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FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/11
 LAST UPDATED 03/08/11 **HB** _____

SPONSOR Griego, Eric

SHORT TITLE Tax Credit for Certain Radio Stations **SB** 342

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13	FY14	FY15		
	(\$55.0)	(\$55.0)	(\$55.0)	(\$55.0)	Recurring	General Fund
	(\$45.0)	(\$45.0)	(\$45.0)	(\$45.0)	Recurring	Municipal and County Gross receipts taxes (primarily local general funds)

(Parenthesis () Indicate Revenue Decreases)

*** There is a danger that the revenue loss due to this credit could be much higher because of the ambiguity of what other sales made by a business may qualify for the credit. See **Technical Issues** below.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$25.0	\$25.0	\$50.0	Recurring	General Fund (DCA/MC operating)
	\$2.0	\$40.0	\$40.0	\$82.0	Non-recurring	General Fund (TRD operating)

(Parenthesis () Indicate Expenditure Decreases)

See Technical Issues for a discussion of implementing the provisions of this bill as a tax credit against the state gross receipts tax or as a deduction applied proportionally to the state, county and municipal gross receipts tax distributions.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department (EDD)

Taxation and Revenue Department (TRD)

Department of Cultural Affairs/Music Commission (DCA/MC)

Industry Sources

SUMMARY

Synopsis of Bill

Senate Bill 342 creates a New Mexico Music Tax Credit to be granted to commercial radio stations airing work of local musicians. The credit is 15% of gross receipts tax liabilities from advertising and other sales made by the radio station. The radio station must include in its daily programming New Mexico musical acts for at least 20% of its time on the air. The music commission is the responsible agency for verifying this airtime requirement.

The music commission and DCA are required to compile an annual report for the legislature detailing costs and benefits of the tax credit. Benefits will include jobs created, number stations qualifying, percentage of air time devoted to New Mexico musical acts and royalties paid to musicians. Beginning in 2016, the Revenue Stabilization and Tax Policy Committee is required to review the effectiveness of the New Mexico Music Tax Credit.

SB 342 does not provide a clawback in case stations fail to meet the 20% of airtime standard. It does, however, indicate that a taxpayer who applies for a credit agrees to a waiver of confidentiality per Laws 2009, Chapter 243 (HB 257). This would require a written waiver.

FISCAL IMPLICATIONS

Although the bill provides for a 15% credit against gross receipts tax liability, it is not clear if the intent is to allocate that credit against the state gross receipts tax or against the local option or municipal state shared GRT. For the purpose of this estimate, it is assumed that the credit is applied prorata against state, state share and local option gross receipts tax liabilities. See Technical Issues for further discussion of this issue.

Industry sources and the Music Commission (attached to the Department of Cultural Affairs) indicate that the typical commercial radio station in the state has annual gross revenues between \$150,000 and \$400,000. KDCE, a Spanish Contemporary AM station broadcasting out of Espanola with a budget of about \$400,000, probably plays more New Mexico music than any other station in the state and would probably qualify for this credit. Up to nine more stations would respond to this incentive and adjust programming to take advantage of the tax credit.

General fund impact would be \$400K (avg. annual revenue) x 10 (stations) x .15 (credit %) x .05 (GRT rate) = \$30K. Local impact would be approximately \$15K. FY 13 impacts would be approximately 30% greater than the FY12 impact, based on 13 stations qualifying.

Industry sources report that the vast majority of radio program content is currently obtained from satellite feed. These stations would find it difficult to adjust programming to take advantage of the credit. These same sources indicate that initially only six to ten stations would be able to take advantage of the tax credit, and that only two or three stations a year would decide that the tax credit would warrant the additional costs of locally generated programming.

TRD's estimate is reported in the table. It is somewhat higher than the amounts estimated above, primarily assuming more stations would qualify. This estimate is highly uncertain. Less than one twelfth of New Mexico radio stations are assumed to qualify for the proposed credit. Their assumed revenue is based on data from the Radio Advertising Bureau. An average GRT rate of

7.2% is used for this estimate. Note: RAB data shows 176 commercial AM and FM stations in New Mexico. 1/12 of this number is about 15 stations. The TRD estimate includes an additional amount to account for “other sales” of stations.

To calibrate and validate these estimates, LFC has researched the economics of KUNM, a non-commercial station. <http://www.newwest.net/index.php/city/article/4476/C110/L110> reports that KUNM’s annual budget is \$1.5 million, with approximately 50% met by donations from listeners. Most of the local on-air talent is unpaid. The news director position was advertised some time ago as paying \$26,800, so even the paid staff at KUNM work for low salaries. Listenership is approximately 100,000. Currently, KUNM plays more New Mexico music than all but two or three other stations in the state. KUNM would not benefit from this tax credit.

The responsible agency (the Music Commission) may require a PTE or PT Auditor to monitor and report the data being required. If only three stations apply for the credit, no additional resources would be needed to gather the required data and produce an annual report. The amount in the op bud table assumes a part time information officer.

TRD reports difficulty administering this tax credit, because it is uncertain whether the credit should be treated as a deduction, with proportional decreases to state, municipal and county distributions or as a tax credit taken solely against state gross receipts tax residual. If treated as a deduction, then TRD could accommodate the provision with no increased cost, but would incur substantial non-recurring costs of providing a special reporting code for this provision as a tax credit.

SIGNIFICANT ISSUES

TRD reports, “... the proposed tax expenditure creates a trade-off between targeted economic development goals and the tax policy goals of simplicity, efficiency and equity. The complexity of the credit will add significant compliance and administration costs to New Mexico’s tax system relative to the size of the incentive. Not treating similar business activity the same violates the equity principal of good tax policy. This bill has a non-tax policy goal to stimulate the music industry in New Mexico that should be evaluated with the same framework used for spending choices such as performance budgeting criteria.”

SB 342 requires the Music Commission to monitor the New Mexico Music Tax Credit, as required in section 9-15-56 NMSA 1978:

9-15-56. Economic development tax incentives; guidelines (2010):

A. An economic development tax incentive shall include in the enabling statute the following minimum provisions:

- (1) a statement of purpose;
- (2) the designation of a responsible agency to establish measurable policy goals, track state expenditures, quantify the state's return on investment and report regularly to the interim revenue stabilization and tax policy committee and the legislative finance committee;
- (3) a requirement that the economic development department track job creation;
- (4) specific standards for the taxpayer to qualify for the incentive;
- (5) reporting requirements for the taxpayer;
- (6) a description of the financial obligation of the taxpayer if the specific standards are not met; and

(7) a mandatory review of the incentive no more than every seven years.

Conforming to this mandate, the bill requires the music commission to gather data and prepare an annual report to the legislature. The report must contain the following key elements:

1. The use of the New Mexico music tax credit, including the aggregate amount claimed pursuant to that credit;
2. The number of radio stations claiming the credit;
3. The number of jobs created that can be attributed specifically to the New Mexico music tax credit;
4. The total number of hours of programming of New Mexico musical acts in the year compared to the total number of programmed hours reported by radio stations claiming the credit;
5. Information regarding the sales or use of music made or produced by New Mexico musicians and any other information deemed necessary by the commission and the department to assess the effectiveness of the credit.

The bill does not require information on whether royalties have been paid to the New Mexico artists.

TECHNICAL ISSUES

Specifying this tax incentive as a tax credit is appropriate if the state is to bear the entire cost of the tax credit and local governments are to be held harmless. This treatment increases the administrative cost and complexity of the provisions. However, the bill is not clear how specifying this as a tax credit would differ from specifying it as a – less costly to administer – deduction.

TRD notes the following technical issue:

A New Mexico business that owns and operates a qualifying radio station may have significant sales from unrelated activity; however, this credit applies to both gross receipts tax liability “from advertising **and other sales.**” The intent may be to limit the credit to only receipts related to activities of radio broadcasting, but as currently drafted there is a large amount of uncertainty.

The reporting requirements that this proposal places on the Department that include disclosing taxpayer information are in direct conflict with the general confidentiality statutes under Section 7-1-8 NMSA 1978. The general confidentiality statutes carry criminal penalties including imprisonment for up to one year. Without amending the general confidentiality statutes in Section 7-1-8, it is likely that the Department will not be able to comply with the reporting requirements. For example, the likelihood is that there will be a small number of eligible taxpayers claiming the credit. Even if the Department were to publish only the total amount of the tax credits claimed, this could compromise taxpayer confidentiality.

Page 3, line 22 – “living in New Mexico” should be changed to “whose place of residence is in New Mexico” so there is no misinterpretation of the term. Even with the change the definition of “New Mexico musical act” in Section 1 Subsection G is inadequate because it requires the taxpayer to possess information regarding the domicile of

the performing musicians that they may not have access to because it is confidential information of the musicians. It also fails to address the impact of performances by musical acts with membership of both New Mexican and non-New Mexican musicians.

ADMINISTRATIVE IMPACT

TRD reports a moderate administrative impact; however, compared to the size of the incentive this proposal has a relatively high administrative cost. The lost General Fund revenue from the credit could be roughly equal the costs New Mexico taxpayers in aggregate will pay for administering the credit. There will be low initial costs to create a new form, revise instructions and publications at a cost of \$2,000. Ongoing tasks including processing, approving, monitoring, tracking, auditing, and reporting on the credit will be spread across several divisions with an overall impact equal to approximately 1/2 FTE.

It will be difficult for the Department to audit the credit and ensure proper compliance. Since the credit will be claimed with the filing of a monthly CRS-1 Form, there will be little time to review the validity of the credit being claimed. It is not clear on how the Department will determine if the 15% air time requirement is met.

TRD's review did not explain the difference between a tax credit and a tax deduction. It is possible that the proponents of this bill intended the tax credit to be applied only against the state GRT and to leave the local governments whole.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

EDD points out a potential conflict:

SB342 may conflict with HB 166 (2011). HB166 seeks to establish legislation beginning in 2014 and at six-year intervals following 2014, to require the Taxation and Revenue Department, as an aid to and in collaboration with other departments named specifically in each tax credit identified, to present a report on the tax credit provided pursuant to this bill, to the revenue stabilization and tax policy committee for review. The report shall determine if a need remains for the credit, if the credit is effectively being used for the purpose for which it was created and if the use of the credit is cost-effective. The credit may be proposed for repeal or amendment if it is found by the revenue stabilization and tax policy committee to be ineffective, more costly than is warranted by the purpose for which the credit was proposed or unused or otherwise no longer needed.

As of the date of this revision, the music commission has been removed from SB 158, repeal of boards and commissions.

OTHER SUBSTANTIVE ISSUES

The purpose of this tax credit is “to increase visibility of New Mexico musicians with the public and the music industry and provide enhanced exposure for the music of musicians living or working in New Mexico.” Since this is acknowledged to be an economic development tax credit” shouldn't the purpose include some such phrase as “increase income for the musicians?”

ALTERNATIVES

Respecify this proposal as a tax deduction rather than a tax credit. Alternatively, amend the bill so that the credit applies to the state gross receipts tax and holds local governments harmless.

City	DMA Area	Number of Radio Stations
Albuquerque	Albuquerque , NM	40
Farmington	Albuquerque, NM	13
Gallup	Albuquerque, NM	12
Las Cruces	El Paso, TX	10
Clovis	Amarillo, TX	9
Roswell	Albuquerque, NM	9
Santa Fe	Albuquerque, NM	8
Rio Rancho	Albuquerque, NM	8
Hobbs	Albuquerque, NM	8
Alamogordo	Albuquerque, NM	7
Portales	Amarillo, TX	6
Taos	Albuquerque, NM	5
Carlsbad	Albuquerque, NM	5
Artesia	Albuquerque, NM	4
Ruidoso	Albuquerque, NM	4
Silver City	Albuquerque, NM	3
Las Vegas	Albuquerque, NM	3
Lovington	Albuquerque, NM	2
Raton	Albuquerque, NM	2
Grants	Albuquerque, NM	2
Española	Albuquerque, NM	2
Deming	Albuquerque, NM	2
Tucumcari	Amarillo, TX	2
Clayton	Amarillo, TX	1
Socorro	Albuquerque, NM	1
Truth or Consequences	Albuquerque, NM	1
Santa Rosa	Albuquerque, NM	1
Dulce	Albuquerque, NM	1
Belen	Albuquerque, NM	1
Chama	Albuquerque, NM	1
Corrales	Albuquerque, NM	1
Magdalena	Albuquerque, NM	1
Pine Hill	Albuquerque, NM	1

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