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FISCAL IMPACT REPORT

LAST UPDATED
SPONSOR Baca/Gonzales **ORIGINAL DATE** 2/21/23
SHORT TITLE GRT Deduction for Certain Special Fuels **BILL NUMBER** Senate Bill 253

ANALYST Torres, I.

REVENUE* **(dollars in thousands)**

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
	($600)	($600)	($600)	($600)	Recurring	Local Governments
	($800)	($800)	($900)	($900)	Recurring	General Fund

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

Relates to House Bill 354

Sources of Information

LFC Files

Responses Received From
Department of Transportation (NMDOT)

No Response Received
Taxation and Revenue Department (TRD)
Municipal League

SUMMARY

Synopsis of Senate Bill 253

Senate Bill 253 (SB253) creates a deduction from the gross receipts tax equal to 50 percent of the receipts from selling special fuels consisting of at least 99 percent vegetable oil or animal fat.

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

FISCAL IMPLICATIONS

Non-dyed biofuels are already exempt (Section 7-9-26) from gross receipts taxes (GRT) when subject to the Special Fuels Supplier Tax (Section 7-16A-10, Subsection H, Paragraph (1)). NMDOT reports any 99 percent vegetable oil/fat diesel (B99) for use in a motor vehicle would be subject to the Special Fuels Supplier Tax and therefore exempt from GRT. The only biofuels that could benefit from the deduction proposed in SB253 are dyed biodiesels which are not subject to the special fuels tax.

Dyed fuel volumes are reported to be as follows by the Department of Transportation:

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).

According to the International Energy Agency[1], biofuels represent about 3.6 percent of transportation energy demand. LFC used this share of the above volumes as a maximum cost, as not all biofuels would qualify (only those fuels composed of 99 percent or more vegetable oil/fat qualify).

Any B99 biodiesel destined for use other than in a motor vehicle probably would need to be dyed to avoid application of the Special Fuels Supplier Tax.

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**
B99+ (3.6% of total)	**$2,927,100**
50% GRT deduction	**$1,463,550**

Alternatively, the Taxation and Revenue Department used data for current volumes of non-dyed biodiesels containing at least 99 percent vegetable oil or animal fat reported during FY22. To estimate the future volumes, TRD applied the most recent road fund forecast produced by NMDOT. To estimate the prices, TRD collected diesel prices reported EIA and produced a projection of prices based on the chained price index for consumer fuel produced by the firm IHS Markit. A gross receipts tax (GRT) rate was applied together with a 50 percent deduction to calculate the estimated revenue impact. This estimate is reflected in the revenue impact table above.

[1] IEA (2022), Biofuels, IEA, Paris https://www.iea.org/reports/biofuels, License: CC BY 4.0

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.

In a related bill HB354, 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 special fuels. 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 TRD, 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		

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