel tank of a U.S. Government-licensed vehicle would no longer be deductible, but would be subject to a non-taxable use tax reimbursement (see Section 7).

Section 7: Distributors and wholesalers generally would no longer claim "deductions" but would file for a reimbursement of tax for non-taxable use of gasoline. Non-taxable uses are defined to be the same as deductible uses under current law.

Section 8: Creates a new "certificate of eligibility" issued by TRD to persons eligible to claim deductions. It appears this certificate would serve to identify distributors who are fuel importers and who are actual taxpayers who may legitimately claim a deduction.
Section 9: States that "<u>Rack operators</u> shall file gasoline tax returns ...". This should probably be reformulated to also provide that importers of gasoline shall file gasoline tax returns. (see Technical Issues)

Section 10: changed for technical consistency.

Section 11: Gasoline retailers shall file information returns. Electronic filing of information returns may be required if there is an exception allowed for small retailers.

Section 12: Gasoline distributors shall file information returns. (No electronic filing provisions – see Technical Issues).

Section 13: Effective date is January 1, 2005 (see Technical Issues).

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