

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.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Marquardt DATE TYPED: 02/21/01 HB 743
 SHORT TITLE: Non-Taxable Transaction Certificates SB _____
 ANALYST: Eaton

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	\$ (5,000.0)	\$ (21,000.0)	Recurring	General Fund
	\$ (2,500.0)	\$ (11,000.0)	Recurring	Local Govt.

(Parenthesis () Indicate Revenue Decreases)

Relates to Senate Bill 637, House Bill 189

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

This bill redefines "construction materials" to allow governmental and 501(c)(3) organizations to deduct tax on the parts needed for simple repairs or replacement of fixtures. The bill also reinstates language in which the entity can separate a construction contract into a non-taxable materials piece and a taxable services piece. The bill reiterates that government and non-profits that deliberately misuse NTTCs will be penalized. Finally, the bill provides a "safe-harbor" if a seller accepts an NTTC in good faith, accompanied by a written statement from a government or non-profit promising that the material will not be used in a construction project.

Significant Issues

The Taxation and Revenue Department (TRD) indicate that while this bill (as written) proposes a solution to the "Alamogordo" problem, the bill reinstates an old tax avoidance scheme for governments and non-profits in which the entity separates a construction contract into a non-taxable materials piece and a taxable services piece. TRD suggest a correcting amendment (see TECHNICAL ISSUES below).

FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) estimate that this the full year impact of this bill would reduce the general fund by \$21 million. Local government revenues would be reduced by \$11 million.

ADMINISTRATIVE IMPLICATIONS

Minimal.

TECHNICAL ISSUES

Deleting "the use of tangible personal property that becomes an ingredient or component part of a construction project" (Page 11, lines 22-24) indirectly validates the old avoidance behavior of government and non-profit units to separate a construction contract into a non-taxable materials part and a taxable services part. The Department suggests amending the deletion to read, "the use of construction material".

If the seller of the tangible personal property is also the installer, then the seller should retain the responsibility of determining whether a fixture replacement is construction or not. This ability to independently determine if an NTTC is appropriate or not does not make the seller immune from tax liability. A seller who accepts an inappropriate NTTC in this case is not accepting it in good faith and, under the terms of the bill, will not be accorded the safe harbor. If the seller is not the installer, then he cannot verify the use of the tangible property and will be allowed to claim the safe harbor.

For orderly transition, the Department requests a July 1, 2001 effective date.

OTHER SUBSTANTIVE ISSUES

If the technical problem noted by the Taxation and Revenue Department is corrected, then this bill should solve the problem. The bill would punishes the governmental unit for issuing a type 9 NTTC inappropriately by having its ability to issue any NTTC, for any purpose, revoked for one year.

TRD has agreed to redraw the bright line on repairs or replacement of fixtures. Finally, if the seller accepts an NTTC in good faith accompanied by a written assurance from the governmental or 501(c)(3) organization that the material is not intended for incorporation in a construction project, then TRD may not impeach the statement and assert a subsequent liability.

However, under circumstances where the seller of tangible personal property is also the installer, the taxpayer can independently verify if an NTTC is appropriate or inappropriate. TRD, under these circumstances, might well assert that the acceptance of an NTTC was not in good faith and subsequently assert a liability.

JBE/njw