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

ORIGINAL DATE 01/30/12
SPONSOR Larrañaga **LAST UPDATED** **HB** 48

SHORT TITLE Eliminate Some Tribal Gas Tax Deductions **SB**

ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14	FY15	FY16		
$0.0	$7,423.0	$8,443.0	$11,503.0	$11,503.0	Recurring	State Road Fund
$0.0	$1,010.0	$1,010.0	$1,010.0	$1,010.0	Recurring	Counties & Municipalities
$0.0	$561.0	$561.0	$561.0	$561.0	Recurring	County Gov Road Fund
$0.0	$561.0	$561.0	$561.0	$561.0	Recurring	Municipal Road Fund
$0.0	$140.0	$140.0	$140.0	$140.0	Recurring	Municipal Arterial Fund
$0.0	$25.0	$25.0	$25.0	$25.0	Recurring	Aviation Fund
$0.0	$13.0	$13.0	$13.0	$13.0	Recurring	Motor Boat Fuel Tax Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Transportation (DOT)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 48 amends section 7-13-2 NMSA 1978. The bill eliminates the two tribal gasoline tax deductions. It eliminates the deduction for gasoline sold at retail on tribal lands subject to a tribal-imposed gasoline tax, and it eliminates the deduction for gasoline received in New Mexico and sold at wholesale outside of tribal boundaries by certain registered Indian tribal distributors.

The bill also removes the authority of the Secretary of the Department of Transportation (NMDOT) to enter into gasoline tax sharing agreements with the specific tribes qualified to engage in proscribed wholesaling of gasoline outside of their tribal boundaries.

The effective date of this bill is July 1, 2012.

FISCAL IMPLICATIONS

According to DOT, HB 48 will have two separate impacts. It will allow New Mexico to partially recapture the ability to tax gasoline sold at retail on tribal lands; this is expected to increase taxable gallons in New Mexico by about 57 million gallons, generating $9.7 million in new gasoline tax revenue. New Mexico's Road Fund receives the majority of gasoline tax revenue at 76.27% with Counties and Municipalities receiving 10.38%, the County Government Road Fund and the Municipal Road Fund each receiving 5.76%, the Aviation Fund receiving 0.26%, and the Motor Boat Fuel Tax Fund receiving the remaining 0.13%. Tribal retail sales are currently estimated at 60 million gallons annually; however, this estimate assumes that gasoline sold by both the Navajo and Jicarilla Apache Nations will continue to avoid taxation if they import gasoline from out-of-state directly across their tribal boundaries.

Separately, removing the off-tribal wholesale deduction and the authority of NMDOT to enter into Gasoline Tax Sharing Agreements will eventually increase the Gasoline Tax revenue available to the State Road Fund (by $1.02 million in FY14 and $4.08 million in FY15). Currently two pueblos (Nambe and Santo Domingo) qualify for a limited wholesale deduction outside their tribal boundaries under Section 7-13-4, NMSA 1978. Under the current off-tribal wholesale deduction they would be allowed to sell 30 million gallons of gasoline each that would not be subject to New Mexico's gasoline tax. However, both Pueblos have entered into agreements with NMDOT and given up their right to sell gasoline tax free outside of their tribal boundaries in return for distributions equal to 40% of the state tax on their allowable gallons annually (30 million gallons x $0.17/gallon x 40% = $2.04 million each). The current distribution/gasoline tax sharing agreements with NMDOT will expire on January 1, 2014 for Nambe Pueblo and on July 1, 2014 for Kewa Pueblo (formerly Santo Domingo Pueblo). This will make an additional $1.02 million in gasoline tax revenue available to the Road Fund in FY14 as Nambe's agreement expires halfway through the fiscal year, and then $4.08 million to the Road Fund in FY15 and beyond as distributions to both pueblos will cease.

SIGNIFICANT ISSUES

According to TRD, Repeal of the state gasoline tax deduction for gasoline sold at retail within reservation boundaries will create a situation of double taxation. Currently Tribes and Pueblos must impose a tribal gasoline tax in order to qualify for the deduction of state tax (the state tax deduction is generally claimed by non-Indian distributors based on the imposition of the tribal tax). Tribes will probably be faced with the necessity to rescind their existing tribal taxes in order to remain competitive on retail price. This presents a conflict compared to other areas of multi-jurisdictional taxation such as the gross receipts tax, cigarette tax, coal severance tax, etc., where agreements have been implemented allowing each jurisdiction a portion of the tax in order to avoid excessive overall tax rates.

OTHER SUBSTANTIVE ISSUES

Current estimates provided by NMDOT forecast routine maintenance gaps of approximately $200 million per year and highway construction gaps of another $300 million per year. Costs of pavement preservation alone require recurring revenues of at least $65 million; in FY12 only half of that funding is available. Major funding shortfalls exist for the most basic maintenance needs – chip seal, pavement striping, guardrail repair, sign and signal improvement, heavy equipment repair and replacement – are far below required levels. Ten percent of the bridges in the state are structurally deficient. Unfunded major investment projects like the Paseo del Norte/I-25 interchange, the Hatch interchange, US 491, US 64, US 54, and others total over $800 million.

NMDOT balances expenditures to revenue as appropriated by the State Legislature. Currently, federal revenues for FY13 are projected to be flat with FY12 levels at approximately $403.5 million, although continued political uncertainty in Washington, D.C. related to the reauthorization of the SAFE, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) could lead to significant federal funding shortfalls – perhaps as much as $123.5 million for the state. State Road Fund revenues – the other critical component of revenues for state roads, highways, and bridges – have not recovered as quickly as expected. The July 2011 forecast used for the FY13 budget request previously incorporated a return to traditional growth patterns of two to three percent. Subsequent revisions predicted a far slower and longer recovery. The current forecast for unrestricted State Road Fund revenues in FY13 is down $10.1 million dollars to $385 million. Close to $22 million of unrestricted State Road Funds is automatically directed to payment of debt service obligations. An objective analysis suggests that current revenues are not close to expected needs, leading to a deficient and, more importantly, unsafe transportation infrastructure across the state.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

EWM/lj:svb