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

ORIGINAL DATE 02/01/12
SPONSOR Chavez, E. **LAST UPDATED** **HB** 233

SHORT TITLE Internet Sales Gross Receipts **SB**

ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	**FY13**	**FY14**		
	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB 207

SOURCES OF INFORMATION
LFC Files

Responses Received From

SUMMARY

Synopsis of Bill

House bill 233 enacts a new section of the Income Tax Act to require a person to pay the compensating tax on and report all purchases made by that person of personal tangible property that pay the compensating tax and are used only for non-business purposes. A person may apply an income tax credit or tax refund against the compensating tax due. Section 7-9-7.1 NMSA 1978 is repealed.

The bill also amends section 7-9-3.3 NMSA 1978 to include a worldwide web site as a third party content provider on a computer physically located in New Mexico as one who is "engaging in business".

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends or May 16, 2012.

FISCAL IMPLICATIONS

The fiscal impact is difficult to determine as information on internet sales is not readily available.

The impact could be significant as more purchases are now made through catalogs and internet sales.

It is also possible that major internet retailers could cut ties with New Mexico affiliates as has happened in other states. This will likely have a negative effect on New Mexico business's retail sales and as a result have a negative impact on general fund revenues. Due to these issues House Bill 233 is expected to have no effect on general fund revenues.

SIGNIFICANT ISSUES

Repealing section 7-9-7.1 NMSA 1978 in the bill allows the compensating tax to be collected. Part C of Section 1 allows a person to report the compensating tax due on their personal income tax form. There is concern that since this reporting is voluntary that it will be difficult to enforce without extensive auditing.

This bill is similar to a bill passed by New York State intended to capture internet sales from online retailers known as the "Amazon Law." New Mexico's tax structure is different than New York and most other states because of our gross receipts tax and Section 7-9-7.1 NMSA 1978 which bars the Department from taking any actions to collect the compensating tax on households or non-business individuals. The legal incidence or burden of New Mexico's gross receipts tax is on the seller (not the buyer as in most states). A state can only tax a business if that business has an actual physical presence (nexus) inside the State. Nexus can be triggered by the business having property, employees, agents, or independent contractors inside the state. There is a large and expanding amount of case law prescribing what kind of actions and contractual agreements by related agents or contractors will actually trigger nexus. For example in Dell Catalog v NM Tax & Rev., 2009-NMCA-001, 145 N.M. 419 a contractor physically presence in New Mexico that serviced the computers sold by Dell gave Dell nexus and made Dell's receipts subject to New Mexico's GRT.

In 2009, major internet retailer, Amazon, Inc., cut ties with affiliates in North Carolina and Rhode Island in response to attempts to tax internet sales in those states. More recently, Amazon, Inc. sent letters to affiliates in Illinois in response to a bill that proposes to tax internet sales. The letter states the intention to break relationships with affiliates in Illinois if the bill is signed by the governor. Highly populated states with large business participation are those that appear to be insulated from these pressures; New Mexico is not likely to be one of these states.

In the absence of sales tax on internet transactions, retailers with physical nexus in New Mexico are at a competitive disadvantage. Internet retailers are able to offer lower prices artificially because they are not taxed. Additionally, the state is foregoing gross receipts and compensating tax revenue by not taxing internet sales. The frequency of internet sales has increased substantially over the past few years and is expected to continue growing. The issues associated with the lack of state sales tax on internet sales are anticipated to worsen in the coming years. On a larger scale, unified effort by the states will be necessary to further the discussion on the taxation of interstate sales.

ADMINISTRATIVE IMPLICATIONS

According to TRD's response to SB95 in the 2011 Regular Session, although this bill intends to increase compliance and help audit efforts it is not clear that compliance will increase or audit abilities will be simplified. Since the majority of these companies would not be registered with the department, it would be difficult to identify those who owe the compensating tax due to the affiliated nexus rule. Also, it would be difficult for the Department to identify sales that were made through the affiliate as opposed to the New Mexico customer going directly to the out of state companies website since the sales invoice would just identify the ship to address and not how the sale was solicited.

An effective date of July 1 or January 1 would be easier to administer.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

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