

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1769 – SB 2076

March 18, 2014

**SUMMARY OF ORIGINAL BILL:** Enacts the Transportation Fuel Equity Act. Subjects dyed diesel fuel that is used in Tennessee by a commercial carrier to produce power for a means of transportation to the 17 cents per gallon diesel tax, rather than the 7 percent sales and use tax, and requires all proceeds to be deposited in the Transportation Equity Trust Fund. Requires money in the Fund to be used by the Department of Transportation for programs and activities related to railways, aeronautics, and waterways. Requires each commercial carrier who uses dyed diesel fuel within Tennessee to register with the Department of Revenue and file a quarterly report on forms prescribed by the Department no later than the 20<sup>th</sup> day of the month following the close of the calendar quarter reporting period for which the report is submitted. Requires the full amount of the diesel tax imposed by Tennessee on dyed diesel to be paid at the same time that the commercial carrier transmits the report.

FISCAL IMPACT OF ORIGINAL BILL:

Other Fiscal Impact – To the extent the judgment by the U.S. District Court for the Middle District of Tennessee, preventing the Department of Revenue from collecting the sales tax previously paid by the plaintiff railroads, is overturned and the Department is allowed to continue collecting the state sales tax imposed under current law, this bill will result in a decrease in state revenue to the Transportation Equity Trust Fund of \$701,800 in FY13-14 and \$4,210,800 in FY14-15 and subsequent years, and a decrease in state revenue to the General Fund of \$629,700 in FY13-14 and \$3,778,100 in FY14-15 and subsequent years.

However, to the extent the judgment is upheld and the Department is prohibited from collecting the state sales tax imposed under current law, this bill will result in an increase in state revenue to the Transportation Equity Trust Fund of \$1,607,000 in FY13-14 and \$9,642,100 in FY14-15 and subsequent years.

**SUMMARY OF AMENDMENT (014688):** Revises the provisions requiring quarterly reports to be submitted by each commercial carrier to the Department of Revenue. Authorizes a tax credit against the tax liability for any sales tax properly paid to another state upon the dyed diesel fuel in this state by the commercial carrier to produce power for a means of transportation. Authorizes a tax credit against the tax liability equal to the amount of sales tax that was paid on dyed diesel fuel used by the commercial carrier to produce power for a means of transportation and was purchased by the carrier on or after July 1, 2014, and before the effective date of this act. Requires each commercial carrier to maintain records sufficient to reasonably determine the

HB 1769 – SB 2076

number of gallons of dyed diesel fuel used in this state to produce power for any vehicle employed by the carrier for the purpose of transporting passengers or goods for a fee, including, but not limited to, motor vehicles, trains, marine vessels, and aircrafts. Establishes that this Act shall take effect on the effective date of a final, unappealable order of a court of competent jurisdiction that the sales taxes imposed on fuel used by rail carriers are preempted by federal law or otherwise invalid. Section 18, requiring each commercial carrier to maintain specified records, shall be effective upon becoming a law.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Other Fiscal Impact – To the extent the judgment by the U.S. District Court for the Middle District of Tennessee is overturned and the Department is allowed to continue collecting the state sales tax imposed under current law, this bill will not result in a significant fiscal impact to the state or local government.**

**However, to the extent the judgment is upheld and the Department is prohibited from collecting the state sales tax imposed under current law, this bill will result in a recurring increase in state revenue to the Transportation Equity Trust Fund of \$9,642,100. The first-year in which the state will begin collecting the diesel tax is unknown.**

Assumptions for the bill as amended:

- Pursuant to Tenn. Code. Ann. § 67-6-103(b)(1), all collections from the seven percent state sales and use tax rate imposed on the sale, use, consumption, distribution, or storage for use or consumption of fuels used for aviation, railways, or water carriers are to be deposited in the Transportation Equity Trust Fund.
- Pursuant to Tenn. Code. Ann. § 67-6-103(c)(1) and (2), all revenue generated from the increase in the rate of state sales and use tax , from 5.5 percent to 6.0 percent (effective April 1, 1992), or from 6.0 percent to 7.0 percent (effective July 15, 2002), must be deposited in the General Fund.
- Therefore, collections from the remaining 5.5 percent sales and use tax imposed on the sale, use, consumption, distribution, or storage for use or consumption of fuels used for aviation, railways, or water carriers are currently deposited in the Transportation Equity Trust Fund.
- According to the Department of Revenue (DOR), the total state sales tax reported for railroad and motor vessel fuel was \$17,630,929 in FY12-13, of which \$13,852,873  $[(\$17,630,929 / 7.0\%) \times 5.5\%]$  was deposited in the Transportation Equity Trust Fund, and the remaining \$3,778,056  $(\$17,630,929 - \$13,852,873)$  was allocated to the General Fund. These numbers are assumed to remain constant under current law.
- According to DOR, the number of gallons of railroad and motor vessel fuel sold or purchased was 80,287,154 in FY12-13. Under this bill, only fuel used in Tennessee

would be subject to the diesel tax. DOR estimates that 56,718,078 gallons were used in Tennessee in FY12-13. This number is assumed to remain constant under current law.

- Subjecting dyed diesel fuel used to power railroad locomotives or motor vessels to the 17 cents per gallon diesel tax and requiring all proceeds to be deposited in the Transportation Equity Trust Fund would result in recurring revenue to the Fund of \$9,642,073 (56,718,078 gallons x \$0.17 per gallon).
- On August 27, 2013, Class 1 railroads obtained a judgment in the United States District Court for the Middle District of Tennessee, which resulted in an injunction forcing the DOR to cease collecting the state sales tax previously paid by the plaintiff railroads. The Department has appealed this decision and the case is currently pending in the U.S. Court of Appeals for the Sixth Circuit.
- For the purposes of this fiscal memo, it is assumed that, as a result of the judgment by the U.S. District Court, the state sales tax on dyed diesel fuel used to power motor vessels is currently not being collected.
- To the extent the judgment by the District Court is overturned and the Department is allowed to continue collecting the state sales tax imposed under current law, this bill as amended will not result in a significant fiscal impact as the sales taxes will continue to be imposed as under current law prior to the injunction.
- To the extent that the judgment is upheld and the Department is prohibited from collecting the state sales tax imposed under current law, this bill as amended will result in a recurring increase in state revenue of \$9,642,073 to the Transportation Equity Trust Fund. This bill as amended is effective on the effective date of a final, unappealable order of a court of competent jurisdiction that the sales taxes imposed on fuel used by rail carriers are preempted by federal law or otherwise invalid. As a result, the first-year in which the state will begin collecting the diesel tax is unknown.
- According to the Department, the tax credits established by this bill as amended are estimated to not result in a significant decrease in tax collections.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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