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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/08

SPONSOR Beffort LAST UPDATED _____ HB _____

SHORT TITLE Weight Distance Tax Compliance Penalties SB 438

ANALYST Earnest

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
\$0.1*	\$0.1*	\$0.1*	Recurring	General Fund
\$0.1*	\$0.1*	\$0.1*	Recurring	State Road Fund

(Parenthesis () Indicate Revenue Decreases)

*See narrative for explanation of positive but indeterminate revenue impact

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Department of Transportation (DOT)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 438 amends Section 66-8-116.2 to impose a new fine for failure to comply with the requirements of the Weight Distance Tax Act (Section 65-1-26). The penalty assessment for the first conviction would be \$300. For the second conviction, occurring within 10 years of the first conviction, the penalty assessment would be \$500. For the third conviction, occurring within 10 years of the first conviction, the penalty assessment would be \$1,000.

FISCAL IMPLICATIONS

While the Motor Transportation Division (MTD) of DPS, the enforcement agency for weight distance permits, estimated that revenue generation from these penalties may exceed \$1 million in FY09, neither TRD or DOT estimated the revenue impact.

According to TRD, penalty assessment fines distributed to the general fund could be

considerable, but are difficult to forecast. Revenue from fines might easily be in the hundreds of thousands of dollars per year. Additional revenue generated for the road fund also cannot be reliably estimated. The current level of noncompliance is difficult to quantify, and it is difficult to forecast how increased penalties alone, without an extensive audit program, might impact compliance.

According to MTD:

The agency recently held two 72-hour commercial motor vehicle tax operations at their Gallup and San Jon ports of entry in an effort to assist the Taxation and Revenue Department in detecting motor carriers that were delinquent in paying past due weight distance taxes. The Motor Transportation Police collected \$102,844 in delinquent weight distance taxes and identified 1,320 non-filers and 1,359 zero filers during these two special operations.

If this penalty assessment had been in place, each of the 1,320 non-filers would have been issued either a \$300 penalty assessment misdemeanor citation or a court appearance, at the option of the violator. The potential revenue to the road fund generated from just the non-filers would have been \$396K. This estimate would be higher for second or subsequent violations of this section. Penalty assessment misdemeanors or court appearance citations would also have been issued to those drivers of commercial motor carrier vehicles whose weight distance accounts were delinquent in addition to collecting the back taxes owed.

It is difficult to estimate the annual potential revenue generated from non-filers and delinquent weight distance tax accounts because the only data available to use for projections comes from these two special tax operations. In addition, the estimated revenue generated over time will probably decrease with increased compliance with weight distance tax reporting requirements. Consequently, revenue estimates are conservative because of the lack of historical data to calculate accurate projections.

SIGNIFICANT ISSUES

New Mexico is one of four states that has a weight distance tax (NY, KY, OR are the others). For trucks driving in and across the state, a fee is charged based on how far they travel and how much they weigh. In New Mexico, the weight distance tax is offset by the lowest truck registration fees in the country.

Weight distance tax will produce \$83 million in FY09 for NMDOT and is its third largest source of revenue after fuel taxes. The revenues are received as the trucking companies file their quarterly tax returns.

HM 35 from the 2007 legislative session undertook a comprehensive study of current NMDOT revenues and a number of possible revenue enhancement sources. Along with new revenues, there was considerable discussion about the performance, i.e., compliance with revenue/tax sources already prescribed by law. Weight distance tax generated the most concern about compliance – both on-the-road and in the administration of the collection process. There are approximately 1,000,000 different trucks that use New Mexico's roads and it is difficult to effectively monitor them. In an effort to improve compliance, three areas were reviewed: more

auditing of returns, enhanced road and port-of-entry coverage (HB 298), and increase penalties (this bill and SB232).

During the HM 35 process, an estimate that perhaps as much as 20% or approximately \$20 million could be collected. It must be stressed that this is an estimate.

ADMINISTRATIVE IMPLICATIONS

TRD reports “that a New Mexico-based carrier that is registered for weight distance tax but shows “*A nonfiler or zero-filer status or an inactive weight distance account*” could likely be considered in violation. An out-of-state carrier who is not registered for the weight distance tax and has failed to pay the alternative trip tax at a Port-Of-Entry could likely be considered in violation. However, Section 65-1-26 does also include the reference: “*A nonfiler or zero-filer status or an inactive weight distance account is proof of failure to pay the weight distance tax.*” This provision of current law could be problematic, because there are times when a trucking company can be a non-filer or zero filer and still be in compliance with WDT. It is possible for a company to have a legitimate zero filer return because they have not driven any miles in New Mexico in a particular quarterly filing period. Also, a tax return may have been filed, but processing of the tax return is delayed due to no fault of the taxpayer, and the tax processing system does not reflect the filed return.

A driver for a company may not be aware of the company’s tax reporting status and might be inclined to accept a penalty assessment when, in fact, the company is not in violation. Once a penalty assessment has been accepted, there is no provision to protest and receive a refund of the fines.”

According to MTD, “the penalty assessment misdemeanor citation option makes it easier for the driver to agree to pay the penalty assessment prescribed and not have to appear in court. This also results in less court time for the officer that issued the citation.

Other factors that will affect the enforcement of this statute is the timely and accurate weight distance tax data provided by the Taxation and Revenue Department, the communication of this information to the Motor Transportation Police Division and the number of personnel available at the ports of entry to check the tax status of every commercial motor carrier vehicle that enters their facilities to include the number of officers available to issue citations to these motor carriers.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The bill relates to HB 298 (adding additional patrolmen and inspectors) and SB 232 (penalties for failure to pay tax).

This bill reflects the HM 35 process discussion concerning the notion that significant revenues are being lost in weight distance tax from non-compliance.

OTHER SUBSTANTIVE ISSUES

Recent federal law disallows states from requiring interstate commercial carriers to *possess and display* state-specific documentation of tax registration. However, that federal law does not

interfere with the state's ability to require tax registration by taxpayers. Weight distance tax registrations are now being issued electronically, and verification of tax registration will soon be available to Motor Transportation Division officers and port-of-entry staff.

The issue of possible poor compliance with the weight distance tax was noted by the Interim Committee study of transportation funding issues pursuant to HM-35 (2007). TRD is funded for 4 FTE term positions to conduct a minimal level of WDT auditing. Because the positions are not permanent, these have been difficult to fill. Last year, TRD completed 78 in-state WDT audits in conjunction with the international registration program and international fuel tax agreement. These audits found a total tax due for all 78 of \$53,641. Last year we did five out of state WDT audits for large carriers. These five audits found total tax due of \$59,191 for all five companies combined. In the audits TRD has done, relatively little non-compliance was found. TRD is working with DPS/ MTD to identify additional audit prospects based on information gathered at the ports. There are approximately 71,000 trucking companies that are registered for WDT.

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