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

SPONSOR Gonzales **ORIGINAL DATE** 02/07/12 **LAST UPDATED** **HB** 202

SHORT TITLE CHANGE BASIS OF GAS TAX **SB**

ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY12	**FY13**	**FY14**	**FY15**	**FY16**		
0	38,280	38,650	34,080	33,650	Recurring	State Road Fund
0	450	430	330	310	Recurring	Tribal Gasoline Tax Sharing Agreement Dist.
0	2,720	2,830	2,625	2,640	Recurring	Local Gov. Road Fund (Special Fuels Tax)
0	1,750	1,650	1,290	1,200	Recurring	Counties & Municipalities
0	970	920	715	670	Recurring	County Gov. Road Fund
0	970	920	715	670	Recurring	Municipal Road Fund
0	240	230	180	170	Recurring	Municipal Arterial Fund
0	40	40	30	30	Recurring	Aviation Fund
0	20	20	15	15	Recurring	Motor Boat Fuel Tax Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Conflicts with HB 205

SOURCES OF INFORMATION

LFC Files

Responses Received From
Department of Transportation
Taxation and Revenue Department

SUMMARY

Synopsis of Bill

House Bill 202 amends section 7-13-3 NMSA 1978 to change the current unit based gas tax to a value based tax. Under current law there is a per unit tax on the number of gallons of motor fuel sold at $0.17/gallon for the gasoline tax and $0.21/gallon for the special fuel (diesel) tax. In this bill the gasoline would be taxed at 7.2% of the value received and special fuel would be taxed at 8.7% of the value received. This bill also makes corresponding changes to the gasoline and special fuel inventory taxes.

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

FISCAL IMPLICATIONS

According to DOT, switching from the current unit based taxes to the proposed value based taxes in FY13 is estimated to generate an additional $16.8 million from the gasoline tax and $28.6 million from the special fuel (diesel) tax. The prices in this estimate are based on the U.S. Energy Information Administration (EIA), New Mexico wholesale/resale prices for refiners and growth rates are based on EIA's January 2012 Short Term Energy Outlook and the December 2011 General Fund Consensus Revenue Estimate's oil price assumptions. Volatility in oil prices adds significant uncertainty to the revenue impact as the price of gasoline and diesel cannot be predicted with a high level of confidence.

This fiscal impact forecast assumes that the elasticity impacts of the tax changes will be negligible and uses the volume forecasts from the January 2012 Road Fund Forecast.

The fiscal impact also assumes that the language in the bill is amended to clarify that the taxable value is the price paid at the rack by the taxpayer. As drafted the taxable event occurs (as under current statute) at the point where the fuel is received at the rack; however, the taxpayer (the distributor) at that point has not yet obtained payment for the fuel.

SIGNIFICANT ISSUES

NMDOT balances expenditures to revenue as appropriated by the State Legislature. The cost of maintenance and construction has increased dramatically over the past five years as inflationary costs have impacted the materials, such as asphalt, concrete and fuel that are used in our services and products. Economic downturns have decreased the revenue incomes limiting these services and jeopardizing the sustainability of the highway infrastructure. Currently NMDOT estimates that routine highway maintenance gaps average around $200 million per year, highway construction gaps average around $300 million per year and major improvement projects throughout the state are easily in the billions of dollars. Any supplemental funding to the State Road Fund would be prioritized to protect the current state infrastructure investment through pavement preservation and further address critical safety and congestion projects that would provide the greatest impact to New Mexico taxpayers.

ADMINISTRATIVE IMPLICATIONS

A significant adverse administrative impact on both the TRD and fuel distributors is likely. Administrative impact on the TRD would include extensive revisions to tax filing forms, the e-filing web site, and tax processing systems. Audit and compliance functions would be complicated and significantly more time consuming. A non-recurring cost of $100 thousand is possible.

TECHNICAL ISSUES

According to TRD:
The language in the bill imposing the new value-based tax rates must be amended in order to be administrable. The bill imposes the tax on the value received by the taxpayer; however, at the time of the taxable event (when fuel is "received") the taxpayer (distributor) has probably purchased the fuel from the rack operator, but may not have received any payment for the resale of that fuel. The bill must align the taxable value of the fuel with the taxable event for fuel "received" by the taxpayer. In most cases, that would be the rack price paid by the taxpayer. The TRD is unsure what language would best clarify this issue, and it may be appropriate to consult the industry for recommended language. The TRD has posed some alternative language in their FIR.

Rack prices of motor fuel change on a daily basis. After the initial loading at the rack, fuel with varying prices may subsequently be mixed in storage tanks, or the specific price of a load may change. In any situation where a refund of tax is required, it will be impossible to know how much tax was initially paid on the fuel. All fuel tax refund language in Chapter 7, Articles 13 and 16A should probably be revised to specify that tax refunds will be computed based on quarterly price averages for some prior period of time and published by the Taxation and Revenue Department. Note that such published average prices will also be required to establish a cents-per-gallon tax rate on special fuel for purposes of the International Fuel Tax Agreement (IFTA).

This bill would affect the "registered Indian tribal distributor" deduction for gasoline sold at Tribal retail stations (Section 7-13-4, Subsection E). Tribal tax rates would have to be converted to a percentage tax on value in order for the deduction to operate correctly.

It is unclear whether it would be possible for distributors to defeat the inventory tax provision by declaring a price that would result in a tax exactly equal the current $0.17 and $0.21 per gallon tax rates. Distributors' inventories would include fuel purchased at differing prices, and the actual price paid on inventories may not be known.

Taxing at percentage of price may result in out-of-state terminals choosing to opt out of the TS-22 agreements. The state of Texas imposes "tax at the rack", and rack operators are required to collect either the Texas tax or New Mexico's tax for exports to New Mexico. If the TS-22 agreements ended, the result might be New Mexico distributors paying the Texas tax, and then filing for a Texas refund on volumes exported to New Mexico. Another implication for audit and compliance activity in the absence of TS-22 agreements might be increased difficulty quantifying imports into New Mexico from Texas.

OTHER SUBSTANTIVE ISSUES

Adequacy: According to the DOT, taxing motor fuel on a value basis versus a per unit basis creates a trade-off. Oil and motor fuel prices are closely associated with the costs of road construction and maintenance; therefore, linking Road Fund revenues more closely to Road Fund costs may help to insure proper funding levels. On the other hand, value based taxes are much more volatile and unpredictable than unit based taxes. The ability to forecast revenue streams tied to the price of oil is low and there will be much greater uncertainty in the Road Fund forecast.

New Mexico currently has the 8th lowest tax on Gasoline and the 17th lowest tax on diesel among the 50 states. In real (inflation adjusted) terms New Mexico's rate of tax on diesel and gasoline has fallen significantly over time.

According to TRD:
New Mexico is a member of the International Fuel Tax Association (IFTA) which is an association of all US states and Canadian provinces that collect and transmit special fuel tax for each other. IFTA is fundamentally based on the special fuel tax rate per gallon of each US state and Canadian province. Under IFTA, New Mexico is required to submit its quarterly special fuel tax rate on a cents-per-gallon basis at least 60 days prior to the end of each quarter so that taxes can be appropriately collected and distributed among the states. IFTA allows each US state or Canadian province to set their special fuel tax rate, however, the special fuel tax rate submitted to IFTA must be a special fuel tax rate on a cents-per-gallon basis.

The special fuel tax actually paid by truckers at the pump may vary significantly from the tax rate published in the IFTA system, since the IFTA tax rate can only be adjusted quarterly and that rate would be based on older price information.

Most states tax motor fuel at a rate of cents per gallon, and this facilitates the initiative of Uniformity across states. While some states, primarily those on the east coast, do impose percent of price taxes in combination with taxes per gallon, the department is not aware of any western states other than California using a percent of price tax structure for purposes of the motor fuel excise tax that supports highway construction. Kentucky and North Carolina impose portions of motor fuel taxes as some percent of price, and a number of other states impose sales taxes in addition to motor fuel excise taxes (California, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Michigan, New York, and West Virginia).

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

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