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

SPONSOR Garcia, M.P. **ORIGINAL DATE** 02/09/10 **LAST UPDATED** **HB** 244

SHORT TITLE Tax on Certain Untaxed Transaction **SB**

ANALYST Clifford

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	**FY11**	**FY12**		
	$11,600.0	$12,200.0	Recurring	General Fund
	$2,500.0	$2,700.0	Recurring	Municipalities
	$1,600.0	$1,700.0	Recurring	Counties
	$15,700.0	$16,600.0	Recurring	Total

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 244 would impose the compensating tax on purchases from persons with nexus in New Mexico rather than on transactions that "occurred within this state."

Provisions are effective July 1, 2010.

FISCAL IMPLICATIONS

Fiscal impacts of the proposal are uncertain. No data exist on the volume of transactions that are likely to be made taxable.

TRD:

> There is a high degree of uncertainty in this estimate; it could be lower or much higher. There is no direct data available to make this estimate and it depends not only on the

level of economic activity in New Mexico but heavily on how New Mexico businesses choose to structure their purchases now and into the future.

SIGNIFICANT ISSUES

Under current law, purchases from out-of-state businesses that have no nexus with New Mexico are not taxable under either the Gross Receipts Tax or the compensating tax. This result occurs in part because the compensating tax statute currently makes taxable only those transactions that would have been taxable under the GRT if they occurred in the state. Since transactions with non-nexus sellers would not be taxable under the GRT, this in effect makes them exempt from the compensating tax as well. The proposal appears to be intended to correct this defect in the compensating tax statute.

TRD notes that the advantage of the proposal is that it puts transactions with local sellers on a more even footing with those with out-of-state sellers. A drawback of the proposal is that most of the affected transactions are business-to-business, so the proposal would increase the "pyramiding" of the state's sales tax system. The Tax Department is currently prevented from taking compensating tax collection actions with regard to non-commercial taxpayers.

OTHER SUBSTANTIVE ISSUES

The proposal raises a number of questions concerning how taxpayers will comply. For example, in general the buyer – who is liable for the compensating tax – will not have information about whether a seller has nexus. If the buyer pays compensating tax, is the seller relieved of a future determination of nexus and GRT liability? What if the seller pays GRT and but has no nexus? Should the buyer accrue compensating tax anyway?

DUPLICATES:

HB 281 is a duplicate.

ALTERNATIVES

In order to encourage out-of-state sellers to collect and remit GRT, New Mexico could become a full member of the Streamlined Sales Tax Agreement.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The state may see erosion of its compensating tax base as more buyers take advantage of the exception in present law.

TC/mew