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FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/15

SPONSOR Irwin LAST UPDATED _____ HB 489

SHORT TITLE Internet Wine Sales SB _____

ANALYST Elkins

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Indeterminate	Indeterminate		General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Administrative Office of the Courts (AOC)

Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

House Bill 489 allows winegrower licensees to accept and fulfill wine orders placed via an internet website, whether the financial transaction related to the order is administered by a licensee or a licensee's agent.

FISCAL IMPLICATIONS

According to RLD, House Bill 489 could result in loss of some gross receipts taxes to New Mexico if the sales are deemed to be conducted in another state. However, it is probable that internet sales will expand in-state sales and therefore offset any such loss. There is no language addressing taxability of internet sales.

SIGNIFICANT ISSUES

According to AOC, a winegrower who wishes to avail itself of the allowance granted by HB 489

to accept and fulfill an order for wine that is placed via an internet web site, will need to be aware of the laws in other states governing direct sales of wine. New Mexico, for example, pursuant to Section 60-6A-11 NMSA 1978, requires a person wishing to make direct wine shipments to a NM resident, to be licensed in NM or otherwise and to apply to the director for a direct wine shipment permit. These direct shipments are capped at two nine-liter cases of wine monthly to a NM resident who is at least 21 years old. See *Granholm v. Heald*, 544 U.S. 46 (2005) (U.S. Supreme Court applies the commerce clause to the sale of wine.)

For information on legal challenges related to internet wine sales, see <http://www.aallnet.org/mm/Publications/spectrum/Archives/Vol-14/pubsp1007/pub-sp1007-wine.pdf>

TECHNICAL ISSUES

According to RLD, House Bill 489 does not contain a definition for “licensee’s agent”. Currently, only the licensee may directly profit from the sale of alcoholic beverages. It is unclear whether the bill intends to only allow financial transactions through a bank, PayPal or other clearing house or will allow for third-party sellers like Smith’s, wine of the month clubs, or other on-line retailers to sell the products and accept payment for those sales.

CE/aml