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FISCAL IMPACT REPORT

SPONSOR Kissner DATE TYPED 02/12/98 HB 345/a HTRC

SHORT TITLE Internet Services Deductions SB _____

ANALYST Gallegos

REVENUE

(Thousands)

Estimated Revenue FY99	Estimated Revenue FY00	Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
\$ <u>(8.0)</u> *	\$ <u>(9.0)</u> *	\$ <u>na</u> .	<u>Recurring</u>	<u>GF</u>
\$ <u>(5.0)</u> *	\$ <u>(6.0)</u> *	\$ <u>na</u> .	<u>Recurring</u>	<u>Local Govts</u>

***See Fiscal Implication**

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Taxation and Revenue Department
NM Public Utility Commission

SUMMARY

Synopsis of HTRC amendment

The HTRC amendment ensures that internet services provided among or between affiliated entities will not be allowed a deduction from gross receipts for receipts from these services.

FISCAL IMPLICATIONS

The HTRC amendment does not change or modify the fiscal impact.

PREVIOUS FISCAL IMPACT REPORT

Synopsis of Bill

This bill proposes to amend the Gross Receipts and Compensating Tax Act. The amendments include the creation of three new deductions for the sale of Internet related services to an Internet provider, hosting of world wide web page, sales through the Internet and amending the definition of "engaging in business" is to exclude out-of-state businesses who have a web site at a New Mexico server. The deduction for Internet related services sunsets on June 30, 2000.

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- Section 1- creates a new deduction under the Gross Receipts and Compensating Tax Act for the receipts from (1) leasing of telephone lines, (2) providing telecommunications services, (3) Internet services, (4) Internet access services and (4) computer programming services when sold to a person who is subject to the gross receipts tax or the interstate telecommunications gross receipts tax. This a temporary deduction for the period July 1, 1998 through June 30, 2000.
- Section 2- creates a new deduction for "hosting" a web site in New Mexico and a definition of "hosting". "Hosting" means the storing of information on computers attached to the Internet.
- Section 3- creates a new deduction for sales of services or products over the Internet to persons located outside of New Mexico.
- Section 4- amends the definition of "engaging in business" to exclude an out-of-state business maintaining a website at a third-party provider.
- Section 5- amends Section 7-9-10 (Agent for Collection of Compensating Tax) to exclude the activity of have a website on a third-party provider by an out-of-state business as an activity subjecting the out-of-state business from becoming an agent for the collection of compensating tax.
- Section 6- creates a new deduction under the Interstate Telecommunications Gross Receipts Tax Act for the receipts from (1) leasing of telephone lines, (2) providing telecommunications services, (3) Internet services, (4) Internet access services and (4) computer programming services when sold to a person who is subject to the interstate telecommunications gross receipts tax, the gross receipts tax or compensating tax. This a temporary deduction for the period July 1, 1998 through June 30, 2000.

This bill is effective July 1, 1998 and sunsets June 30, 2000.

FISCAL IMPLICATIONS

The Taxation and Revenue Department estimates that the revenue loss will be \$8,000 to the general fund and \$5,000 to the local governments from this bill. The fiscal impact of this bill is largely indeterminate with current practice, and particularly indeterminate in the future. In any event, the impact is unlikely to exceed \$1 million per year. Assuming that 10,000 businesses pay \$20 per month for storage space, the gross receipts tax impact of this proposal is about (140), split roughly (85) general fund and (55) local governments. The number in the table above assumes 1,000 business in New Mexico have developed or will develop Internet web pages in the next year. It will be quite difficult for companies and the Department to separate a "bundled services" charge into a deductible storage component and a taxable Internet access component.

ADMINISTRATIVE IMPLICATIONS

The Taxation and Revenue Department anticipates minimal systems or processing impact. The NM Public Utility Commission states that no impact will result because of this bill.

TECHNICAL ISSUES

The Taxation and Revenue Department has identified the following issues:

1. Sections 3 and 4 of this bill are simply (1) a restatement of constitutional interstate commerce principles applied to sales of services and goods through Internet communications; and, (2) a restatement of constitutional nexus principles as to when an out-of-state firm has sufficient presence in the state for the state to demand payment of gross receipts taxes. There is no good reason to restate constitutional nexus principles in state statute. There will be unavoidable conflict at the margin where constitutional principles say one thing and statute says another. If the service is performed out of state, or the product of the service delivered out-of- state and initially used out of state, there is no tax, just like for any other service. If the tangible personal property purchased through the internet is delivered out of state, there is no tax just like any other sale of tangible personal property.
2. Section 3 may allow an unintended avoidance behavior, with accompanying revenue loss. If a purchaser enters a store in Santa Fe, for example, uses a computer connected to the internet at the store to make a purchase, and has the bill routed through an out-of-state address, the purchase would be deductible. It is better to focus on the conventional location where title passes than where the invoice is sent, or where a person maintains an accommodation address.

[See Taxation and Revenue Department Fiscal Impact Report dated February 7, 1998 for additional Technical Issues and more details.]

OTHER SUBSTANTIVE ISSUES

1. One issue in which this bill may create an accounting or processing problem is the deduction for "hosting" a world wide web site. The issue is where an Internet service provider "bundles" the total costs of accessing, using and "hosting" into one lump sum to the final end-user.
2. The NM Public Utility Commission stated "Is it appropriate policy to exempt certain Internet related services from the gross receipts tax?"

MFG/gm