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## FISCAL IMPACT REPORT

SPONSOR Wirth ORIGINAL DATE 2/3/06  
LAST UPDATED 2/6/06 HB 583/aHGUAC  
SHORT TITLE Property Sales Included in Gross Receipts SB \_\_\_\_\_  
ANALYST Schardin

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	\$13,000.0	\$13,546.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 590.

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of HGUAC Amendment

The House Government and Urban Affairs Committee amendment to House Bill 583 narrows the definition of “property” to exclude patents, trademarks and copyrights.

#### Synopsis of Bill

House Bill 583 amends the Gross Receipts and Compensating Tax Act to clarify that receipts from licensing property for use in New Mexico are subject to the gross receipts and compensating taxes. First, the bill strikes the reference to “licensing” under the definition of “leasing.” Second, the bill adds receipts from licensing property located in New Mexico to the definition of gross receipts.

The effective date of these provisions is July 1, 2006.

### FISCAL IMPLICATIONS

In response to the preliminary New Mexico Supreme Court decision on the case KMART Corporation v. Taxation and Revenue Department of the State of New Mexico that was issued in De-

ember 2005, the consensus estimate for nonrecurring revenue in FY06 was reduced by \$40 million in anticipation of refund claims by KMART Corporation. The consensus estimate also reduced the recurring gross receipts tax forecast by \$13 million in FY07 and beyond to reflect impacts of the KMART case. The amendments in this bill attempt to restore the \$13 million in recurring revenue that will be lost due to the KMART case.

This fiscal analysis is a rough estimate. The estimate will be round until the New Mexico Supreme Court reaches a final decision on KMART Corporation v. Taxation and Revenue Department of the State of New Mexico.

The House Government and Urban Affairs Committee amendment does not affect the fiscal impact because the state is not currently collecting tax on the affected transactions.

### **SIGNIFICANT ISSUES**

In December 2005 the New Mexico Supreme Court made a preliminary decision in the case KMART Corporation v. Taxation and Revenue Department of the State of New Mexico that the gross receipts tax act did not apply to receipts from a trademark licensing agreement executed in a state other than New Mexico, even though the trademark is used in New Mexico.

The court also indicated that it would soon apply the same rule to the taxation of franchise agreement receipts. This ruling on franchise receipts may result in New Mexico issuing refund claims to various franchise businesses such as software licensors, satellite broadcasters, and subscription database vendors.

TRD reports that removing patents, trademarks and copyrights from the definition of property helps bring New Mexico's gross receipts tax structure closer in line with other states' sales taxes. Aggressively seeking tax collections on the use of patents could discourage businesses from locating or expanding operations in New Mexico.

SS/mt