F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 2/08/09
SPONSOR Trujillo **LAST UPDATED** ____ **HB** 505

SHORT TITLE Retail Communication Services Gross Receipts **SB** ____

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	($56.0)	($112.0)	Recurring	Small Counties Assistance Fund
	($56.0)	($112.0)	Recurring	Small Cities Assistance Fund
	($551.0)	($1,102.0)	Recurring	Local Governments
	($1,068.0)	($2,135.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates SB452

SOURCES OF INFORMATION
LFC Files
Taxation and Revenue Department (TRD)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 505 creates a new deduction from the gross receipts and compensating tax for the sale or lease of communications equipment to a communications provider. The bill requires the purchaser or lessee to deliver a nontaxable transaction certificate (NTTC) to the seller or lessor. The communications provider may only deliver an NTTC if the communications equipment enables the provider to provide specific communications services ultimately to retail customers. The deduction is 20% of receipts in FY2010, 40% in FY2011, 60% in FY2012, 80% in 2013 and 100% in FY2014 and later.

Because no effective date is provided in the bill, its provisions will become effective June 19, 2009, ninety (90) days after the 2009 legislative session adjourns.

FISCAL IMPLICATIONS

TRD:
The New Mexico Public Regulation Commission (PRC) indicates $140.15 million in receipts would qualify for the deduction in FY10. This figure is in line with estimates done with different methodology using property tax data. Based on taxpayer data and PRC expectations, this estimate assumes 40% of the receipts will be subject to compensating tax, 60% subject to the gross receipts tax, and that investment in communications equipment will be flat over the next five years.

SIGNIFICANT ISSUES

TRD:
This proposal would remove pyramiding of certain business-to-business sales if the sale of the final product is subject to New Mexico's gross receipts tax. However, the bill does not require that the sale of communications services be to a New Mexico customer or subject to any New Mexico tax. And while general removal of pyramiding would reduce the economic distortions in the gross receipts tax, this proposal narrowly targets a specific industry and requiring higher rates on remaining taxpayers in order to raise the same amount of gross receipts tax revenue. Since the economic losses associated with taxes rise rapidly as rates increase, piecemeal approaches to pyramiding could result in increased economic distortions in the gross receipts tax.

The definition of communications services excludes certain services that may be performed with the same equipment used to perform included services. If equipment is used for excluded services, and a NTTC was given for the purchase of the equipment, compensating tax will be due for the use of the equipment for excluded services. The Department would probably require the communications provider to produce evidence of the amount of use of equipment for included and excluded services so that the compensating tax could be properly calculated.

PRC:
There are several potentially significant issues raised by the Bill. Telecommunications companies routinely sell and lease facilities to other telecommunications companies in a variety of ways: Parent to subsidiary; sibling transfers; joint ventures; interconnection agreements; wireless to wireline and vice versa; wholesale and retail designed services; among others. It is not certain that savings from taxation would in fact be deployed into further investment in basic infrastructure. Also, according to the proponents of the bill, only 16 other states have similar legislation.

ADMINISTRATIVE IMPLICATIONS

TRD:
The proposal will have a minimal impact on the Department. Annual revisions of instructions and publications for the CRS tax program for the next five years. Audit procedures to develop; taxpayer and Department employee education. Industry specific knowledge will assist in further defining qualifying versus non-qualifying equipment. No systems changes will be required.

The bill does not contain a sunset date and there is no provision for reporting on this deduction. It is important for policy makers to have regular information and an opportunity to review the effectiveness of the deduction.

DUPLICATION

Duplicates Senate Bill 452.

TECHNICAL ISSUES

TRD:
It's unclear which dates receipts from purchases and leases qualify for the deduction. Fiscal year is not defined in the proposal and it is unclear if it means the State's fiscal year or the taxpayer's fiscal year. The revenue estimate assumes a deduction "for fiscal year 2010"means receipts from July 1, 2009, through June 30, 2010. If fiscal year is interpreted as the taxpayer's fiscal year the complexity of the deduction and its impact would increase considerably.

PRC:
There is an ambiguity in the bill in that some telecommunications providers are also providers to other telecommunications carriers, in the form of designed services, for example to voice over internet service providers.

BLG/mt

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity***: *taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc