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

SPONSOR Griego, P. **ORIGINAL DATE** 01/30/12 **LAST UPDATED** **HB**

SHORT TITLE Agricultural Transportation Tax Credit **SB** 141

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	**FY13**	**FY14**		
	($2,000.0)	($2,000.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

This bill creates the agricultural transportation income tax credit and the agricultural transportation corporate income tax credit. This credit is equal to twenty percent of direct eligible transportation expenditures incurred prior to January 1, 2017, for transportation of an agricultural product out of state to a customer or for processing. Any portion of the credit approved by the department that exceeds the taxpayer's income tax liability or corporate income tax liability in the taxable year in which it is claimed shall not be refunded, carried over or transferred.

Effective Date: Not specified; 90 days following adjournment (May 16, 2012); Applicable to tax years beginning on or after January 1, 2012.

FISCAL IMPLICATIONS

Data from the Federal Highway Administration's Freight Analysis Framework indicates that over 2.5 million tons of agricultural products traveled out of New Mexico in 2010. By assuming an average trip of 200 miles at an average cost of 10 cents per ton-mile, the total transportation cost for that year was estimated at $51.1 million for agricultural businesses. The credit from those qualified expenditure would exceed $10 million, but this analysis assumes that income tax

liabilities for agricultural businesses could absorb only 25% of that non-refundable credit before being exhausted. This analysis concludes that agricultural businesses would try to claim at least $2.5 million in credits, but the aggregate annual cap would limit this amount to $2 million.

SIGNIFICANT ISSUES

The tax credit also raises concerns over double-dipping and equity. Businesses can already expense their transportation costs when calculating their net taxable income and receive a deduction from gross receipts when exporting their goods out of the state. As such, this tax credit targets a cost that is largely mitigated even without the credit provided by this legislation. An equity argument could also be made. If transportation costs for shipping goods out of state are too onerous for agricultural business, they would also be onerous for other industries; those industries should be accorded the same benefits in order to be competitive in other markets.

TECHNICAL ISSUES

On page 3, paragraph F, the bill indicates that the credit "may be claimed by a partnership, business association or LLC," but this conflicts with the Income Tax Act's definition of a taxpayer which does not include pass-through entities. Existing income tax credits can provide statutory reference for how to deal with pass-through entities; see the Advanced Energy Income Tax Credit (Section 7-2-18.25 NMSA 1978) or the Agricultural Biomass Income Tax Credit (Section 7-2-18.26 NMSA 1978).

The bill allows the Department of Agriculture to issue certificates of eligibility for the credit beyond the maximum aggregate tax credit allowance of $2 million. This appears to defeat the purpose of the cap.

OTHER SUBSTANTIVE ISSUES

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

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

This bill may violate the LFC tax policy principle of adequacy. According to the LFC General Fund Recurring Appropriation Outlook for FY14 and FY15 the December 2011 forecasted revenues will be insufficient to cover growing recurring appropriations. Since currently forecasted revenues in FY14 and FY15 may not be adequate to fund government services there is insufficient funds for additional tax cuts.

SS/svb