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

		ORIGINAL DATE	02/14/11		
SPONSOR	Ingle	**LAST UPDATED**	03/08/11	**HB**	
SHORT TITLE	TRD Secretary Approve Certain Evidence			**SB**	326/aSFC/aSFL#1
				ANALYST	Golebiewski

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	**FY12**	**FY13**		
	($220.0)	($55.0)	Recurring	General Fund
	($180.0)	($45.0)	Recurring	Local Funds

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	$20.0	$35.0	$35.0	$90.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SFL Amendment #1

The Senate Floor amendment to Senate Bill 326 amends the bill’s title to reflect the emergency clause that was added to the bill in the SFC amendment.

Synopsis of SFC Amendment

The Senate Finance Committee Amendment to Senate Bill 326 would allow a seller of tangible personal property for resale to support their deduction for the sale with TRD secretary-approved evidence other than a non-taxable transaction certificate (NTTC) as long as the evidence is provided prior to the issuance of an audit assessment. Under present law, for the seller to be eligible to deduct the sale of property for resale, the buyer must deliver an NTTC to the seller and the NTTC must be dated within 60 days after the taxpayer is notified of an audit. A temporary provision would allow sellers who have protested an audit assessment to support their deduction with other evidence provided prior to their withdrawal of the protest or its formal hearing. The definition of "other evidence" would be determined by a regulation of the Department.

The amendment also adds an emergency clause.

The estimates above reflect the changes in the amendment. They are lower than those provided for the original bill because the amendment effectively makes the NTTC the default, meaning that the taxpayer must go through the current process unless excepted by the alternative evidence.

Synopsis of Original Bill

Senate Bill 326 proposes a change in gross receipts tax policy; it would allow alternative evidence in lieu of a properly executed and retained type 2 non-taxable transaction certificate, the established deduction for sales for resale. The bill proposes that such alternative evidence be approved by the TRD secretary.

Technically, the bill adds sales for resale (Type 2 non-taxable transaction certificates) to a list of gross receipts tax deductions not requiring the presentation and retention of a non-taxable transaction certificates, but some form of alternative evidence. These other deductions requiring alternative evidence rather than an NTTC are:

> 7-9-57. Deduction; gross receipts tax; sale of certain services to an out-of-state buyer.
> 7-9-58. Deduction; gross receipts tax; feed; fertilizers.
> 7-9-74. Deduction; gross receipts tax; sale of property used in the manufacture of jewelry. (1994)

The new provisions would apply to audited GRT tax returns claiming deductions for transactions "to which a taxpayer's administrative and judicial remedies have not been exhausted prior to July 1, 2011."

FISCAL IMPLICATIONS

TRD:

> Permitting certain taxpayers to provide alternative evidence could result in fewer assessments and associated collections. The Department has information on some but not all potentially-affected transactions. Although the full impact of the proposal is uncertain, the fiscal impacts shown are based on extrapolation from a limited number of known tax assessments.

However, the cost may be zero if the secretary decides not to honor any alternative evidence. The bill does not require the secretary to regulate alternative evidence. This may give unwanted and unwarranted authority of the secretary. Alternatively, the bill grants the secretary the authority to vacate a substantial portion of posted audit assessments and possible audit assessments attributable to scheduled and in-process audits.

SIGNIFICANT ISSUES

1. The 1990 change to 7-9-43 NMSA 1978 allowed taxpayers 60 days from notice of audit to assemble all NTTCs. Previously, all NTTCs had to be in the taxpayer's possession at the time of audit.
2. This issue was extensively briefed and discussed in the course of deliberations of the Professional Tax Study Committee (1998-99) and the Blue Ribbon Tax Study Committee (2006-07). The conclusion of both of the committees was that there could be taxpayer-specific issues without approving alternative evidence, but that certainty for both the auditor and the taxpayer was important.
3. This bill gives an unusual amount of discretion to the secretary. The secretary is not required to propose rules for alternative evidence and is not required to notify the Attorney General of any abatement granted pursuant to alternative evidence.
4. Structurally, this abatement procedure for already issued audit assessments may provide precedent for similar disputes regarding other deductions.

TRD:

The question of whether the state should accept "alternative evidence" of a seller's eligibility for a deduction is a complex one that involves several tradeoffs. Current law requires sellers to receive a nontaxable transaction certificate (NTTC) from the buyer before claiming certain deductions. However, NTTC's are not required for all deductions. The NTTC requirement has advantages for both the Department and for taxpayers. For the Department it simplifies the otherwise complicated process of determining whether a taxpayer is eligible for a deduction. For taxpayers, it provides certainty. The downside of the NTTC requirement is inflexibility. If for whatever reason a taxpayer cannot produce the NTTC within 60-days of being notified of an audit, the deduction is denied even if the transaction met all of the other requirements under the law.

A regulation would need to be drafted to define what "other evidence" would be approved by the Secretary. Guidance or regulations should be developed to identify when and where "evidence approved by the secretary" can be applied.

PERFORMANCE IMPLICATIONS

This might impact TRD's audit productivity performance goals.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 281 is a duplicate.

ADMINISTRATIVE IMPLICATIONS

TRD:

Additional requests to obtain refunds or additional protests will require additional resources at a time when the budget doesn't allow for additional resources. The guidance or regulations would have to be done quickly to avoid unnecessary refund requests and protests, and it is questionable whether regulations could be approved before July 1, 2011. Audit processes will have to be modified to accept other evidence, increasing audit complexity. The sale for resale deduction is one of the most commonly claimed deductions, implying a significant workload increase spread over many audits. Impacts could be as high as 1 to 2 FTE between the audit division and the protest bureau.

TECHNICAL ISSUES

Including 7-9-47 deductions which require a non-taxable transaction certificate in the list of deductions that do not require a non-taxable transaction certificate (7-9-57, 7-9-58 and 7-9-74 NMSA 1978) is unusual. It might be better to draft a new section B that has only the 7-9-47 deduction requiring alternative evidence in lieu of an NTTC.

Granting the secretary unlimited discretion to determine acceptable alternative evidence is an unusual grant of statutory authority from the legislature to an executive entity. At minimum, statutory guidelines and a requirement to propose and hear rules should be included in the bill.

JAG/mew: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