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

SPONSOR Munoz **ORIGINAL DATE** 1/31/16
LAST UPDATED **HB**

SHORT TITLE Air Ambulance Tax Reporting **SB** 136

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY16	**FY17**	**FY18**	**FY19**	**FY20**		
	($3,000.0) to $10,000	($3,000.0) to $10,000.0	($3,000.0) to $10,000.0	($3,000.0) to $10,000.0	Recurring	General Fund
	$1,000.0 to $5,000.0	$1,000.0 to $5,000.0	$1,000.0 to $5,000.0	$1,000.0 to $5,000.0	Recurring	Local Governments **

Parenthesis ( ) indicate revenue decreases

Note: this bill is very difficult to score. See “Fiscal Impacts” for a discussion of the reasons for this difficulty.

** The major impact of portions of the bill would be to move gross receipts location reporting from within municipal boundaries as at present into the remainder of counties. Thus there would be winners and losers over and above the modest gains in revenue in aggregate. The county would gain small amounts of revenue for fire districts and environmental service fees. The municipality, however, would lose the entire amount of the GRT from the swapped reporting locations.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$1,000.0 to $3,000.0		$1,000.0 to $3,000.0	Non-recurring	TRD operating

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

SUMMARY

Synopsis of Bill

Senate Bill 136 makes one substantial change affecting thousands of taxpayers and one moderate change affecting at most 10 taxpayers. The moderate change in the bill is to require businesses operating medical air transportation services to report gross receipts to the location where the sick or injured person being transported is picked up by an air ambulance.

The larger impact is to require professional services providers, including architects, engineers, medical arts practitioners, scientists, management and systems analysts, certified public accountants, lawyers, planners, researchers, "and other persons or businesses providing similar professional services" to report gross receipts to the location where their services are delivered to the ultimate consumer of the service.

The effective date of this bill is July 1, 2016.

FISCAL IMPLICATIONS

Assuming that the provisions of this bill are constitutional and that TRD would be able to regulate the many detailed questions before July 1, 2016, there are four sources of fiscal impact on the state and local governments:

(1) Operators of air ambulances would change reporting location for transporting trauma patients from generally municipal locations to primarily remainder of county locations roughly in proportion to the 2/3rd muni, 1/3rd remainder county population location. This would add revenue for the general fund, since the full amount of the 5.125% state gross receipts tax would go to the general fund rather than the 3.9% to the general fund for receipts generated from municipal locations. For medical transport (the bulk of private air ambulance transportation), there would be swaps for the local governments, but little change in general fund impact. Assuming that this is a $10 million industry, so the general fund loss could range to $100 thousand.

(2) Out-of-state taxpayers in the listed professional services occupations currently paying the R & D Services GRT (about 20 paying about $1.4 million annually) would have their taxes increased by about 40% to about $2 million, with the general fund losing about $300.0 to the municipal credit and the local governments gaining revenue due to the 1.225% state share and the local options.

(3) Out-of-state taxpayers in the listed professional services occupations currently paying the regular GRT (perhaps 900 taxpayers paying some $30 million to the general fund) would have their taxes increased by about 40% to $41 million with the general fund losing $6 million and the local governments gaining $17 million.

(4) New Mexico taxpayers in the listed professional services occupations currently reporting gross receipts tax to their resident municipality would shift some of their reporting to county remainder locations, with the general fund incurring increases because of not having to pay the 1.225% municipal share. The total professional services category includes professions such as veterinarians, computer programmers, photographers, translators and interpreters, building inspectors, testing laboratories and other (unlisted) licensed and unlicensed professions that might or might not be included in the description, "other persons or businesses providing similar professional services". However, there is a substantial mismatch between resident population location and

> professional services business location. A simple sample for June 2015 (a semi-annual filing month) shows that (excluding Sandia and related businesses in remainder Bernalillo County), a typical profile is that 73% of taxable gross receipts are derived in municipal locations, 10% from out-of-state locations, and 17% from county remainder locations. Having discussed in items (2) and (3) above, we can correct these profiles to exclude the out-of-state sales. Then 81% is municipal sourced and 19% county remainder. The population ratio is 66% municipal v. 33% county remainder and 1% resident on pueblos or reservations. The total taxes in the professional services category total about $400 million and if 7% switched to conform to the sourcing rule, then the general fund would gain about $6.7 million

The amounts shown in the table above represent an upper bound and a lower bound to the plausible effects of the provisions of this bill.

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.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

The most significant issue with this bill is that it will be virtually impossible to draft "bright lines" to define which taxpayers may continue reporting based on business location and which taxpayers would have to switch to reporting use-of-product-of-service location. Take lawyers, for example. Where are the services delivered to a person (the "ultimate consumer")? In criminal proceedings, the presumed location would be a court house. But what if the county uses TV arraignments? In Santa Fe County, the adult detention center is in the county, but the judge and defense attorney might be physically located in the county courthouse in the middle of the city of Santa Fe. What about a will? The will would be delivered to a client at the lawyer's office, but would the product of the service eventually be "consumed" at the client's home? These are highly intractable issues.

From the beginning, the gross receipts tax focused on easing compliance. Thus, the general rule is that the business location determines the reporting location, even if the services are delivered to a number of different locations. There are relatively few exceptions to the general rule, and those exceptions affect relatively few taxpayers. The big exceptions are for utilities, where the services are delivered to the meter location, and construction where the services are delivered to the job site. One other minor exception is that interjurisdictional transportation – like a taxi – is treated somewhat differently for the purpose of local option taxes. Finally, in a relatively little known provision of the GR&CTA, research and development services performed by out-of-state taxpayers are reported to the location where the services are initially used. This latter provision was included in Laws 1989, Chapter 262. At the time, it was not clear if the state could impose gross receipts taxes on out-of-state companies with little or no nexus in the state. It is still not clear if the underlying tax is constitutional and if the extension under this bill of the local option GRT is similarly constitutional.

There is a R & D tax credit available to the taxpayer in case the state where the out-of-state services are performed imposes a sales tax or similar tax on the services.

PERFORMANCE IMPLICATIONS

One little-discussed principal of good tax policy is that of simplicity and understandability. The provisions of this bill, which overturn settled law, precedent and regulations, will cause a great deal of uncertainty until TRD can write regulations on how expansive the list of alternative reporting locations will be. There will be resistance to supplant an easy and understandable location reporting principle to be replaced one that may have to be decided on a case-by-case basis.

The LFC tax policy of accountability is <u>not</u> met since TRD is <u>not</u> required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers being forced to file a far more complex monthly tax return and keep far more voluminous records concerning the residence location of non-business clients.

ADMINISTRATIVE IMPLICATIONS

The volume of "long-form" CRS-1 forms could increase dramatically, since some 10,000 taxpayers (including the "medical arts practitioners" might have to record home addresses of their patients and report to the location of the each patient's residence.) Writing regulations on inclusion or exclusion of affected taxpayers will be difficult and time consuming.

TECHNICAL ISSUES

Subsequent to the initial enactment of the tax on first use of the product of research and development services in the state in 1989, a number of opinions and explanations were published by practitioners and academics on whether this provision was constitutional under the nexus doctrines. The general conclusion was that the provision was not constitutional and was prohibited by the commerce clause of the US Constitution. The provisions of this bill will undoubtedly raise the specter of these earlier debates and have the potential of the expansion to local option taxation being held not only specifically unconstitutional but that the earlier tax on research and development services themselves could be held to be unconstitutional because of insufficient nexus.

OTHER SUBSTANTIVE ISSUES

The bill's long title included in the bill is accurate and emphasizes that the location reporting change is the more important provision. The short title, however, gives the casual observer the impression that the air ambulance provision is the more important aspect of this bill.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

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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