NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

FISCAL IMPACT REPORT

SPONSOR: Cisneros DATE TYPED: 01/28/00 HB

SHORT TITLE: State Chartered Credit Union Deduction SB 98

ANALYST: Eaton

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY00	FY2001			
	$ (62.0)	$ (68.0)	Recurring	General Fund
	$ (53.0)	$ (58.0)	Recurring	Local Govt

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

This bill provides for a deduction of gross receipts from sales to state credit unions chartered under the provisions of the Credit Union Act. The extent of the deduction to state credit unions will be the same extent that federal credit unions may deduct pursuant to the provisions of Section 7-9-54 NMSA 1978 (Attachment).

FISCAL IMPLICATIONS

The estimated impact in FY01 is $62.0 (recurring) to the General Fund and $53.0 (recurring) to local governments.

JE/gm/njw
Attachments

History: 1953 Comp., § 72-16A-14.8, enacted by Laws 1969, ch. 144, § 43; 1972, ch. 80, § 3; 1973, ch. 205, § 1; 1975, ch. 160, § 3; 1979, ch. 338, § 5; 1983, ch. 220, § 11; 1991, ch. 203, § 5; 1998, ch. 94, § 1.

Cross references. — For deduction of real estate commissions from gross receipts tax, see 7-9-66.1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, substituted "manufactured" for "mobile" in the section heading and throughout the section.

The 1998 amendment, effective April 1, 1998, inserted "or recreational vehicle" near the middle of the second sentence in Subsection B.

Receipts attributable to improvements. — Real estate developer was not entitled to deduction for receipts from the sale of real estate attributable to improvements made on the land since those improvements were completed prior to the effective date of this section but sale was not made until after effective date, as the plain language of this section shows a legislative intent not to allow a deduction on receipts from sale of real property attributable to such improvements. Dona Ana Dev. Corp. v. Commissioner of Revenue, 84 N.M. 641, 506 P.2d 798 (Ct. App. 1973).

Monies not received from lease of real property. — The receipts, which this section declares not to be "receipts from leasing real property," are clearly intended to mean the monies or rentals normally received by operators of hotels, motels, etc., when being operated as such in their customary and ordinary manner, from the lodgers, guests, roomers and occupants thereof. Chavez v. Commissioner of Revenue, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

Yearly lease of motel. — Since taxpayers leased motel to a railway on an annual basis at a fixed rental, having no relationship to whether the railway company let the rooms to lodgers, guests or roomers, the rental received by the taxpayer was not income received from lodgers, guests or roomers, but was income by way of rental received from the lessee railway for the entire premises, and was deductible from gross receipts. Chavez v. Commissioner of Revenue, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

Receipts from license agreements not deductible. — Agreements between the taxpayer and several other companies providing for the use of space in the taxpayer's department stores for the purpose of retailing certain items, which agreements expressly negatived the intention to create a lease, constituted licenses, the money from selling which was not deductible from the gross receipts tax under this section. S.S. Kresge Co. v. Bureau of Revenue, 87 N.M. 259, 531 P.2d 1232 (Ct. App. 1975).

Law reviews. — For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

7-9-54. Deduction; gross receipts tax; governmental gross receipts tax; sales to governmental agencies.

A. Except as provided otherwise in Subsection C of this section, receipts from selling tangible personal property to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts.

B. Except as provided otherwise in Subsection C of this section, receipts from selling tangible personal property to an Indian tribe, nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts.

C. Unless contrary to federal law, the deduction provided by this section does not apply to:

(1) receipts from selling metalliferous mineral ore;

(2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) receipts from selling tangible personal property that will become an ingredient or component part of a construction project; or

(4) that portion of the receipts from performing a "service", as defined in Subsection K of Section 7-9-3 NMSA 1978, that reflects the value of tangible personal property utilized or produced in performance of such service.

History: 1953 Comp., § 72-16A-14.9, enacted by Laws 1969, ch. 144, § 44; 1976, ch. 25, § 2; 1985, ch. 225, § 4; 1989, ch. 115, § 5; 1992, ch. 100, § 7; 1993, ch. 31, § 11; 1995, ch. 50, § 3.

The 1989 amendment, effective July 1, 1989, designated the formerly undesignated first sentence as Subsection A, while substituting therein "as provided otherwise in Subsection C of this section" for "for receipts from selling nonfissionable metalliferous mineral ore and except for receipts from selling tangible personal property which is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code; designated the formerly undesignated second sentence as Subsection B, while substituting all of the language thereof preceding "to" for "Receipts from selling tangible personal property other than nonfissionable metalliferous mineral ore"; added the

introductory paragraph of Subsection C and Subsections C(1) through C(3); and designated the formerly undesignated third sentence as Subsection C(4).

The 1992 amendment, effective July 1, 1992, inserted "governmental gross receipts" in the section heading; added "or from governmental gross receipts" at the end of Subsections A and B; substituted "that" for "which" in Subsection C(2); and substituted "that" for "which" in Subsection C(4), while deleting "is not deductible" at the end of that subsection.

The 1993 amendment, effective July 1, 1993, deleted "or any agency or instrumentality thereof" following "United States" and substituted "any governmental unit or subdivision, agency, department or instumentality" for "any political subdivision" in Subsection A, and deleted "the governing body of" following "personal property to" and substituted "nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof" for "or Indian pueblo" in Subsection B.

The 1995 amendment, effective July 1, 1995, inserted "tax" following "governmental gross receipts" in the section heading, deleted "nonfissionable" preceding "metalliferous" in Paragraph C(1), and made a minor stylistic change.

Metropolitan Redevelopment Code. — See 3-60A-1 NMSA 1978 and notes thereto.

Effect on government's contract costs does not invalidate tax. — That the gross receipts tax may increase cost on a contract to the government does not validate the tax on the grounds that a state may not directly tax the federal government where its legal incidence falls elsewhere. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Suppliers of personal property for federal agents entitled to deduction. — If contractors are procurement agents for the federal government, their suppliers of tangible personal property would be entitled to a tax deduction. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Tax proper unless purchasing contractors agents of United States. — Since contracts do not authorize the contractors to act as agents of the United States in purchasing supplies and materials, an application of the gross receipts tax to the contractual transactions for materials and supplies is not unconstitutional. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Construction project includes wide variety of activities. — This section was intended to make sales of construction materials to governmental entities taxable when the materials were to be incorporated into construction projects. Contrary to taxpayer's argument that Regulation GR 51:16 establishes a definite test for determining whether an endeavor is a "construction project," this regulation merely states nonexclusive guidelines for determining whether materials constitute a component part of a construction project. Thus, construction projects include the wide variety of activities listed in 7-9-3C NMSA 1978. Arco Materials, Inc. v. State, Taxation & Revenue Dep't, 118 N.M. 12, 878 P.2d 330 (Ct. App. 1994), rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't, 118 N.M. 647, 884 P.2d 803 (1994), cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

Direct passage of title to government insufficient to establish agency. — That title to tangible personal property passes directly from the vendor to the federal government is insufficient in itself to establish an agency relationship. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), aff'd in part and rev'd in part on other grounds, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Contract and circumstances establish agency relationship. — In determining whether contractors are procurement agents of the federal government, the surrounding facts and contract provisions must be analyzed, and specific words naming the contractors as agents are not required so long as it is clear from the contracts and the factual circumstances that the relationship is one of agency. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), aff'd in part and rev'd in part on other grounds, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Facts that contracts were management contracts, in existence for nearly 30 years and conducted in government-owned facilities with government-owned funds for the purpose of carrying out significant energy research and development administration statutory responsibilities, were important in determining whether contractor was an agent of the federal government. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), aff'd in part and rev'd in part on other grounds, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Tax may not be imposed on non-Indian for purchase price of materials for tribal housing project. — The state, through its bureau of revenue (now taxation and revenue department) and the commissioner of revenue (now secretary of the taxation and revenue department), may not impose upon a non-Indian construction company its gross receipts tax for the purchase price of materials used in connection with a tribal housing project on the Mescalero Apache reservation. Mescalero Apache Tribe v. O'Cheskey, 439 F. Supp. 1063 (D.N.M. 1977), aff'd, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), rehearing denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

Educational and instructional materials. — Contracts between taxpayer and certain government agencies for the creation, production and delivery of reproducible originals of instructional books, manuals, films, magnetic audio tapes and other items constitute sales of tangible personal property within the contemplation of this section, despite the fact that the value of the instructional materials produced depended largely upon the skills, learning and technical abilities of the taxpayer, rather than tangible materials which went into their makeup. Evco v. Jones, 81 N.M. 724, 472 P.2d 987 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970), vacated and remanded for reconsideration on other grounds, 83 N.M. 110, 488 P.2d 1214 (Ct. App.), cert. denied, 402 U.S. 969, 91 S. Ct. 1655, 29 L. Ed. 2d 134, cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971), rev'd on other grounds, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

Telephone service. — Decision that a telephone company was not entitled to a deduction under this section for receipts collected for intrastate toll charges and local phone calls from certain government organizations and organizations which had been granted federal income tax exemptions would be held, since there was a reasonable basis for differ-

entiating between electricity (declared to be tangible personalty at 7-9-3I NMSA 1978) and telephone communications where the evidence showed that more was involved in the telephone business than the selling of electricity. Leaco Rural Tel. Coop. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

7-9-54.1. Deduction; gross receipts from sale of aerospace services to certain organizations.

A. As used in this section:

(1) "aerospace services" means research and development services sold to or for resale to an organization for resale by the organization to the United States air force; and

(2) "organization" means an organization described in Subsection A of Section 7-9-29 NMSA 1978 other than a prime contractor operating facilities in New Mexico designated as a national laboratory by act of congress.

B. Receipts from performing or selling, on or after October 1, 1995, an aerospace service for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate. The buyer delivering the nontaxable transaction certificate shall separately state the value of the aerospace service purchased in the buyer's charge for the aerospace service on its subsequent sale to an organization or, if the buyer is an organization, on the organization's subsequent sale to the United States, and the subsequent sale shall be in the ordinary course of business of selling aerospace services to an organization or to the United States.

C. A percentage of the receipts from selling aerospace services to or for resale to an organization may be deducted from gross receipts in accordance with the following table:

Receipts During the Period	Deductible Percentage
October 1, 1995 through September 30, 1996	10%
October 1, 1996 through September 30, 1997	25%
October 1, 1997 through September 30, 1999	50%
October 1, 1999 and thereafter	100%.

History: Laws 1992, ch. 40, § 1; 1993, ch. 310, § 1; 1994, ch. 45, § 5; 1995, ch. 183, § 1.

Cross references. — For Spaceport Development Act, see 9-15-41 to 9-15-47 NMSA 1978.

The 1993 amendement, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

The 1994 amendment, effective July 1, 1994, substituted "sold to or for resale to" for "performed or sold by" in Subparagraph A(1)(a) and inserted "performing or" in the first sentence in Subsection B.

The 1995 amendment, effective July 1, 1995, rewrote Subsection A, inserted "if the buyer is an organization, on the organization's subsequent sale" in Subsection B, and substituted "or for resale to an organization" for "the United States or any agency or instrumentality thereof" in Subsection C.

Compiler's notes. — Laws 1992, ch. 40, § 4, as amended by Laws 1993, ch. 310, § 2, provided that the effective date of the provisions of 7-9-54.1 NMSA 1978 was October 1, 1995. Laws 1994, ch. 45, § 8 repeals Laws 1992, ch. 40, § 4 and Laws 1993, ch. 310, § 2.

Laws 1993, ch. 31, § 13D and Laws 1993, ch. 310, § 3, both repeal Laws 1992, ch. 40, § 3, which provided for the repeal of ch. 40 of Laws 1993 on August 1, 1995, if the United States has not announced prior to July 1, 1995, that the space systems division of the department of the air force will be relocated to New Mexico.

7-9-54.2. Gross receipts; deduction; spaceport operation; launching and recovery of space launch vehicles; payload services. (Effective until June 30, 2001.)

A. Receipts from launching or recovering space launch vehicles or payloads in New Mexico may be deducted from gross receipts.

B. Receipts from preparing a payload for launching in New Mexico are deductible from gross receipts.

C. Receipts from operating a spaceport in New Mexico are deductible from gross receipts.

D. As used in this section: