HB15-1228

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL
REVISED FISCAL IMPACT

(replaces fiscal note dated March 19, 2015)

Drafting Number:	LLS 15-0258	**Date:**	March 30, 2015
Prime Sponsor(s):	Rep. Mitsch Bush; Becker J. Sen. Scott	**Bill Status:**	House Appropriations
		Fiscal Analyst:	Greg Sobetski (303-866-4105)

BILL TOPIC: SPECIAL FUEL TAX ON LIQUEFIED PETROLEUM GAS

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	**(up to $252,000)**	**(up to $576,000)**
Cash Funds	(up to $252,000)	(up to $576,000)
State Expenditures	**$73,440**	
Cash Funds	$73,440	
FTE Position Change		
TABOR Set-Aside	(up to $252,000)	(up to 576,000)
Appropriation Required: $73,440 - Department of Revenue (FY 2015-16).		

* *This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.*

Summary of Legislation

This bill, ***as amended by the House Finance Committee***, makes several changes to the administration and collection of the special fuel excise tax (tax) on liquefied petroleum gas (LPG), beginning in calendar year 2016. These changes include:

- limiting the imposition of the tax on LPG so that, in most instances, the tax is levied when LPG is placed in a motor vehicle's fuel tank, instead of when the LPG is acquired, sold, offered for sale, or used for any purpose whatsoever;
- requiring a distributor that places LPG in a fuel tank to pay the tax;
- allowing a retailer not to be considered as a distributor, provided it files an affidavit with the Department of Revenue (DOR) and posts a notice stating that the LPG it sells is not for vehicle use;
- designating the operator of a private commercial fleets that uses LPG as a distributor where no other distribution contract is in place;
- requiring a distributor that uses LPG to propel a cargo tank motor vehicle to pay the tax on the LPG used for this purpose, based on odometer readings of the mileage traveled by the vehicle;
- assessing the tax on the volume of net gallons, rather than gross gallons, of LPG;
- eliminating the 2 percent allowance for LPG lost in transit or handling;
- eliminating the minimum amount, currently $25,000, of a surety bond that an LPG distributor may deposit with the DOR in lieu of evidence of a savings account, deposit, or certificate of deposit; and
- prohibiting the DOR from collecting any penalties or interest related to the tax on LPG sold in calendar years 2014 and 2015.

Additionally, the bill changes the definition of "gallon" for the purpose of assessing the special fuel excise tax on compressed natural gas (CNG). The bill defines "gallon" so that the tax is assessed on a quantity of fuel computed using the same method as was the basis for the purchase of gas at the wholesale level, provided that the method is one of three identified in statute.

Background

Colorado collects excise taxes on gasoline and special fuel, defined as diesel engine fuel, kerosene, LPG, and natural gas, to fund the state highway system. House Bill 13-1110 reduced excise tax rates for LPG beginning January 1, 2014. The excise tax on LPG is equal to three cents per gallon for tax year 2014, five cents per gallon for tax year 2015, seven cents per gallon for tax year 2016, and nine cents per gallon for tax year 2017. Taxes are levied when fuel is acquired, sold, offered for sale, or used for any purpose whatsoever.

Special fuel tax refunds. Under current law, a consumer who pays a special fuel excise tax on LPG not used to power a motor vehicle may claim a refund from the DOR if he or she meets certain criteria. Refunds issued to these consumers average less than $12 each month. Consumers who cannot claim refunds from the DOR may ask the distributor from which they purchased the fuel to refund the tax paid, in which case the distributor may adjust its tax remittance in the DOR's fuel tax collection system. Because distributors make adjustments for other reasons, the amount of LPG tax refunds issued via this mechanism cannot be computed.

Distribution of tax revenue. Article X, Section 18, of the Colorado Constitution, requires all excise taxes collected on gasoline and other liquid motor fuel to be used exclusively for the construction, maintenance, and supervision of the state highway system. Special fuel excise taxes are paid to the Highway Users Tax Fund (HUTF), and apportioned to the State Highway Fund (SHF), counties, and municipalities. The first seven cents per gallon of special fuel are apportioned out of the HUTF as follows:

- 65 percent to the SHF;
- 26 percent to counties; and
- 9 percent to municipalities.

Special fuel taxes in excess of seven cents per gallon are apportioned as follows:

- 60 percent to the SHF;
- 22 percent to counties; and
- 18 percent to municipalities.

State Revenue

HUTF revenue will decrease by a maximum of $252,000 for FY 2015-16, and by a maximum of $576,000 for FY 2016-17.

Assumptions. Approximately 600,000 gallons of LPG are taxed monthly without being positively confirmed to be for vehicle use, based on tax reporting for the fall of 2014. If none of this fuel is used for vehicles, then the bill would result in a revenue loss to the state equal to $42,000 per month for calendar year 2016, and $54,000 per month for calendar year 2017. This estimate is overstated to the extent that this fuel is used for vehicles, and to the extent that, under current law, consumers obtain refunds from distributors for taxes paid on fuel not used for vehicles.

HUTF allocations to the SHF will be reduced by a maximum of $163,800 for FY 2015-16, and by a maximum of $368,000 for FY 2016-17. For calendar year 2016, 65 percent of LPG excise tax revenue is allocated to the SHF. For calendar year 2017, approximately 64 percent of LPG excise tax revenue is allocated to the SHF, representing 65 percent of the first seven cents per gallon and 60 percent of the remaining two cents per gallon.

TABOR Impact

This bill decreases state revenue subject to TABOR, which will decrease the amount required to be refunded under TABOR by a maximum of $252,000 for FY 2015-16 and by a maximum of $576,000 for FY 2016-17. TABOR refunds are paid from the General Fund in the year following excess collections.

State Expenditures

This bill is expected to increase one-time Highway Users Tax Fund expenditures by $73,440 for FY 2015-16. State expenditures are summarized in Table 1 and detailed below.

Table 1. Expenditures Under HB15-1228

Cost Components	FY 2015-16	FY 2016-17
Programming for Colorado Fuel Tax System	$67,200	$0
Updates to Colorado Fuel Tax System Reports	$6,240	
TOTAL	**$73,440**	**$0**

Department of Revenue. The bill requires the DOR to utilize a third-party computer programming vendor to make changes to the Colorado Fuel Tax System (COFTS), which it uses to administer and collect the special fuel excise tax, and to provide tax reports. The bill is also expected to result in increased workload at the DOR during the system changes; however, these increases can be accommodated within existing appropriations.

Pursuant to current law, costs for changes to data collection services for gasoline and special fuel taxes are paid from the HUTF.

Colorado Fuel Tax System. The COFTS will need to be updated in order to accommodate the changes to the administration of the excise tax on LPG. Changes to the point at which the tax is levied, the reassessment of LPG quantities according to net rather than gross gallons, and a newly defined universe of distributors all will be programmed in the COFTS. The DOR has solicited and obtained an estimate from a third-party contractor for the costs of making required changes to this system, and this fiscal note assumes the estimate provided. Further, one-time expenditures by the DOR will increase in order to accommodate changes to the way that special fuel tax collections are reported from the COFTS.

Local Government Impact

HUTF allocations to counties and municipalities will decrease to the extent that revenue to the HUTF is reduced. Allocations to counties will be reduced by a maximum of $65,520 for FY 2015-16, and by a maximum of $144,640 for FY 2016-17. These figures represent 26 percent of the maximum LPG excise tax revenue loss for FY 2015-16, and approximately 25 percent of the maximum LPG excise tax revenue loss for FY 2016-17.

Allocations to municipalities will be reduced by a maximum of $22,680 for FY 2015-16, and by a maximum of $63,360 for FY 2016-17. These figures represent 9 percent of the maximum LPG excise tax revenue loss for FY 2015-16, and 11 percent of the maximum LPG excise tax revenue loss for FY 2016-17.

Effective Date

Most of the bill takes effect January 1, 2016. There are two exceptions:

- Section 5, which directs the DOR not to collect any penalties or interest related to the special fuel tax on LPG sold in calendar years 2014 and 2015; and
- Section 8, which directs the DOR to update its software systems to monitor and track data from LPG licensees.

These sections take effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2015-16, the DOR requires a Highway Users Tax Fund appropriation of $73,440.

State and Local Government Contacts

Colorado Energy Office	Counties	Labor and Employment
Local Affairs	Municipalities	Personnel and Administration
Revenue	Transportation	