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FISCAL IMPACT REPORT

SPONSOR:	Silv	⁄a	DATE TYPED:	02/01/01	HB	188
SHORT TITLE	\:	Franchise Advertising	Gross Receipts		SB	
				ANAL	YST:	Eaton

REVENUE

Estimated		Subsequent Years Impact		Recurring	Fund	
FY01	FY02			or Non-Rec	Affected	
	\$	(800.0)	\$	(800.0)	Recurring	General Fund
	\$	(400.0)	\$	(400.0)	Recurring	Local Govt.

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

This bill proposes a gross receipts tax deduction for certain shared costs between franchisee and franchiser. The shared costs of developing, maintaining or modifying a reservation system (such as those used by car rental agencies or hotels) would become deductible. Hotels, motels and the like may reimburse the franchiser for payments of commission to travel agents for booking guests without tax imposed on the franchiser. Amounts paid by a franchisee to the franchiser for training are deductible. Finally receipts of an advertising cooperative from franchisee or franchiser are deductible. These deductions are proposed to change the future impact of a series of audits by the Taxation and Revenue Department (TRD) that resulted in multimillion dollar assessments.

FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) report that previous estimates of the value of gross receipts tax imposed on the 4% to 8% franchise fees charged by out-of-state franchiser to in-state participants have ranged up to \$30 million. This includes the tax on the shared services enumerated in this bill, along with the straight royalty payments excluded from this bill.

The primary franchises are in car rentals, hotels, motels and restaurants. The total taxable gross receipts in these industries (franchise, wholly owned chain stores, and mom and pops) exceeds \$2.1 billion. A conservative guess is that 30% of this total is from franchise operations. It is possible that, in the wake of this deduction, that franchiser would rewrite the franchise contract and characterize a

House Bill 188 -- Page 2

relatively greater portion of the total as "shared costs" rather than royalties. This would increase the cost of this measure over a few years to \$2.4 or \$2.5 million.

ADMINISTRATIVE IMPLICATIONS

Minimal.

OTHER SUBSTANTIVE ISSUES

The case law that supports the Department's position in recent audits are contained in three cases decided by New Mexico courts in 1979: AAMCO Transmissions v. Taxation and Revenue Department, 93 N.M. 389, 600 P.2d 841 (Ct. App.) cert denied, 93 N.M. 205, 598 P.2d 1165 (1979); Baskin-Robbins Ice Cream Co. v. Revenue Division, 93 N.M. 301, 599 P.2d 1098 (Ct. App 1979); and American Daily Queen Corp. v. Taxation and Revenue Department, 93 N.M. 743 605 P.2d 251 (Ct. App. 1979).

This bill would overturn the result of fairly recent audits and (on-going) litigation on the subject.

JBE/ar