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F I S C A L   I M P A C T   R E P O R T

SPONSOR: Taylor DATE TYPED: 3/4/04 HB 891

SHORT TITLE: Local Option Compensating Taxes SB

ANALYST: Smith

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	**FY04**			
	(2,800.0)	(3,040.0)	Recurring	General Fund
	(700.0)	(760.0)	Recurring	Small Cities/Counties Assistance
	8,800.0	9,600.0	Recurring	Municipalities
	4,100.0	4,500.0	Recurring	Counties

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

Responses Received From
TRD

SUMMARY

Synopsis of Bill

House Bill 891 allows the imposition of local option compensating taxes on a taxpayer's use of property within a local taxing jurisdiction. For the most part, this proposal parallels the administration of current local option gross receipts tax statutes. The bill is structured to set local option compensating tax rates equal to corresponding local option gross receipts tax rates. Hence this proposal serves to equalize total gross receipts and compensating tax rates. TRD has provided a section by section analysis.

- ***Section 1*** amends Section 7-9-3 NMSA 1978 to include a definition of "local option compensating tax" which is similar to that of the "local option gross receipts tax".

- **Section 2** amends Section 7-1-6.12 to provide a transfer of revenue to municipalities from local option compensating taxes.

- ***Section 3*** amends Section 7-1-6.13 to provide a transfer of revenue to counties from local option compensating taxes.

- ***Section 4*** amends Section 7-1-6.15 to allow adjustments for any erroneous compensating tax revenue distributions to local governments.

- ***Section 5*** adds a new section to the Tax Administration Act (TAA) to establish terms for determining the jurisdiction in which property is used. This is done to allocate the local option compensating taxes to the appropriate local government. The location of use is the buyer's place of business if the property is used in furtherance of that business. If the buyer is not engaged in business in New Mexico, the location of use is the buyer's residence.

- ***Section 6*** amends Section 7-9-7.1 to bar the department from taking collection action with respect to local option compensating taxes due on purchases made by an individual.

- ***Section 7*** provides a credit against municipal compensating tax paid. The value of the credit is equal to one-half percent (.5%) of the value of property for which the taxpayer is liable if the rate of the municipal compensating tax is .5% and one-fourth percent (.25%) if the rate of the municipal compensating tax is .25%.

- **Sections 8-21** match the rates and the administration of local option compensating taxes with the various local option gross receipts taxes.

FISCAL IMPLICATIONS

TRD notes that the fiscal year 2004 statewide compensating tax base is expected to be $975 million. The weighted average local option tax rate is about 1.45%. Total compensating tax distributions to local governments will total about $14.1 million on a "full year" basis.

The negative general fund and small cities/small counties assistance fund impacts are due to the .5% credit allowed against the compensating tax for taxpayers within municipal boundaries. The effective state compensating tax rate will fall from 5% to 4.5% for taxpayers in incorporated areas. Twenty percent (20%) of net compensating tax collections go to small cities and small counties assistance funds. The remaining 80% is distributed to the state General Fund.

An estimate of fiscal year 2004 distribution amounts is included at the end of this review. The department does not currently receive information from taxpayers that identifies compensating tax liability by location. Therefore, the distribution amounts are allocated using fiscal year 2002 taxable gross receipts information. This method is only an approximation of the actual distributions that would arise under the bill.

TRD has provided the following table estimating county impacts.

Estimated Local Option Compensating Tax Distributions—Counties

Bernalillo	1,064,982	Harding	545	Roosevelt	40,942
Catron	736	Hidalgo	9,862	Sandoval	163,814
Chaves	152,060	Lea	102,254	San Juan	414,175
Cibola	61,013	Lincoln	31,198	San Miguel	44,599
Colfax	25,705	Los Alamos	293,384	Santa Fe	672,127
Curry	58,115	Luna	55,375	Sierra	21,752
DeBaca	2,502	McKinley	272,004	Socorro	11,286
Dona Ana	320,367	Mora	4,343	Taos	152,454
Eddy	189,115	Otero	67,897	Torrance	22,524
Grant	77,656	Quay	18,779	Union	4,818
Guadalupe	6,480	Rio Arriba	61,375	Valencia	95,835
				All Counties	**$4,520,071**

ADMINISTRATIVE IMPLICATIONS

TRD states that the provisions in this bill would have a major impact on the department. In order to capture the appropriate data, larger CRS reporting forms would be required. This, in turn would require at least two full-page scanners at a cost of about $350 thousand apiece. Three additional FTE would be required to enter the additional data and verify distribution amounts.

Major computer systems changes would be necessary to make the appropriate local revenue distributions. Reprogramming the system is possible. However, the department is in the process of converting to a new computer system for processing gross receipts and compensating taxes. The changes required by this bill would have to be implemented in the new system. This system is currently scheduled to become operational in October 2003. Thus, it is unlikely the department will be able to implement the changes by the July 1, 2003 effective date specified in this proposal. An effective date of January 1, 2004 would give the department enough time to incorporate the changes.

This proposal does not authorize the department to collect an administrative fee to defray the costs of collecting and distributing local option compensating taxes.

TECHNICAL ISSUES

TRD makes several technical comments:

1. Section 7-1-6.41 NMSA 1978 authorizes the department to withhold an administrative fee for local option taxes distributed pursuant to Sections 7-1-6.12 and 7-1-6.13. These two sections of statute have been amended to apply to local option compensating tax distributions. Currently, however, these distribution statutes specifically refer to the administrative fee to be collected on local option gross receipts taxes. The amendments to these sections do not include similar language referring to local option compensating taxes. Similarly, current statutes regarding the various local options clearly recognize an administrative fee for local option gross receipts taxes. There is no recognition of an administrative fee for the local option compensating tax contained in the amendments to these sections of statute. Hence, although

this proposal may intend to allow the department a fee for its role in administering the local option compensating tax, it is not accomplished with the language contained in this proposal.

2. Section 7 provides a credit against municipal compensating tax paid. The value of the credit is equal to one-half percent (.5%) of the value of property for which the taxpayer is liable "if the rate of the municipal compensating tax in effect at the time of use was one-half percent." To be consistent with the municipal credit for gross receipts tax paid, the value of the compensating tax credit should be .5% of the value of property if the rate of municipal tax is ***at least*** .5%. On page 15, line 10 "at least" should be inserted between "was" and "one-half".

OTHER SUBSTANTIVE ISSUES

One argument in favor of the proposal is that equalizing the compensating and GRT rates would eliminate an incentive some buyers have to use out-of-state vendors. However, a compelling argument could be made that increasing the compensating rate to the average statewide gross receipts tax rate would accomplish the same objective.

SS/yr:njw