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## FISCAL IMPACT REPORT

SPONSOR Sandel DATE TYPED 3/17/97 HB 1257/aHTRC/aHF1

SHORT TITLE Amend Fuel Taxes SB \_\_\_\_\_

ANALYST Groepler

### REVENUE

<u>Estimated Revenue</u>	<u>Subsequent</u>	<u>Recurring</u>	<u>Fund</u>
<u>FY97</u>	<u>Years Impact</u>	<u>or Non-Rec</u>	<u>Affected</u>
\$ <u>0.0</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Recurring</u> <u>State Road Fund</u>
\$ <u>0.0</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Recurring</u> <u>Other Fuel Tax</u> <u>Beneficiaries</u>

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

Attorney General (AG)  
Taxation and Revenue Department (TRD)  
LFC Files

### SUMMARY

#### Synopsis of House Floor Amendments

The House Floor amendments deal only with the Gasoline Tax Act. The substantive amendment is number 4, which changes the definition of the taxable event receiving. When gasoline is shipped from a rack to, or for, the account of a distributor, then it is received at the place that the gasoline is unloaded into nonmobile containers for that distributor. This would eliminate the problem of the "bump and run" whereby tank trucks of gasoline briefly pass through Indian land to "wash" the gasoline of the state gasoline tax.

**The following is an individual summary of the House Floor amendments:**

Amendment 1 strikes HTRC amendment 2 which included gasoline blenders as rack operators. This is not needed now because the new definition of received in House Floor amendment 4 includes blending of gasoline in the definition of receiving;

Amendment 2 strikes part of the title relating to when gasoline or special fuel is received;

Amendment 3 re-includes rack operators within the definition of distributors for the Gasoline Tax Act. This is because the original bill's new definition of receiving is stricken and replaced by House Floor amendment 4;

Amendment 4 defines the taxable event of receiving gasoline. This is similar to current statute, except it clearly defines the taxable event of receiving gasoline from a rack. This separates and clarifies what it means to ship or deliver gasoline. Gasoline which is delivered at the rack to a registered gasoline distributor or for a registered gasoline distributor is received by that distributor at the rack. Gasoline which is shipped to a distributor, or for the account of the distributor, away from the rack, is received by the distributor where it is unloaded. Amendment 5 renumbers the Sections;

Amendments 6 and 7 add a new definition to the Gasoline Tax Act for unloaded. "Unloaded" means removal of gasoline from transportation equipment into a nonmobile container at the place at which the unloading takes place;

Amendment 8 removes the new definition of receiving from the original bill. Amendment 9 renumbers the Sections; and

Amendment 10 removes the original bill's amendment to the registration requirements for the Gasoline Tax Act. Amendment 10 renumbers the Sections.

#### Significant Issues of House Floor Amendments

Discussions have been taking place among TRD, LFC, and HTRC staff, attorneys representing Indian governments, Nambe Pueblo representatives, gasoline distributors and their attorneys. The final version of this bill is a result of those meetings. It appears that the Indian parties either support this final version of the bill or have no objections to it. It also appears that the gasoline distributors do not object to this bill, although they have not seen it in its final version, they had no objections to a similar early version.

During the meetings, it was also agreed that further meetings need to take place during the interim to produce a bill for next year's regular session of the legislature that would be more comprehensive and have active support by all parties, rather than merely not being objected to.

This bill would allow Indian gasoline retailers and distributors to obtain ex-tax gasoline from New Mexico racks and receive it on their own reservations and pueblos provided that it is unloaded there into nonmobile storage tanks. The gasoline could then be sold ex-tax to anyone at Indian retail stations, or reloaded into transportation equipment and wholesaled off reservation or pueblo land. Currently, only Nambe Pueblo has nonmobile storage tanks to enable off-pueblo wholesaling. This would eliminate the so-called "bump and run" of gasoline supply trucks momentarily passing through Indian land and ownership transferring on the Indian land to "wash" the fuel of its tax.

In order for Indian distributors to obtain ex-tax gasoline shipped from New Mexico racks, a so-called destination contract would be needed, as is the case under current law. This means that the racks own the gasoline until it is unloaded on Indian land. Racks have been reluctant to use this method of shipment in the past, and most ex-tax Indian gasoline in this state is imported gasoline. Indian distributors could still obtain ex-tax gasoline from out-of-state sources under the House Floor amendments.

#### Synopsis of HTRC Amendments

The first amendment corrects a technical problem in the original bill. The amendment makes it clear that rack operators are not distributors.

The second amendment expands the definition of rack operators to any person who blends gasoline in this state. In the original bill, blending gasoline off rack premises was left out as a taxable event.

Amendment 3 removes the definition of motor vehicle from the Petroleum Products Loading Fee Act. Amendment 4 renumbers the succeeding subsections.

Amendment 5 changes the definition of gasoline and diesel fuel in the Petroleum Products Loading Fee Act to those definitions found in the Gasoline Tax Act and the Special Fuels Supplier Tax Act.

Amendment 6 expands the definition of rack operators to any person who blends diesel fuel in this state. In the original bill, blending diesel fuel off rack premises was left out as a taxable event.

Amendment 7 makes a minor technical change in the requirements for carrying a manifest or bill of lading when transporting diesel fuel.

#### Synopsis of Bill

This bill proposes to amend the Gasoline Tax Act, the Special Fuels Supplier Act, and the Petroleum Product Loading Fee Act. The intent of this bill is to minimize fuel tax evasion and avoidance.

This bill would discontinue the present regime of allowing rack terminals to deliver (tax-free) fuel to Indian country. Under the new definitions of taxable event, the event must occur at the rack terminal. This still allows the liability for fuel taxes to be passed on to registered distributors picking gasoline up at a rack, but liability may not be passed to subsequent distributors. This implies that Indian country distributors and retailers would no longer have access to tax-free gasoline from New Mexico racks, unless of course the fuel is exported or sold to tax-immune government entities.

The taxable event for truck importation of fuel is changed. Under current law, the taxable event for truck-imported fuel is when the gasoline is unloaded in this state (possibly on Indian country). Under this bill, the taxable event would occur when the fuel is first imported into this state, with the taxable event occurring at the time and place of importation. Only the Navajo Indian distributors could import tax-free gasoline into the state through the Navajo reservation.

Motor fuel that has not been subject to New Mexico fuel taxes on Indian country, when exported from Indian country would be subject to New Mexico fuel taxes. Under current law, this is not the case. According to the Attorney General, this means that gasoline retailers may be liable for the gasoline tax in certain circumstances.

The export documentation provisions are made more stringent to reduce fuel tax evasion. Under current law, fuel may be daisy chained under the sold for export provisions. Bonding requirements for gasoline distributors are moved from regulation to statute, with \$1.0 bonds required for new distributors. Gasoline components that are blended to make gasoline off rack premises would no longer be liable for the gasoline tax, this is also true for special fuels and the Petroleum Products Loading Fee.

**The following is a section-by-section summary of this bill:**

Section 1 amends Section 7-13-2 NMSA 1978, definitions in the Gasoline Tax Act. The taxable event "receiving" gasoline is also removed from this section.

Section 2 adds new material to the Gasoline Tax Act, defining the taxable event "receiving" gasoline and who has liability to pay the gasoline tax.

Subsection A specifies that rack operators receive gasoline at the time and place it is first loaded into transportation equipment or other stationary tanks. Gasoline is not received when it is shipped from one rack to another rack.

Subsection B allows the liability for the gasoline tax to be transferred to registered gasoline distributors from the rack operator.

Subsection C specifies that gasoline imported into the state is received at the time and place that it is imported into the state. The person who owns the gasoline at the time of importation is required to pay the tax.

Subsection D specifies that gasoline received on Indian country by tax-immune entities is also received when it is transported off Indian country by the person who owns the gasoline at the time of importation.

Section 3 amends the deductions section of the Gasoline Tax Act.

Subsection A allows deductions for exported or sold for export gasoline provided: the exporter is registered to pay the fuel tax in the destination state; proof is submitted that the gasoline tax has been paid in the destination state or is not due; or the destination state's gasoline tax is paid to New Mexico per the terms of an agreement with a destination state.

Subsection C allows for deductions for gasoline sold to Indian governments used exclusively by those governments.

Section 4 adds rack operators as persons required to file returns and pay the gasoline tax.

Section 5 adds rack operators as entities required to register with TRD.

Section 6 moves bonding requirements from regulation to statute. The minimum bond required for gasoline distributors is \$1.0. Taxpayers who are not delinquent in gasoline tax payments over a 24-month period are exempt from bonding requirements.

Section 7 amends the Petroleum Products Loading Fee (PPLF) Act. This section clarifies that the taxable event is the loading of petroleum products at racks. References to receiving petroleum products is deleted. Petroleum products includes gasoline, gasoline blends, diesel fuel and kerosine, but does not include fuels subject to the Alternative Fuels Act. Fuels formerly excluded from the definition, e.g., products used for turbo-prop or jet aircraft, are now subject to the fee. Products blended off rack property would not be subject to the PPLF if this bill is enacted.

Section 8 amends the definitions section of the Special Fuels Supplier Tax Act. The definitions of receiving and use are removed from this section. Special fuel is defined as diesel fuel or kerosine used for the generation of power to propel a motor vehicle.

Section 9 defines the taxable events, when special fuel is received or used. The definition of receiving is identical to that provided for gasoline in Section 2 of this bill. Use is defined as placing special fuel in the supply tank of a motor vehicle for propulsion or importing into this state in the fuel supply tank of a motor vehicle.

Section 10 amends a section of the Special Fuels Supplier Tax Act that pertains to special bulk storage user permits. Instead of permits having indefinite durations, permits are for one year at a time, with the option to apply for three years at a time. No bonding requirements are made. No bonding for special fuels is required.

Section 11 amends the Special Fuels Supplier Tax Act to specify that rack operators, in addition to special fuel suppliers shall file special tax returns.

Section 12 amends the deductions section of the Special Fuels Supplier Tax Act. The export deduction would be identical with that proposed for gasoline as in Section 3 of this bill.

Section 13 amends the credit section of the Special Fuels Supplier Tax Act. The special fuel excise tax may no longer be credited against the weight distance tax due.

Section 14 specifies that rack operators shall now be registered in addition to suppliers and dealers.

Section 15 amends the bond requirement section of the Special Fuels Supplier Tax Act to conform with the newly proposed bonding requirements for gasoline suppliers in section 6 of this bill.

Section 16 changes the language in the Special Fuels Supplier Tax Act pertaining to temporary special fuel user permits. Vehicles unregistered in New Mexico are now required to obtain a temporary permit good for 48 hours and one entrance and exit from New Mexico.

Section 17 adds a new section to the Special Fuels Supplier Tax Act to require bills of lading or other proof for persons transporting special fuels.

Section 18 has a temporary provision that prior to the effective date of this act, fuel received shall be subject to the appropriate taxes.

Section 19 specifies that the effective date of this act is June 1, 1997 provided that if this act is enacted without an emergency clause the effective date is July 1, 1997.

Section 20 contains an emergency clause.

#### Significant Issues

New Mexico's fuel tax statutes need to be amended for two reasons. The first reason is that illegal evasion of New Mexico's fuel taxes is costing the road fund needed revenue. The TRD claims that fuel tax evasion is a significant problem in New Mexico. The TRD states that federal estimates for fuel tax evasion gives a range of 7 to 25 percent. Using the midpoint of this range, 16 percent, and \$216 million in fuel taxes collected in FY96, then \$41 million in fuel taxes could have been evaded in New Mexico during FY96. This amount of money is equivalent to raising the gasoline tax in New Mexico by 4.5 cents per gallon.

The second reason for amending the fuel tax statutes is to insure that most fuel sold at retail in New Mexico has the same tax treatment. Currently, Indian gasoline distributors can legally avoid fuel taxes by taking delivery of wholesale quantities of gasoline on Indian country. The gasoline is then wholesaled off Indian country to retail outlets. Retailers selling gasoline with the tax paid are at a large price disadvantage and are losing market share. The road fund is also losing revenue. The amount of tax-free gasoline marketed by Indian distributors cost the road fund about \$1 million in FY96. If the statutes are not amended then this amount will probably increase. One of the generally accepted principles of tax policy is equity. This means that similarly situated taxpayers engaging in the same type of activity should pay the same tax.

Section 1 of this bill strikes 7-13-2 NMSA 1978, Subsection K, Paragraph 3. This means that persons blending components of gasoline to make gasoline off rack premises would not be liable for the gasoline tax, since they do not receive gasoline within the meaning of the Gasoline Tax Act. This type of receiving is not added back in Section 2 of this bill. This would encourage production of this type of fuel, which is usually of a substandard quality. A blending scheme was recently uncovered in Hobbs, which evaded millions of dollars in gasoline taxes. This can be corrected by adding Subsection E to Section 2 of this bill. The language should be the same as in the existing statute in Section 7-13-2, Subsection K, Paragraph 3 NMSA 1978.

The new definition of receiving gasoline as proposed in this bill is similar to the one currently in place. The gasoline tax liability is incurred by the rack owner if the gasoline is loaded into transportation equipment for a person that is not a registered gasoline distributor. This act of receiving occurs at the time and place of this first loading.

However, if the gasoline is loaded into trucks for a registered distributor, then the gasoline is received by that registered distributor. Since this exception does not define the time nor place of receiving, presumably the rack operator could enter into a delivery contract with an Indian distributor and ownership would pass hands upon delivery on Indian country, and receiving would occur on Indian country. This is the current method that Indian distributors are using to obtain tax-free gasoline. To correct this, Section 2, Subsection B of this bill should be amended. On page 9, after the word "gasoline" the words "at the time and place that it is loaded at the rack" should be inserted to avoid any ambiguity.

The deductions section of the Gasoline Tax Act is amended. Deductions for "sold for export" gasoline are still permitted. This may continue to permit a method of daisy chain tax evasion that is difficult to detect. To change this, the sold for export language could be stricken and a refund section could be added for gasoline that was exported by a distributor who had purchased gasoline with the tax already paid.

Section 7, Subsection E, does not include blending of gasoline off rack premises as a taxable event under the amended PPLF Act, although under current law it is a taxable event. Language similar to lines 12 through 15, page 18 should be added to Section 7-13A-3 NMSA 1978 (note this Section is not amended in this bill) to close this loophole. "Receiving" is not the taxable event in the PPLF Act so this language needs to be modified. Furthermore, Section 7-13A-3 could be amended to specify that the PPLF liability is on the rack unless the fuel is sold to a registered distributor, i.e., make this follow the taxable event as proposed in amendments to the Gasoline Tax Act.

The deductions section for special fuels still allows a "sold for export" deduction. This should be changed to fuel actually exported to minimize fuel tax evasion. See the above discussion on gasoline for more details.

## **FISCAL IMPLICATIONS**

Under any type of fuel tax statute, some degree of tax evasion will occur. Fuel tax evasion and avoidance could still occur under this bill. The amount of impact on the road fund and the corrective action fund is unknown.

To the extent that this bill would eliminate tax avoidance, performed by "washing" gasoline of the tax on Indian country and selling off Indian country tax free, then road fund revenues should increase.

## **OTHER SUBSTANTIVE ISSUES**

Federal officials advise that to minimize fuel tax evasion, the fuel tax should be collected at the rack, and a system of refunds rather than deductions should be instituted at the state level. In contrast, this bill would allow tax liability to pass from the rack to the first distributor. Piggybacking onto federal fuel tax statutes, combined with greater state level enforcement efforts might increase road fund revenue by tens of millions of dollars.

An implication of moving to a federal type fuel tax system or the current bill under consideration, is that most Indian distributors could no longer get tax free gas, unless used for export or for Indian government purposes. HB5/sHTRC from last years special session proposed an agreement for sharing 6 cents of the 17 cent gasoline tax with Indian governments for gasoline retailed on Indian country. If, during this session, statutes were changed to minimize fuel tax evasion and state enforcement efforts increased, then increased fuel tax revenue would result. There probably would be more than enough additional revenue to permit a dual taxation agreement on fuel taxes without decreasing road fund revenue. An estimate of the amount of gasoline being sold retail on Indian country would be needed to estimate the impact on the road fund. The PUC was requested to determine this amount from their database

The AG's bill analysis notes that this bill does not address a number of audit and enforcement issues. These are: Distributors based on reservations and pueblo grants may not have to provide detailed information to TRD; TRD is not required to revoke distributor licenses for entities and individuals who repeatedly fail to comply with fuel tax laws; and TRD is not required to perform criminal background searches on individuals applying to become distributors in New Mexico.

The AG also notes, "Oklahoma has entered into compacts with many of the Indian entities whereby equitable revenue sharing agreements have reduced the possibility of disputes between the state and Indian entities being resolved in the courts. Such compacts may reduce the competitive distortions which would otherwise exist in the marketplace." and, "The most effective deterrent to fuel tax evasion is to move the point of taxation to the rack, making the rack operators or refiners responsible for paying the tax. Deductions would be reimbursed when documentation is provided Taxation and Revenue by the distributor."



**POSSIBLE QUESTIONS**

1. What is TRD's estimate of fuel tax evasion in New Mexico? How was it determined?
2. The program manager for the federal Fuel Tax Evasion Program has stated that the payback from auditing fuel taxes is 10 to 20 dollars for each dollar spent on auditing. The federal government supplied data on the TRD fuel tax audit program for the period 4/1/95 to 9/30/95. This shows that for each dollar spent on audit activities, 100 dollars in additional road fund revenue is produced. Describe the fuel tax audit program at TRD. How it could be enhanced?
3. What are the advantages/disadvantages of changing New Mexico's fuel tax system to more closely match the federal one?
4. Fuel tax evasion rings are "migrant" criminals moving from state to state. Other states have found that criminal background checks are useful in detecting which distributors might be prone to evade gasoline taxes. What does TRD do in this regard? Could statutes be amended to specify that persons convicted of fuel tax evasion in this or other states could not be registered as distributors in this state? The North Carolina fuel tax statutes have this provision.
5. The Navajo reservation leads to other potential problems. Gasoline imported from Arizona to the Navajo reservation would escape New Mexico taxation if it is retailed on the Navajo reservation. Currently Navajo distributors are buying tax free gasoline at New Mexico racks under export provisions. How will this bill affect the Navajo distributors and retailers?
6. Price competition for gasoline customers due to tax differentials violates the equity criteria of tax policy. What type of dual taxation agreement could be implemented to satisfy Indian interests?
7. Nambe Pueblo has invested money in fixed storage tanks to facilitate marketing of tax-free gasoline off their Pueblo. If this bill is enacted, they will lose their tax advantage. If their operation is grand fathered in by an amendment to this bill, it would violate the equity principle of taxation. How much gasoline has passed tax-free through Nambe Pueblo?
8. New Mexico currently has no dying requirements for diesel fuel, although there are federal requirements. If this dying provision were added and penalties for the violation of the dyed fuel requirement were enacted, then whenever federal officials convict a violator, New Mexico could piggyback on federal efforts and receive fines and penalties at little additional cost to New Mexico. What is the amount of additional revenue that this would bring to the state?
9. The amount of gasoline tax on an 8,000 gallon load of gasoline is \$1.4. The statutory bonding requirement for gasoline and diesel fuel distributors is a minimum of \$1.0. TRD's current practice is to charge a \$1.0 bond for all new distributors. The bond requirement in Texas is for a minimum of \$30.0. Does the minimum bonding requirement of \$1.0 in New Mexico seem reasonable in light of these facts?

## BILL ANALYSIS AND FISCAL IMPACT REPORT

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DATE: March 13, 1997

Submitted by: TAXATION AND REVENUE DEPT.  
JOHN J. CHAVEZ, SECRETARY

BILL NUMBER: HB-1257 as amended by House Taxation &amp; Revenue Committee (3/10/97)

SPONSOR: Representative Sandel

BILL SHORT TITLE: Amend Fuel Taxes

## CONFLICTS, DUPLICATES, COMPANIONS:

**DESCRIPTION:** This bill revises certain definitions in the Gasoline Tax Act, the Special Fuel Suppliers Tax Act and the Petroleum Products Loading Fee Act to clarify legislative intent as to the taxable events of these taxes and the persons responsible for reporting and paying the taxes. While no drastic changes are made to the general ways in which these taxes are currently administered, four important changes are proposed.

The first significant change is the taxable event for refinery and pipeline terminal fuel. The current law language discussing when fuel "is *shipped or delivered* to another person registered as a distributor" is eliminated, and the bill thus keeps the taxable event at the rack where fuel is loading into transportation equipment. The *responsibility for paying* the tax may still be passed forward to the first registered distributor when the fuel is loaded into transportation equipment "for the account of another person who is registered", *but the taxable event would not move*. Under current law the entire taxable event is shifted when fuel is "shipped or delivered" by the rack operator, and this allows deliveries to Indian reservation distributors on Indian lands where tax is preempted.

The second change is the taxable event for imported fuel. Rather than being taxable when imported fuel is first "unloaded" in the state, the taxable event would be "at the time and place it is imported into this state." Under this bill's provisions, the taxable event would occur at the state boundary and would parallel language in the petroleum product loading fee.

The third major change imposes the tax to previously untaxed fuel when it is moved outside of Indian reservation boundaries. Thus, fuel which is refined on Indian lands, or first imported into the state within an Indian reservation, would become subject to tax when the fuel is transported off the Indian reservation or pueblo grant boundary.

The fourth significant change involves the documentation required to qualify for a deduction for exported fuel. Current statutory requirements are quite lax, using the phrase "sold for export". Current regulations are more specific, but administrative problems have arisen regarding probable "after the fact" documentation of exports. Under this bill's provisions, the person exporting would have to be a registered fuel dealer in the destination state or submit proof that tax was paid in the destination state. Alternatively, if New Mexico has entered into an agreement with the destination state to collect each other's tax, the exporter could pay the other state's tax (to New Mexico) and deduct the export from New Mexico taxable volume. (New Mexico currently has no such agreements with other states).

A section-by-section description appears beginning on page 3.

**EFFECTIVE DATE:** June 1, 1997 if enacted with Emergency Clause, otherwise July 1, 1997.

**FISCAL IMPACT:**

	<u>Estimated Impact on Revenues</u>	<u>Recurring or Nonrecurring Impact</u>	<u>Funds Affected</u>
	<u>Percentage Share</u>		
	76.27%	Recurring	State Road Fund
	0.26%	Recurring	State Aviation Fund
	0.13%	Recurring	Motorboat Fuel Fund
	1.44%	Recurring	Municipal Arterial Program
	10.38%	Recurring	County/Municipal general funds
	5.76%	Recurring	County Government Road Fund
	<u>5.76%</u>	Recurring	Municipal Roads Distribution
<b>TOTAL</b>	100.00%	Recurring	

The positive fiscal impact of this bill cannot be reliably quantified. The fiscal impact involves both an immediate small revenue increase, as well as a longer-run affect of forestalling potential increased revenue losses.

During the first 7 months of FY 1996-97 about 6.4 million gallons of tax preempted gasoline was reported, for an associated revenue loss of about \$1.2 million (gasoline tax and petroleum products loading fee). Assuming the current trend of gradual growth in tax preempted gasoline continues, the FY 1996-97 revenue loss will probably be in excess of \$2.5 million. While some tax preempted gasoline has found its way off Indian reservations, so far the majority (about 90%) has been retailed within Indian reservation or pueblo grant boundaries. However, confidential taxpayer inquiries to the department indicate a potentially growing concern with (and interest in) tax preempted gasoline, possibly motivated by competitive concerns within the motor fuel industry. The department continues to believe that, given time to clarify specifications of recently released regulations and time to renegotiate existing long-term contracts, trading in tax preempted gasoline could grow rapidly. If substantial growth in tax preempted fuel occurs, a cascading affect would be likely as more fuel suppliers are pushed towards tax preempted arrangements because of competitive price concerns.

The positive fiscal impact associated with changes to exported fuel provisions are not predictable. While the vast majority of fuel exports are legitimate, some unscrupulous fuel dealers use the export deduction in their attempt to complicate the chain of documentation and hide fuel from taxation. Cases of fuel "sold for export" which never leaves the state, and cases of fuel possibly exported but immediately re-imported, have come to the attention of state tax auditors. State tax officials share information with other states and have identified a number of tax evasion schemes, but states suspect there may be further activity which has yet to be uncovered. The more stringent export requirements should enhance tax compliance in New Mexico and surrounding states.

**ADMINISTRATIVE IMPACT:**

A moderate administrative burden on the department would result from tax reporting form changes, computer system revisions, and revisions to existing motor fuel tax regulations. A number of taxpayer inquiries for clarification could be expected, and a substantial number of tax reporting errors will probably occur. The department will be able to administer the changes with existing personnel and budget resources, at some opportunity cost to other initiatives.

Blending of fuel is added to the definition of "rack operator" by HTRC amendments. The department may have to issue regulations specifying the amount of tax due for the incremental addition to fuel volume. See Technical Issue #4 for another possible need for regulation.

**TECHNICAL ISSUES:**

1) Section 2, Subsection C -- Imported fuel received: There are no special provisions for fuel traveling across the state in interstate commerce. On its face, the definition of fuel "received" upon import appears to apply to any fuel crossing the state border. A definition of "import" might relieve interstate

commerce of a responsibility to report and deduct fuel which was imported for direct export (traveling through). This situation where fuel is crossing the state by truck may be uncommon due to transportation costs and so could await future action. In any event, the bill's reporting requirements will disclose the extent of each activity.

2) Section 15 revises the bond requirements for special fuel suppliers. Rack operators are not included in the definition of supplier and so are not subject to the bond requirement for special fuel excise tax. The gasoline tax imposes the bond requirement on the "taxpayer" so the bond may be required of rack operators for gasoline tax.

3) The two taxable events specified in the bill are fuel imports and loading at the rack.

#### **SECTION -BY-SECTION DESCRIPTION:**

**SECTION 1:** Gasoline Tax Definitions -- definitions are placed in alphabetic order and new definitions are added for "aviation gasoline", "fuel supply tank", "government-licensed vehicle", "rack operator", and "taxpayer"; amends "distributor" to exclude rack operators; moves "received" (the current taxable event) to a new section (Section 2).

**SECTION 2:** When Gasoline Received -- the taxable event of the gasoline tax ("received") is specified to be: 1) when fuel at a refinery or pipeline terminal in this state is loaded into delivery equipment or fuel tanks at the refinery or pipeline terminal; 2) when fuel is imported into this state (other than by pipeline); 3) when tax preempted (Indian) fuel is transferred to another taxable person or transferred off of reservation or pueblo grant boundaries. Each taxable person possessing gasoline is subject to tax unless the tax has been previously paid. Gasoline is not taxed ("received") when it is transferred to another refinery or pipeline terminal to another.

A rack operator who "receives" (loads) fuel is required to pay the gasoline tax unless the rack operator "*loads ... for the account of ...[a] registered ... distributor*", in which case the distributor "receives" the gasoline and is required to pay the tax. Note that current law uses the phrase "shipped or delivered to" a registered distributor. Gasoline imported into the state is "*received at the time and place it is imported into this state.*" Gasoline "received" (whether refined or imported by pipeline or imported by other means) within an Indian reservation or pueblo grant by a tax-immune Indian person, would be "received" again (by a taxable person) when the fuel is transported off the reservation or pueblo grant boundaries.

#### **SECTION -BY-SECTION DESCRIPTION (continued):**

**SECTION 3:** Gasoline Deduction for Export -- to qualify for the deduction, the person exporting must be registered or licensed in the destination state to pay fuel tax or submit proof that the other state's tax has been paid on the fuel (or it is not subject to tax) or, if a cooperative agreement on the subject has been entered into by New Mexico with the other state, have paid the other state's tax to New Mexico.

Gasoline Deduction for U.S. and Indian governments -- gasoline sold to the U.S. Government must be "delivered into the supply tank of a government-licensed vehicle". A new deduction is allowed for gasoline sold to an Indian tribe or pueblo and "delivered into the supply tank of a government-licensed vehicle of the Indian nation, tribe or pueblo".

**SECTION 4:** Rack operators -- (a new category, distinct from distributors) must file gasoline tax returns.

**SECTION 5:** Rack operators -- (a new category, distinct from distributors) must register with the department.

**SECTION 6:** Gasoline Tax Bond requirement -- the requirement is moved from regulation into statute. The minimum bond amount is \$1,000. Taxpayers with a good reporting and payment history for 24 months may be exempted from the bond requirement.

**SECTION 7:** Petroleum Products Loading Fee Definitions -- conforms definitions to changes in the Gasoline Tax Act and the Special Fuels Supplier Tax Act.

**SECTION 8:** Special Fuels Supplier Tax Definitions -- adds definition of "rack operator"; moves "received" and "use" to a new section (Section 9); expands the definition of "special fuel" to correct an omission by including kerosene used to propel a motor vehicle.

**SECTION 9:** When Special Fuel Received -- similar to Section 2 definition of "received" (the taxable event). Also defines when special fuel is "used in New Mexico" (an alternative taxable event) for purposes of the Special Fuel Excise Tax imposition (Section 7-16A-3 NMSA 1978).

**SECTION 10:** Special Fuel Bulk Storage Permits -- allows permits to run for up to 3 years at the permittee's option, and specifies the (current) \$10 fee is the fee for each calendar year period of the permit.

**SECTION 11:** Rack operators -- (a new category, distinct from distributors) must file special fuel tax returns.

**SECTION 12:** Special Fuel Deduction for Export -- Special fuel definition similar to Section 3 definition for export of gasoline. The deduction for non-highway use is clarified.

**SECTION 13:** Special Fuel Credit -- special fuel excise tax paid (in-state purchases of fuel by users) may be credited only against special fuel excise tax due (based on in-state miles traveled). The tax paid may not be credited against the taxpayer's Weight Distance Tax obligation.

**SECTION 14:** Rack operators -- (a new category, distinct from distributors) must register with the department.

**SECTION 15:** Special Fuel Excise Tax Bond requirement -- (similar to Section 6) the minimum bond amount is \$1,000. Taxpayers with a good reporting and payment history for 24 months may be exempted from the bond requirement. The amount of bond is lowered from twice the average *quarterly* tax to be twice the average *monthly* tax.

**SECTION 16:** Special Fuel Temporary Permits -- clarifies that temporary permits are required for unregistered special fuel users.

**SECTION 17:** Special Fuels Bill of Lading -- every person hauling special fuel by truck from a refinery in this state or importing or exporting fuel by truck must carry a manifest or bill of lading. Similar to the current law provision for gasoline (Section 7-13-12 NMSA 1978).

**SECTION 18:** Temporary Provision -- prior law in effect for fuel received prior to effective date of this act.

**SECTION 19:** Effective Date -- June 1, 1997 with Emergency Clause; otherwise July 1, 1997.

**SECTION 20:** Emergency Clause.