FISCAL IMPACT REPORT

		LAST UPDATED	2/14/23
SPONSOR	Armstrong/Lara/Zamora/Woods/Townsend	**ORIGINAL DATE**	2/13/23
SHORT TITLE	Dyed Diesel Fuel Gross Receipts	**BILL NUMBER**	House Bill 354
		ANALYST	Torres

REVENUE*
(dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
	($48,785.0 - $87,400.0)	($48,785.0 - $87,500.0)	($48,785.0 - $89,500.0)	($48,785.0 - $92,000.0)	Recurring	General Fund
	($32,525.0 - $58,300.0)	($32,525.0 - $58,400.0)	($32,525.0 - $59,700.0)	($32,525.0 - $61,300.0)	Recurring	Local Governments

Parenthesis ( ) indicate revenue decreases
*Amounts reflect most recent version of this legislation.

Duplicates SB360

Sources of Information
LFC Files

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

SUMMARY

Synopsis of House Bill 354

House bill 354 (HB354) exempts the sale and use of dyed special fuels from the gross receipts and compensating tax. Qualifying dyed special fuels are those dyed in accordance with federal regulation for use in agricultural purposes. The bill also removes the obsolete reference to Section 7-16-3, which was repealed in 1992.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

The Department of Transportation reports volumes of dyed diesel as follows:
FY2017: 330,448,986 gallons … 65% as large as taxable special fuel (excluding IFTA).
FY2018: 448,406,653 gallons … 84% as large as taxable special fuel (excluding IFTA).
FY2019: 524,998,010 gallons … 92% as large as taxable special fuel (excluding IFTA).
FY2020: 427,272,899 gallons … 72% as large as taxable special fuel (excluding IFTA).
FY2021: 325,031,794 gallons … 52% as large as taxable special fuel (excluding IFTA).
FY2022: 331,135,193 gallons … 50% as large as taxable special fuel (excluding IFTA).

Along with the reported volumes, LFC used the Energy Information Administration (EIA) data on dyed diesel prices over the same period. Finally, LFC used the current weighted average gross receipts tax rate for the state of 7.13 percent and determined the following amounts of GRT had been paid on dyed diesel for each year:

	Estimated GRT Paid
FY17	$64,341,199
FY18	$93,966,592
FY19	$104,292,788
FY20	$74,171,043
FY21	$58,234,327
FY22	$92,844,119
AVG:	**$81,308,345**

Given the difficulty in estimating future diesel prices and purchases, for the purpose of this analysis, the reported lower bound of the range on page 1 is equivalent to the annual average GRT paid. Furthermore, LFC assumed GRT paid followed the general split of other purchases in the state where 60 percent of the impact is to the general fund with the remaining 40 percent of impact experienced by local governments.

The Taxation and Revenue Department (TRD) provided an alternative estimate using data on dyed special fuel reported during Fiscal Year 2023 and applied the most recent State Road Fund forecast produced by the Department of Transportation (DOT) to estimate future volumes. To estimate the prices, Tax & Rev collected diesel prices reported by the U.S. Energy Information Administration (EIA) and produced a projection of prices based on the Chained Price Index for consumer fuel produced by the firm IHS Markit. The higher bound on the ranges reported on page 1 reflect these estimates.

This bill creates a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

SIGNIFICANT ISSUES

Dyed diesel and dyed gasoline are exempt from both federal and state motor fuel excise taxes. Motor fuel excise taxes are considered road user fees and dyed fuels are supposed to be used for purposes other than road vehicles (construction equipment, mining, agriculture, generators, etcetera).

The federal government applies excise tax to all clear fuels. New Mexico applies excise taxes to almost all clear fuels. So, if it is clear fuel, it is subject to gasoline or special fuels tax. If it is dyed fuel, it is exempt from gasoline or special fuels tax and therefore GRT is applied. By exempting dyed diesel from GRT, it would receive special tax status where no tax is applied, contrary to the LFC adopted tax policy principle of equity.

TRD adds:

> If this legislation is enacted, receipts from the sale or use of the subset of dyed special fuels used for agricultural purposes will not be subject to any excise tax. TRD understands that the purpose of the legislation is to encourage the use of dyed special fuels in agriculture. However, the creation of special exemption for the sale or use of a particular category of fuels goes against sound tax policy by: (i) distorting the market for agricultural fuels generally; (ii) adding complexity to the tax code for both taxpayers, increasing the burden of tax compliance, and for Tax & Rev, increasing administrative costs; and, (iii) violates principles of horizontal equity by favoring consumption of certain fuels that are otherwise similar in application and use to other fuels.

This bill narrows the gross receipts tax (GRT) base. Many efforts over the last few years to reform New Mexico's taxes focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state's largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

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.

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

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✘	
Targeted	✘	
Clearly stated purpose	✘	
Long-term goals	✘	
Measurable targets	✘	
Transparent	✘	
Accountable		
Public analysis	✘	
Expiration date	✘	
Effective		
Fulfills stated purpose	✘	
Passes "but for" test	✘	
Efficient	✘	
Key: ✓ Met ✘ Not Met ? Unclear		

IT/al/ne/rl