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

ORIGINAL DATE 1/23/09
SPONSOR Neville **LAST UPDATED** **HB**

SHORT TITLE Expand Definition of Retail Food Store **SB** 88

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	**FY10**	**FY11**		
	($1,768.7)	($1,845.2)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 88 expands the definition of retail food store so that establishments with over 75 percent of sales attributable to bottled water, ice and coffee can receive the gross receipts tax deduction for food enacted in 2004. The deduction only applies to food sold for home consumption.

The effective date of this bill's provisions is July 1, 2009.

FISCAL IMPLICATIONS

An analysis of the same proposal provided by TRD in 2007 estimated that taxable gross receipts eligible for the proposed deduction for water, ice and coffee will be about $23 million in FY08. Since that tax base was expected to grow by about 5 percent per year, the base would be $25.4 million in FY10. With a FY10 statewide gross receipts tax rate of 7.07 percent, revenue will be reduced by about $1,769 thousand. Since local governments are held harmless from revenue losses associated with the food deduction expanded in this bill, the entire revenue loss will most likely be borne by the general fund (see table below).

Estimated Revenue Impact*						R or NR**	Fund(s) Affected
FY09	**FY10**	**FY11**	**FY12**	**FY13**	**FY 09-13**		
0	($945)	($985)	($1,028)	($1,072)	($4,029)	R	General Fund
0	($825)	($860)	($897)	($936)	($3,518)	R	Hold Harmless to Local Governments
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- 0	($1,769)	($1,845)	($1,925)	($2,007)	($7,546)	R	Total General Fund
0	***	***	***	***	***	R	Local Governments

Source: Taxation and Revenue Department

*In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR). *** There could be a very small negative impact for local governments whose hold harmless local option tax rate is frozen at their January 1, 2007, level but have increased their local option rates since that date. This estimate assumes an average tax rate of 7.07% and a growth rate of 4.3%.

SIGNIFICANT ISSUES

LFC notes that while individual deductions from the gross receipts tax may have small fiscal impacts, their cumulative effect significantly narrows the gross receipts tax base. Narrowing the gross receipts tax base increases revenue volatility and requires a higher tax rate to generate the same amount of revenue.

ADMINISTRATIVE IMPLICATIONS

TRD will potentially need to troubleshoot systems, revise forms and instructions, prepare taxpayer education materials and instructions, and retrain personnel.

Implementation of the food and medical deductions has been unusually complicated and expensive for TRD because of the programming needed to do hold harmless distributions for local governments. Increasing the list of food items eligible for the food gross receipts tax deduction will increase the cost of administering the local hold harmless distributions.

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

TECHNICAL ISSUES

The original intent of the food deduction enacted in 2004 was to include food for home consumption as defined by the federal Food Stamp program. This bill would include receipts from companies that sell water to businesses as well as to individuals for home consumption. Companies delivering bottled water to both homes and businesses will have to separate home and business sales to qualify for the deduction. Coffee shops, such as Starbucks, would qualify for the food gross receipts tax deduction for the sale of ground coffee under this proposal since ground coffee is for home consumption; however, sales of brewed coffee would not qualify for the deduction since it is considered “prepared food” and is not for home consumption. This expansion of the deduction would likely lead to requests for other expansions.

BLG/svb