Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Transportation Committee

HB 2816

Brief Description: Concerning fuel taxes on exported fuel.

Sponsors: Representatives Morris, Moeller, Chase, Kessler, Jacks and Nelson.

Brief Summary of Bill

- Re-establishes the export fuel tax exemption at 35 cents creating a 2.5 cent export fuel tax when exporting within the United States. The exemption between 35 cents up to 37.5 cents matches the importing state's gas tax rate.
- Establishes a credit against the export fuel tax for exporters that import crude into Washington.
- Provides funding to the Puget Sound Capital Construction Account.
- Provides funding to the newly created Columbia River Crossing Account to be used for construction and preservation for the Columbia River Crossing. Allows excess funds after 2017 to be used for high capacity transportation.
- Establishes a 48-month averaging for fuel distributors to report and pay business and occupation taxes.

Hearing Date: 1/28/10

Staff: Jerry Long (786-7306).

Background:

Washington has five major refineries and exports approximately 3.2 billion gallons of fuel annually. Current statutes direct that fuel taxes be collected at the time the fuel is removed from the terminal rack. Exported fuel to destinations outside the state is exempt from the state's current fuel tax of 37.5 cents per gallon fuel tax. To receive an exemption, one must be a licensed motor vehicle fuel supplier, special fuel supplier, motor vehicle fuel exporter, special fuel exporter, or a licensed blender. In the case where fuel has been exported outside the state on which the fuel tax has been paid, the payer is entitled to a refund of the fuel taxes. In 1944 the

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voters passed the 18th Amendment to the Constitution which stated that excise taxes collected on the sale, distribution, or use of motor vehicle fuel shall be used exclusively for highway purposes, but fuel that was used for non-highway use was not taxed.

During 2008 the Joint Legislative Audit and Review Committee (JLARC) reviewed this tax exemption for exported fuel as one of their Tax Preference Reviews. According to the report, the United States Supreme Court has ruled that taxes imposed by one state that affect goods that will be purchased in another state are not strictly prohibited by the federal constitution. Taxes between states must be analyzed under a four-prong approach test that looks at whether: the tax applied to an activity with nexus with the taxing state; the tax is fairly apportioned; the tax does not discriminate against interstate commerce; and the tax is related to the service provided by the state. Presently there are three states (Tennessee, Texas, and Florida) that have some form of taxation of fuel being exported to other states. The JLARC recommendation was to retain the motor vehicle fuel tax and special fuel tax exemption for exported fuel, even though it may be possible, depending on the structure of the tax, to provide less than a full exemption on exported fuel and still comply with interstate commerce.

Refineries in the state pay a business and occupation tax at .00484 percent based on the value of the product being sold. Crude oil prices fluctuate with world demand as the price is highly volatile and normally represents approximately 65 percent of the cost per gallon of fuel.

Summary of Bill:

Motor vehicle and special fuel exported for interstate commerce is taxed at 2.5 cents per gallon by reducing the tax exemption for exported fuel to 35 cents per gallon. When exporting fuel to a state where the fuel tax rate is greater than 35 cents per gallon, the exemption per gallon is equal to the per gallon fuel tax rate of the state to which the fuel is exported, but not to exceed 37.5 cents.

A motor vehicle fuel exporter that also imports crude for use in Washington will receive an amount of credit up to 2.5 cents per gallon against the export fuel tax owed. A credit earned in one calendar year may be credited against taxes incurred in the subsequent calendar year. No other refunds, exemptions, and credits are applicable to fuel exported within the United States.

Sixty percent of the export fuel tax must be distributed to the Puget Sound Capital Construction Account to be used for the construction and preservation of the Washington State Ferry System. Forty percent must be distributed to the newly created Columbia River Crossing Account to be used for the construction, preservation, and debt service of the Columbia River Crossing. Any excess funds after 2017 may be used for high capacity transportation.

Persons primarily engaged in petroleum refining will report and pay their business and occupation tax based on a level fuel price based on the prior 48 months for the West Coast as published by the federal Energy Information Administration or its successor agency.

The bill includes a severability clause.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect August 1, 2010.