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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/10

SPONSOR Sapient LAST UPDATED _____ HB _____

SHORT TITLE Medical Marijuana Gross Receipts SB 57

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	NFI	NFI	Recurring	General Fund
	NFI	NFI	Recurring	Local Governments

(Parenthesis () Indicate Revenue Decreases)

Relates to SB56

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Department of Health (DOH)
 New Mexico Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

Senate Bill 57 amends Section 7-9-29 NMSA 1978 to exclude receipts derived from the sale of medical marijuana (cannabis produced, distributed or dispensed pursuant to the Lynn and Erin Compassionate Use Act) from the gross receipts tax exemption of 501(c)(3) organizations.

This bill also amends Section 7-9-73.2 NMSA 1978 to exclude medical marijuana from the definition of prescription drugs.

The effective date of this bill's provisions is July 1, 2010.

FISCAL IMPLICATIONS

No fiscal impact. Currently, the licensed producers of medical marijuana should be paying the gross receipts tax unless they are a 501(c)(3) organization **and** the IRS has determined that this production is related to the nonprofit organizations trade or business.

According to DOH, only nonprofit organizations are allowed to become licensed to produce and distribute medical marijuana in New Mexico. However, not all nonprofit organizations are 501(c)(3) organizations. In order to be classified as a 501(c)(3), the nonprofit organization must be granted an exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code. Because DOH does not require these non-profit organizations to be classified as 501(c)(3), DOH does not know how many of their current nonprofit licensed producers are 501(c)(3) certified. Even if all the nonprofit licensed producers are certified as 501(c)(3), the tax exemption does not apply to the organizations' unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code as determined by the IRS. It is unclear at this time whether the IRS will consider a federally prohibited activity to be a related trade or business.

Because medical marijuana is not currently considered a prescription drug by the federal government, it does not currently qualify for the prescription drug gross receipts tax deduction under Section 7-9-73.2 NMSA 1978.

SIGNIFICANT ISSUES

TRD:

Receipts from the sale of medical marijuana may be exempt from the gross receipts tax under the agricultural product exemption in Section 7-9-18 NMSA 1978. The agricultural product exemption exempts "receipts from...producers...from selling...unprocessed agricultural products." Agricultural products are defined under Regulation 3.2.106.7 NMAC as "those products and the intermediate stages thereof which are normally raised or grown primarily for use as fiber or food for human or animal consumption."

RELATIONSHIP

This bill relates to SB56 which imposes a 25 percent excise tax on medical marijuana.

OTHER SUBSTANTIVE ISSUES

According to The Washington Times, on November 17, 2009 Colorado became the second state, behind California, to tax and regulate medical marijuana. This decision came after the Colorado Attorney General stated that medical marijuana "is a tangible property that is generally subject to state sales tax."

BLG/svb

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc