

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1769 – SB 2076

April 8, 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 20th 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 (016095): Removes marine vessels, boats, barges, or other craft operated on waterways from the provisions of this bill. Authorizes a credit against the tax liability equal to the amount, if any, of sales tax properly paid to another state upon the dyed diesel used in this state by the commercial carrier to produce power for a means of transportation. Changes the effective date to July 1, 2014.

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, 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 recurring decrease in state revenue to the Transportation Equity Trust Fund of \$6,229,200 and a recurring decrease in state revenue to the General Fund of \$3,758,300.

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 \$7,551,400.

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 fuel was \$17,538,961 in FY12-13, of which \$13,780,612 [$(\$17,538,961 / 7.0\%) \times 5.5\%$] was deposited in the Transportation Equity Trust Fund, and the remaining \$3,758,349 ($\$17,538,961 - \$13,780,612$) 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 fuel sold or purchased was 79,855,781 in FY12-13. Under this bill, only fuel used in Tennessee would be subject to the diesel tax. DOR estimates that 56,286,705 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 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 \$9,568,740 ($56,286,705 \text{ gallons} \times \0.17 per gallon).

- The Department estimates that 13,653,684 gallons of dyed diesel used in this state were purchased in another state, of which 75.0 percent, or 10,240,263 gallons, were subject to the sales tax.
- According to the U.S. Energy Information Administration, the average price of diesel fuel in the Tennessee region is \$3.94. The total cost of this diesel fuel is estimated to be \$40,346,636 (10,240,263 x \$3.94). Assuming an average sales tax rate of 5.0%, the estimated sales tax paid on such fuel is equal to \$2,017,332 (\$40,346,636 x 5.00%). Such amount would be used as a credit against the Tennessee diesel tax.
- The net recurring revenue to the Transportation Equity Trust Fund is estimated to be \$7,551,408 (\$9,568,740 - \$2,017,332).
- 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.
- 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 will result in a recurring decrease in state revenue of \$6,229,204 to the Transportation Equity Trust Fund (\$13,780,612 - \$7,551,408), and a recurring decrease in state revenue of \$3,758,349 to the General Fund, beginning with FY14-15.
- 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 will result in a recurring increase in state revenue of \$7,551,408 to the Transportation Equity Trust Fund, beginning with FY14-15.

CERTIFICATION:

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



Lucian D. Geise, Executive Director

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