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

SPONSOR Keller/Gonzales **ORIGINAL DATE** 01/27/13
LAST UPDATED **HB**

SHORT TITLE Technology Transfer Gross Receipts **SB** 29

ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
$0.0	Indeterminate but could be significant. See Fiscal Implications				Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Finance and Administration (DFA)
Economic Development Department (EDD)
Municipal League

SUMMARY

Synopsis of Bill

Deduction of gross receipts of sales to a person engaged in technology transfer. Senate Bill 29 enacts a new section of the gross receipts and compensating tax act to provide a deduction of receipts from selling tangible personal property that is used in converting scientific and technological advances into marketable goods or services to a person who is engaged in the business of transferring technology during the first three years of operations.

The purpose of the deduction is to encourage businesses in the technology commercialization industry to locate and expand in New Mexico.

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends on June 14, 2013.

This bill does not contain a sunset date. The LFC recommends adding a sunset date.

FISCAL IMPLICATIONS

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

According to the TRD, the general lack of definitions of key terms in this legislation makes an accurate estimate of potential costs difficult to impossible. With a broad interpretation of what constitutes "technology" and "transfer", an argument could be made that would extend this deduction far beyond what appears to be its intent to nearly anything. The initial implementation of the deduction of food from gross receipts can be viewed as an example of the difficulty of estimating the impact of overly broad legislation.

Technology Transfer also called Transfer of Technology (TOT) and Technology Commercialization, is the process of transferring skills, knowledge, technologies, methods of manufacturing, samples of manufacturing, and facilities among governments or universities and other institutions to ensure that scientific and technological developments are accessible to a wider range of users who can then further develop and exploit the technology into new products, processes, applications, materials or services.

SIGNIFICANT ISSUES

This bill may conflict with or overlap the Technology Jobs Tax Credit (TJTC), NMSA 1978, Section 7-9F-1. The same expenditures claimed for the TJTC could also be claimed under this tax deduction and there is no provision in SB 29 that prohibits a taxpayer from claiming a benefit under both provisions for the same expenditures.

According to the DFA, this deduction could encourage further research at the state's universities and national labs by promoting the potential commercialization of research. Los Alamos National Laboratory currently lists 37 technologies available for licensure on its website.

This credit may reduce the incidence of tax pyramiding in the gross receipts tax, which results from the taxation of business inputs.

New Mexico Municipal League Resolution 2012-26 urges the legislature and the governor to consider the impact of exemptions, credits and deductions on local governments prior to enactment of such.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD reports that there is a high administrative burden to the department.

TECHNICAL ISSUES

Because there is no effective date specified this takes effect in the middle of a semi-annual reporting period which creates issues for processing and taxpayer education, adding cost to implementing. It is recommended that the effective date be set for either January 1, or July 1 of a given tax year, to reduce complications and added cost.

There is no definition of what constitutes "tangible personal property that is used in converting scientific and technological advances into marketable goods or services…" Pursuant to NMSA 1978, Section 7-9-3(J) tangible personal property includes electricity which will be difficult to quantify.

According to the EDD, the bill lacks many important definitions and clarifications:

- How is a "person engaged in the business of transferring technology" identified?
- Early stage companies engaged in commercializing technologies may develop a number of prototypes that may or may not ultimately result in "marketable goods or services."
- The bill does not provide an explanation as to how the seller shall determine that the tangible personal property purchased is intended for the purpose of "converting scientific and technological advances……"

OTHER SUBSTANTIVE ISSUES

This tax deduction is too broad to be effectively implemented by the Taxation and Revenue Department. Confidentiality issues may arise, when gathering the data for reporting to the legislature, and may further complicate gathering the data needed for analyzing the performance of the deduction. The impact depends on what information is required by the Legislature.

Technology Note - TRD is upgrading its data systems relating to GenTax, requiring that the systems be "locked-down" to any modification until July 1, 2013. NO SYSTEMS CHANGES CAN BE IMPLEMENTED UNTIL OCTOBER 1, 2013 to allow adequate time for development, testing and verification of any new system requirements. As a result TRD will not be able to implement the GenTax modifications necessary to record and claim the tax deduction/credit until at least October 1, 2013, after the effective date of the legislation.

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

EWM/svb/bm