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## FISCAL IMPACT REPORT

SPONSOR Carraro DATE TYPED 1/28/04 HB \_\_\_\_\_

SHORT TITLE Gross Receipts Tax Deduction for Food SB 106

ANALYST Neel

### REVENUE

| Estimated Revenue |             | Subsequent<br>Years Impact | Recurring<br>or Non-Rec | Fund<br>Affected |
|-------------------|-------------|----------------------------|-------------------------|------------------|
| FY04              | FY05        |                            |                         |                  |
| (9,000.0)         | (105,000.0) | (107,000.0)                | Recurring               | General Fund     |
|                   |             |                            | Recurring               | Local Gov.       |
|                   |             |                            |                         |                  |

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From:

Taxation and Revenue Department (TRD)

Attorney General Office (AGO)

Department of Health (DOH)

NM Department of Agriculture

### SUMMARY

Synopsis of Bill

Senate Bill 106 amends statute to provide a gross receipts tax deduction sales of food at a retail level. Food and retail food store is defined by reference to the federal food stamp program. Excluded from the definition of food are alcoholic beverages, tobacco and prepared hot foods sold for immediate consumption. Retail food store(s) must meet one of two criteria specified in the federal act. Under the first criterion, a retail food store must stock and offer for sale a variety of foods on a continuous basis in each of the four defined staple food categories, with perishable foods in at least two of those categories. Under the second criterion, more than 50 percent of a retail food store's total gross retail sales must be in staple foods.

Local governments are held harmless with new distributions to municipal and county governments. The new local government distributions are calculated by applying the appropriate municipal and county local option gross receipts tax rates against the value of the food deductions for each location.

A new section of the Tax Administration Act is enacted that provides penalties for the overstatement of food deductions. The amount of the penalty is the difference between the overstated amount and the correct amount multiplied by twice the applicable local option tax rates. The penalty is in addition to other applicable penalties.

### Significant Issues

TRD notes the critical requirement that food retailers report the exact amount of all food tax credits attributable to each location. If all food retailers report deductions correctly, the provisions contained in this bill will accomplish this goal. However, as with most changes in tax law, reporting behavior can be irregular. The actual impact on a specific local government's gross receipts tax revenue is unpredictable.

DOH states that New Mexico is one of only 9 states that fully taxes food. Thirty-three states and the District of Columbia do not tax food. Three states tax food at lower rates than other goods. Illinois, for example, has a 1% sales tax on food. Five states tax food but allow a specific food tax credit or rebate on their income tax. The gross receipts tax in New Mexico ranges from 5.125% to 7.1875%. For example, \$100 of groceries costs \$106 in Hobbs where the gross receipts tax is 6%, but across the border in Texas, \$100 in groceries costs \$100 because Texas does not tax food. A typical family of 4 in New Mexico spends about \$225 per year on the food tax.

### **FISCAL IMPLICATIONS**

TRD notes the following assumptions:

***Food GRT Deduction Estimate:*** Data sources: the 1997 Economic Census, the 1997 Census of Retail Trade in New Mexico, United States Department of Agriculture (USDA) estimates of food stamp program benefits to New Mexicans, and the New Mexico Taxation and Revenue Department's "Analysis of Gross Receipts by Standard Industrial Classification" (Report-80).

Key steps in the estimate are as follows:

- (1) The 1997 Economic Census provides data at the national level on the proportion of total sales by various industry groups that is derived from sales of food for home consumption.
- (2) Total retail sales in New Mexico for each of these industries were identified using the 1997 Census of Retail Trade in New Mexico.
- (3) The proportion of sales attributable to food from step (1) were then applied to the 1997 retail sales figures.
- (4) Growth patterns for the industry groups in New Mexico were derived from the Report-80 and applied to the 1997 figures in order to estimate applicable food sales.
- (5) USDA estimates of New Mexico food stamp program benefits were subtracted from the taxable base because these sales are already exempt.

**ADMINISTRATIVE IMPLICATIONS**

TRD notes that major computer system changes will be required to accept and track the deductions and to make the appropriate adjustments to local revenue distributions. Reprogramming the system to track the deductions by location is possible. However, this bill has no effective date. Therefore, if this proposal passes, its provisions will become effective 90 days following adjournment of the 2004 legislative session (mid-May 2004). This does not allow the department enough time for the transition. An effective date of January 1, 2005 should give the department enough time to incorporate the

**SN/lg**