

MEMORANDUM

FROM: Jon Clark and Dawn Iglesias, Economists, Legislative Finance Committee
TO: David Abbey, Director, Legislative Finance Committee
SUBJECT: Anti-Pyramiding, GRT Rate Reduction, and House Bill 412 (2017 Regular Session)

Pyramiding in the gross receipts tax (GRT) became one of the most important, yet least understood, components of HB412, a major tax reform proposal during the 2017 legislative session. Two of the bill’s primary objectives were to improve the state’s tax system by addressing pyramiding and lowering tax rates. Such actions would reduce the burden of doing business in New Mexico with the goal of improving the state’s economic conditions. Because tax reform was a hot topic in the session, now is a good time to revisit the costs and benefits of both anti-pyramiding and rate reduction. This memo discusses these issues and how they relate to HB412.

Additionally, a possible option for future consideration is discussed in the “Addressing Pyramiding Through Rate Reduction” section. An added benefit of this option is it substantially reduces the uncertainty in rate-setting prescribed by HB412, addressing timing concerns and reducing the potential need for a one-year delay in the bill’s implementation.

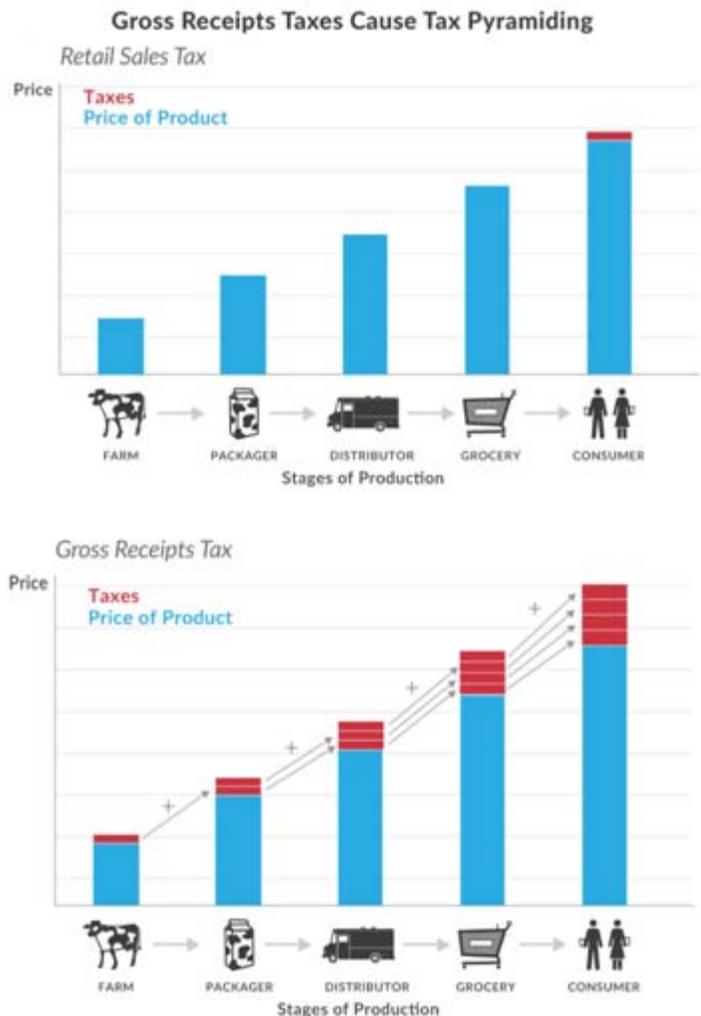
What is Tax Pyramiding?

Tax pyramiding can pose problems in pure gross receipts tax systems or in hybrids, as with New Mexico’s system, where the state’s GRT is neither a pure gross receipts tax nor a pure sales tax. Pyramiding occurs when the GRT is applied to business-to-business purchases of services, supplies, raw materials, and equipment, creating an extra layer of taxation at each stage of production.

New Mexico taxes a much broader spectrum of services than most states; for example, there are few deductions for sales to businesses. While there is an existing deduction for sale of goods for resale, deductions for the sale of services for resale are limited to a few specific industries.

The New Mexico Tax Research Institute (NMTRI) estimates effective GRT could reach 17 percent in certain sectors, such as manufacturing and research and development, a significant disincentive to certain businesses considering expanding or locating in New Mexico.

This graphic from the Tax Foundation shows how pyramiding works, although New Mexico has exemptions and deductions for agriculture and food products.



The increase in GRT rates over the years has exacerbated the effect of tax pyramiding, still an issue in many industries despite multiple exemptions and deductions attempting to mitigate the impact. Lowering GRT rates would not change the mechanism of pyramiding, but it would provide some relief for the impact of pyramiding and reduce the effective rate.

Legislation enacted in 2012 to address tax pyramiding in the manufacturing and construction sectors was onerous to administer and more open-ended than intended, doubling its estimated fiscal impact and requiring legislation to reduce the revenue losses. LFC recommended future anti-pyramiding legislation should be constructed narrowly to limit uncertainty and minimize further tax revenue losses.

House Bill 412: How Does It Affect Pyramiding, and Who Pays and Who Benefits?

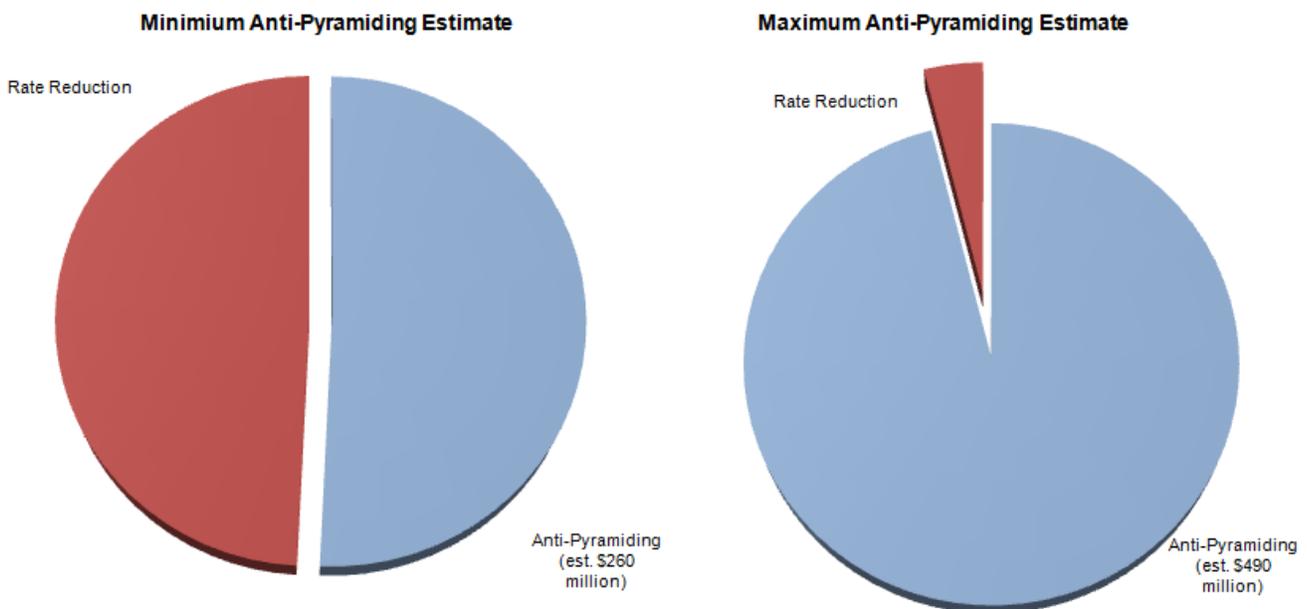
House Bill 412 attempted to reduce pyramiding through both rate reduction and changes to anti-pyramiding statutes, which would have the effect of transitioning GRT more toward the sales tax end of the gross receipts tax-sales tax spectrum.

The bill would achieve rate reduction by broadening the tax base, eliminating the vast majority of GRT exemptions, deductions, and credits not related to pyramiding. The bill also adds to existing anti-pyramiding provisions in statute by creating a new deduction for business-to-business services. However, changing statute to remove additional pyramiding necessarily shrinks the tax base, so these two effects were somewhat at odds with each other.

The foregone revenue from existing anti-pyramiding provisions is highly uncertain, as is the additional cost of the new anti-pyramiding provisions in HB412, so it is difficult to ascertain what the final statewide GRT rate would have been under this paradigm – it could be higher or lower. However, it is certain the resulting rate would be higher than could otherwise be achieved were existing anti-pyramiding provisions left unaltered. LFC’s preliminary estimates in the figure below and in Appendix 2 use estimates for reasonable minimum and maximums, rather than the absolute lower and upper bounds, which are subject to significant uncertainty as discussed in the following section. For example, LFC preliminary estimates for the cost of additional anti-pyramiding provisions (deduction for business-to-business services) range from \$260 million to \$490 million. The more savings from elimination of tax expenditures are used to fund the costs of anti-pyramiding, the less those savings can be used to reduce tax rates. The graphic below demonstrates the tradeoff between the two.

Uses of Savings from Elimination of Deductions, Exemptions and Credits

(estimated total \$512 million in tax expenditure savings)



Why is the cost of anti-pyramiding uncertain?

The primary reason for uncertainty is lack of sufficient data. It is difficult to know the value of pyramiding “solved” by existing anti-pyramiding provisions because taxpayers are not required to separately report their deductions. Therefore, we do not know how much of their current deductions are taken to prevent pyramiding versus how much is attributable to other tax expenditures.

Additionally, determining the value of removing additional pyramiding (providing deductions for business-to-business services) is difficult because we do not have industry-specific sales data. Therefore, we do not know how much of an industry’s gross receipts are attributable to sales to other businesses versus sales to final consumers.

As discussed above, LFC preliminary estimates on the value of lost GRT revenue due to a business-to-business services deduction, as in HB412, range from \$260 million to \$490 million. The uncertainty discussed above is the reason for the wide spread between the estimates. In attempting to determine the value of the deduction, LFC used RP-80 data provided by Taxation and Revenue Department (TRD) on over 100 industry categories to determine the value of taxable gross receipts by industry, then applied a ranged percentage to estimate how much of each industry’s activity could be reasonably attributed to business-to-business sales. The sample estimate was then applied across the population to arrive at an estimate for the total effect of the provision. The results of this estimation are shown in the pie chart in Appendix 2.

Who benefits and who pays more under the regime proposed in HB412?

In the House Floor Substitute, businesses that are currently subject to substantial pyramiding would clearly benefit. Small businesses are more likely to benefit than large businesses because they cannot reasonably bring many service inputs in-house and often contract for services such as accountants, attorneys, and human resources functions.

The charts in Appendix 2 demonstrate the tradeoff that occurs by using the elimination of tax expenditures to reduce rates and further address pyramiding. Effectively, who “pays” are those who give up their deductions, credits, and exemptions, as well as consumers of products previously taking advantage of tax expenditures.

Businesses and individuals that currently avoid GRT to a significant extent because of tax expenditures would likely pay more under the proposal. This might adversely impact New Mexico’s ability to compete for certain industries, although little or no detailed studies have been performed to analyze the effectiveness or efficiency of many tax expenditures, and the state cannot adequately measure the cost of tax expenditures in some cases.

Those industries taking advantage of new anti-pyramiding provisions have obvious benefits. Individual consumers also benefit, as reducing pyramiding reduces the final costs of goods and services consumed (see graphic on page 1). Additionally, all industries and consumers benefit from lower tax rates, as this reduces the cost of doing business and reduces the final sale price of the products.

More specifically, professional services and similar industries (e.g. information and construction) are likely to benefit the most from the proposed regime because of the new deduction for business-to-business sales of services. NMTRI reported in 2005 that professional services are currently subject to the greatest effective pyramiding. Examples of benefitting industries are listed in Appendix 2.

How does addressing pyramiding and reducing tax rates help the New Mexico economy?

Addressing the kinds of pyramiding that remain in our tax system (e.g. sale of services to businesses) could make New Mexico more competitive for service-based businesses – an important consideration as the services proportion of the economy grows and the state faces national and international competition from locations that often do not have transaction taxes that create pyramiding problems.

Many of the state's current tax inefficiencies, such as business-to-business pyramiding, are magnified by high tax rates, and many economic goals can be advanced by tax restructuring. The Tax Foundation iterates that "productive capacity depends on the size and skills of the workforce; the amount and quality of machines, buildings, vehicles, computers, and other physical capital that workers use; and the stock of knowledge and ideas." High marginal tax rates can discourage saving, investment, and innovation in the state economy, thereby suppressing growth.

If New Mexico wants to reduce its dependence on the extractive industries, it is important to make the business environment friendly enough to attract and support other industries in the state. Thus, a lower tax rate should make the state more competitive and business friendly. A broader base (achieved through elimination of tax expenditures) preserves the state's revenue in the face of rate reductions.

The Revenue Stabilization and Tax Policy Committee studied GRT extensively during the 2016 interim, but the committee did not perform an empirical analysis to determine whether reducing pyramiding should be performed at the expense of rate reduction.

NMTRI notes anecdotally, "Economists have argued for years that, ideally, the GRT should be applied only to final consumption and not to business inputs. This ideal state of no taxation of business inputs is not achieved completely by any state's transaction taxes today. Intuitively it seems clear that a broad tax base, which is often a very desirable policy and which we have in New Mexico, will result in greater pyramiding of tax simply because more goods and services are subject to tax, including goods and services purchased by business."

Economic Sectors	Value of Business Purchases (1)	Potential Tax from All Business Purchases (2)	Pyramiding Relief Under Current Law (3)	Tax Collected from Pyramiding (4=2-3)	Percentage of Pyramiding "Solved" by Current GRT Law (5=3/2)	Rank by Lack of Pyramiding Relief
Professional, Mgmt, Admin	\$1,073.3	\$64.4	\$1.0	\$63.4	1.6%	1
Utilities	\$445.0	\$26.7	\$0.5	\$26.2	1.9%	2
Retail	\$1,303.0	\$78.2	\$1.9	\$76.2	2.4%	3
Mining	\$2,557.5	\$153.5	\$9.1	\$144.4	5.9%	4
Wholesale	\$536.0	\$32.2	\$2.1	\$30.2	6.5%	5
Transportation	\$990.0	\$59.4	\$11.7	\$47.7	19.7%	6
Arts	\$124.0	\$7.4	\$2.0	\$5.4	26.9%	7
Real Estate	\$761.0	\$45.7	\$12.6	\$33.1	27.6%	8
Accom and Hotels	\$545.0	\$32.7	\$13.0	\$19.7	39.8%	9
Information	\$686.7	\$41.2	\$16.9	\$24.3	41.0%	10
Manufacturing	\$5,307.0	\$318.4	\$149.2	\$169.2	46.9%	11
Finance	\$881.4	\$52.9	\$26.7	\$26.2	50.5%	12
Other Services	\$254.0	\$15.2	\$8.0	\$7.2	52.5%	13
Health	\$1,294.0	\$77.6	\$51.0	\$26.6	65.7%	14
Agriculture	\$1,118.8	\$67.1	\$45.0	\$22.1	67.0%	15
Construction	\$1,621.8	\$97.3	\$71.6	\$25.7	73.6%	16
Education	\$90.4	\$5.4	\$4.4	\$1.0	81.1%	17
Total	\$19,588.9	\$1,175.3	\$426.7	\$748.6	36.3%	

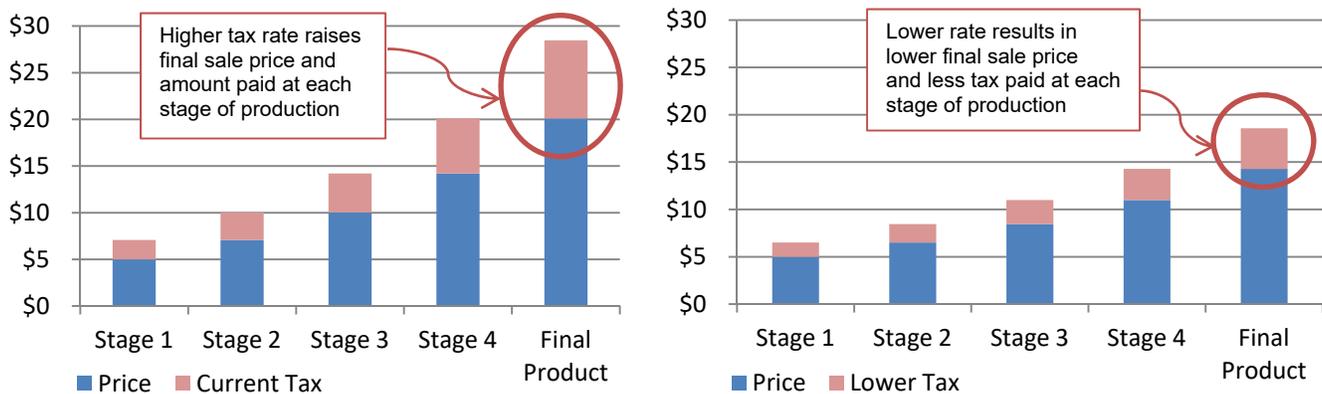
*Pyramiding Transaction Taxes in New Mexico," M. Del Valle, N.M. Tax Research Institute, Sept. 2005.

Addressing Pyramiding Through Rate Reduction

NMTRI also notes, “Pyramiding is very rate-sensitive in that the problem is much worse with higher rates because the rate will apply to each transaction in the chain of commerce.... Inefficiency (i.e. lost economic output) increases with the square of the tax rate (i.e. exponentially).”

Therefore, because pyramiding is rate-sensitive, lowering the rate inherently helps address the problem, as illustrated in the graphic below. A lower tax rates results in a lower final product price and less tax paid at each stage of production. The difference in the final product price under the current regime and the final product price under a lower tax rate is the effective cost to the state – the revenue loss from rate reduction. However, this cost would be “paid” through the elimination of tax expenditures.

Impact of Rate Reduction on Pyramiding



Note: dollar amounts are for illustrative purposes only

If similar legislation is considered in the future, one possible option would be to leave in place existing anti-pyramiding provisions and not enact any additional provisions. Instead, all of the savings from eliminating tax expenditures would be used to reduce the tax rate. This would reduce the burden of pyramiding significantly through rate reduction and would reduce the rate for people and businesses brought into the tax system through repeal of exemptions, deductions, and credits. This is not a perfect option, because no perfect option exists. In this case, certain industries would still be subject to abnormally high effective GRT rates (although lowered through rate reduction), and organizations such as nonprofit groups would pay a tax they previously could largely ignore.

However, this would provide rate relief for a wide array of businesses and residents and would fulfill the LFC tax policy goal of efficiency by broadening the base and lowering rates. It would also address the tax policy goal of equity by placing a far greater number of taxpayers and potential taxpayers in the same rate regime.

Additionally, it would address the tax policy goal of simplicity by eliminating a wide array of tax expenditures many taxpayers currently have to search and apply for to get the lowest possible tax burden. This would ease the administrative burden as well and make revenue forecasting easier.

Finally, it would address the tax policy goal of accountability, because the majority of the tax expenditures that would be eliminated are difficult or impossible to monitor and evaluate with existing reporting requirements.

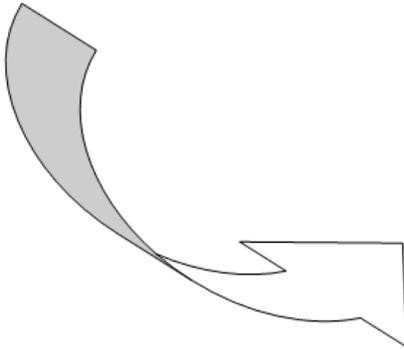
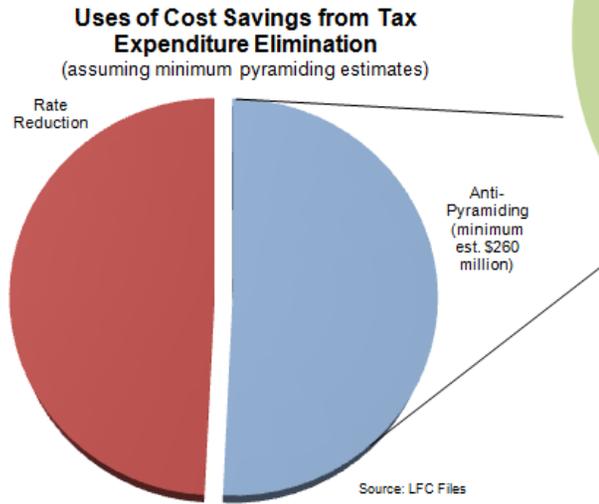
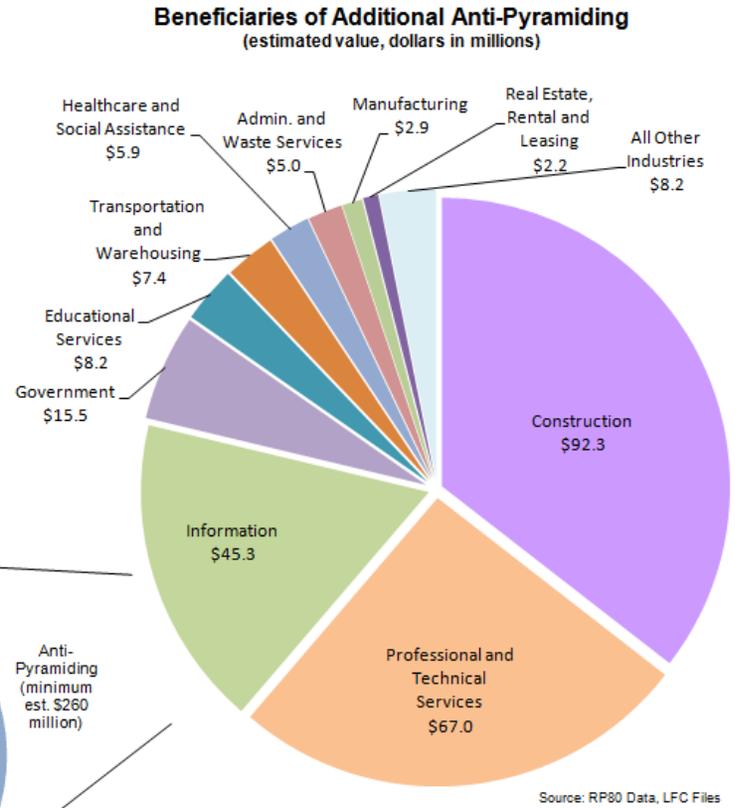
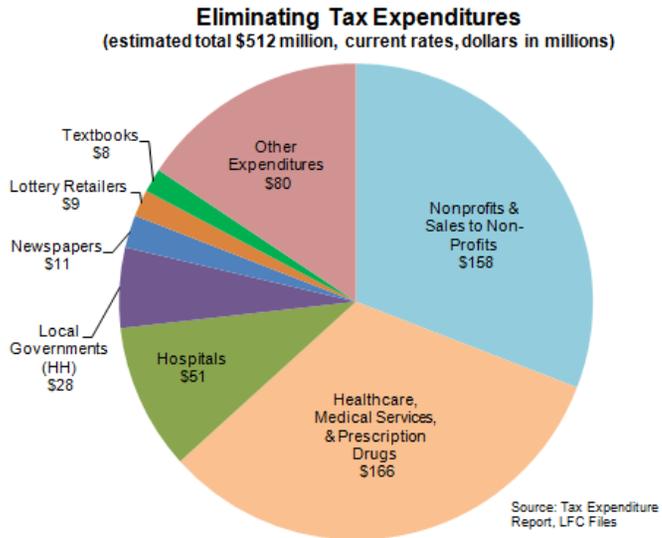
Appendix 1 – Anti-Pyramiding Changes/Deletions/Additions in HB412

Action	Short Description	Statute	Pg. #
Repeal/AP	Agricultural Products Exemption from GRT or GGRT	7-9-18	328
Repeal/AP	Livestock Feeding Exemption from GRT	7-9-19	328
Repeal/AP	Sales to Manufacturers GRT or GGRT Deduction	7-9-46	328
None	Tangible Personal Property or Licenses for Resale GRT or GGRT Deduction	7-9-47	n/a
Amend	Sale of a Service for Resale GRT or GGRT Deduction	7-9-48	239
NEW	Qualified Business Services Deduction – Gross Receipts	7-9-48.1	239
None	Tangible Personal Property and Licenses for Leasing GRT Deduction	7-9-49	n/a
None	Leasing for Subsequent Lease GRT Deduction	7-9-50	n/a
None	Construction Material GRT Deduction	7-9-51	n/a
None	Construction Services GRT Deduction	7-9-52	n/a
None	Lease of Construction Equipment GRT Deduction	7-9-52.1	n/a
Repeal/AP	Aerospace Services to Certain Organizations GRT Deduction	7-9-54.1	328
Repeal/AP	Internet Services GRT Deduction	7-9-56.1	328
Repeal/AP	Feed and Fertilizers GRT Deduction	7-9-58	328
Repeal/AP	Warehousing, Threshing, Harvesting, Growing, Cultivating and Processing Agricultural Products GRT Deduction	7-9-59	328
Repeal/AP	Purchase of Certain Chemicals and Reagents GRT Deduction	7-9-65	328
Repeal/AP	Real Estate Transactions GRT Deduction	7-9-66.1	328
Repeal/AP	Administrative / Accounting Services GRT Deduction	7-9-69	328
Repeal/AP	Prosthetic Devices GRT or GGRT Deduction	7-9-73	328
Repeal/AP	Jewelry Manufacturers GRT Deduction	7-9-74	328
Repeal/AP	Services on Manufactured Products GRT Deduction	7-9-75	328
Repeal/AP	Travel Agents' Commissions GRT Deduction	7-9-76	328
Repeal/AP	Leasing or Licensing Films and Tapes GRT Deduction	7-9-76.2	328
Repeal/AP	Tangible Property Used for Leasing Comp Tax Deduction	7-9-78	328
Repeal/AP	Uranium Enrichment Plant Equipment Comp Tax Deduction	7-9-78.1	328
Repeal/AP	Sales for Resale Credit against GRT or GGRT	7-9-96	328
Repeal/AP	Veterinary Services and Supplies for Cattle GRT Deduction	7-9-109	328
None	Resale Transactions Deduction - Interstate Telecommunications Gross Receipts Tax	7-9C-7	n/a
None	Corporate Telecommunication Services Provided Internally or to Affiliates Deduction - Interstate Telecommunications Gross Receipts Tax	7-9C-8	n/a

Note: HB412's primary anti-pyramiding provisions are covered under the sections identified below, which allow deductions for business-to-business services and sales of tangible personal property. Under this premise, "pyramiding" is defined as the sale of goods or services between businesses; however, the new provision may be overly broad and capture some items that could be argued are not a form of pyramiding and not capture other items currently deductible under existing anti-pyramiding statutes.

- Section 7-9-47 NMSA 1978, unchanged by HB412, provides a deduction from GRT and GGRT for the sale of tangible personal property or licenses for resale.
- Section 7-9-48 NMSA 1978, an existing deduction from governmental gross receipts for services for resale, is amended by HB412 to no longer require the resale of the service to be subject to GRT or GGRT.
- HB412 adds a new section, 7-9-48.1, which allows a deduction from gross receipts for services sold to businesses.

**Tax Reform through
Tax Expenditure
Elimination,
Rate Reduction, and
Anti-Pyramiding
(HB412)**



Industry Examples Include:

Construction

- Construction of Buildings (residential, commercial, industrial)
- Utility System Construction
- Specialty Trade Contractors (e.g. framing, roofing, electrical, plumbing)

Professional and Technical Services

- Lawyers & Legal Services
- Accountants, Tax Preparation, Bookkeeping
- Architectural, Landscaping, Engineering
- Interior Design; Marketing Research; Photography
- Computer Systems Design and Programming
- Consulting; Research & Development
- Advertising and Public Relations

Information

- Publishing
- Motion Picture and Sound Recording
- Broadcasting
- Telecommunications
- Data Processing

Other Industries

- Agriculture (e.g. crop production, animal production)
- Mining (oil and gas extraction, contractors, etc.)
- Utilities
- Wholesale Trade; Retail Trade
- Finance and Insurance
- Management of Companies and Enterprises
- Repair and Maintenance Services
- Leisure and Hospitality