

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 3/1/07  
 LAST UPDATED 3/9/07      HB 1228/aHTRC

SPONSOR Taylor, T

SHORT TITLE Gross Receipts Definitions      SB \_\_\_\_\_

ANALYST Schardin

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	NFI			

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Response Received From

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of HTRC Amendment

The House Taxation and Revenue Department amendment to House Bill 1228 amends the definition of property so that it will include licenses and franchises except for licenses of copyrights, trademarks or patents. This amendment allows the bill to clarify the definition of property in the gross receipts tax base without creating a fiscal impact.

#### Synopsis of Original Bill

House Bill 1228 amends Section 7-9-3 NMSA 1978 to amend the definitions in the Gross Receipts and Compensating Tax Act. The bill would remove licenses and franchises from the definition of “property,” leaving the term property to include only real and tangible personal property, including electricity and manufactured homes.

The bill also amends the definition of “gross receipts” to include receipts from granting a right to use a franchise employed in New Mexico and to remove the restriction that receipts must be received from property “located” in New Mexico.”

Because the bill has no effective date, its provisions will become effective 90 days after the legislature adjourns on June 15, 2007 (see Technical Issues).

## **FISCAL IMPLICATIONS**

The original bill would have excluded transactions in which licenses are sold from the gross receipts tax base. Removing licenses from the tax base would reverse some of the effects of House Bill 583 as passed by the 2006 Legislature. However, the House Taxation and Revenue Committee amendment successfully clarifies language to eliminate that fiscal impact by leaving licenses taxable except licenses of copyrights, trademarks or patents.

## **SIGNIFICANT ISSUES**

The bill clarifies the impacts of House Bill 583, which was passed by the 2006 Legislature. That bill amended definitions in 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. These amendments were made in response to the New Mexico Supreme Court decision on the case KMART Corporation v. Taxation and Revenue Department of the State of New Mexico, in which the supreme court decided that the New Mexico's gross receipts tax 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.

Although current law is clear that intangible property, including licenses, are subject to the gross receipts tax, there remains room for argument about what constitutes a taxable "licensing" transaction. The bill clarifies this ambiguity.

## **ADMINISTRATIVE IMPLICATIONS**

The amended bill has no major administrative impact for TRD.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 1228 conflicts with Senate Bill 321, which also amends Section 7-9-3.5 NMSA 1978. Senate Bill 321 amends the section to exclude receipts of certain temporary staffing firms from gross receipts taxation.

## **TECHNICAL ISSUES**

Gross receipts tax provisions are easier to implement if they become effective on January 1 or July 1 since that is when taxpayer instructions are revised.

SS/mt