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FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/09
LAST UPDATED 02/25/09 **HB** _____

SPONSOR Payne

SHORT TITLE Communication System Property Taxes **SB** 505/aSCONC

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Unknown	Unknown		

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Department of Finance and Administration (DFA)
 Public Regulation Commission (PRC)
 Department of Information Technology (DoIT)

SUMMARY

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to Senate Bill 505 strikes some of the underscored language from the original bill which had further narrowed the definition of “communication system”.

Synopsis of Original Bill

Senate Bill 505 clarifies the definition of “communications system” in Section 7-36-30 NMSA 1978, which provides for special valuation for property that is part of a communications system. The bill adds to the definition that the system must be used for two-way transmission and reception of voice or data information. It also adds language to say that it does not include a system used for one-way communication services.

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.

The provisions of this act apply to the 2009 and subsequent property tax years.

FISCAL IMPLICATIONS

The Taxation and Revenue Department does not have the details to generate a fiscal impact.

SIGNIFICANT ISSUES

TRD:

Departmental policy is that all the tangible property of providers of cable, wireless internet, voice over internet protocol and local exchange services located in the state is considered “plant” “used and useful for the provision of communications service.” Communications systems are state assessed properties. The Department’s Property Tax Division (PTD) regards the proposed changes to Section 7-36-30 NMSA 1978 as intended to avoid legitimate property tax obligations on communications systems. The integrity of the existing statute depends on defining a communication system as being “for the transmission and reception of data” and the definition of plant as “used or useful for the provision of communication service”. Adding any qualifiers, particularly the exclusion of internet service on page two of this bill and establishing a test of bandwidth usage to establish primary use opens the door to selective reporting of assets. More seriously, it could likely exclude Voice Over Internet Protocol, which is the basis of the fourth largest telephone provider in the country. Also, Cable, wireless internet, voice over internet protocol and local exchange services are unquestionably communications systems and PTD believes that all property used and useful for a communications system should be state assessed.

ADMINISTRATIVE IMPLICATIONS

TRD:

The Departmental policy that states that providers of cable, wireless internet, voice over internet protocol and local exchange services should be assessed by the State Assessed Properties Division adds eighteen accounts to the roughly four hundred seventy-five property tax returns processed by PTD each year. PTD is capable of performing the additional work on a timely basis.

DFA:

Unless Section 2 of this bill is revised to apply to 2010 and subsequent tax years, the ability for the Department of Finance and Administration to accurately set property tax rates by the statutory deadline of September 1st will be compromised.

TECHNICAL ISSUES

TRD:

While the bill professes to clarify the definition of communications system, it does not. It does not define what constitutes “video subscription services.” It makes who has the authority (either PTD or county assessors) to value plant that is used both for voice and data transmission and broadcast and video subscription services unclear. Application to the 2009 tax year is impossible. Value renditions are due to PTD by the end of February (Section 7-38-8A) and valuation notices from county assessors must be mailed by April 1 and from PTD by May 1. A split of the property of cable television companies between State (PTD) assessed and county assessed after the effective date of June 19, 2009, would occur after the valuation notices for 2009 have been mailed.

Most observers believe that it is not possible to separate cable, wireless internet and voice over internet protocol assets technically because of their overlapping role as providers of communication services as well as entertainment. This principal is referred to as “convergence” in the industry. To define cable as one way communication would be inconsistent with the actual use of industry assets.

OTHER SUBSTANTIVE ISSUES

TRD:

There are several advantages to communications companies from State assessment by PTD:

- There is a single reporting point for communications companies rather than the obligation to file returns in each county.
- Communications companies have the option of electing valuation by depreciated cost or the unitary method of valuation. The unitary method captures obsolescence and is not practiced by New Mexico’s thirty-three county assessors.
- Industry will enjoy uniformity of assessment across competitors providing similar services.
- Industry will profit from uniformity of reporting requirements.

Cable assessment has increased from roughly \$30 million net taxable in 2007 to more than \$60 million in 2008. We believe that this change was attributable to the increased pressure on the companies in the wake of the 2008 regular legislative session and increased diligence by county assessors. Although improved in the past year, a shift of this magnitude leads PTD to believe that further diligence and uniformity of reporting are needed to bring this class of taxpayer into compliance with statute.

BLG/mc:svb

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