

**Testimony before the
Revenue Stabilization & Tax Policy Committee
October 25, 2011
Santa Fe, New Mexico
Paul Gutierrez, Executive Director
New Mexico Association of Counties**

Thank you, Chairman Eichenberg and members of the Revenue Stabilization & Tax Policy Committee for allowing me to testify on behalf of the New Mexico Association of Counties (NMAC) regarding the Hold Harmless provision and status of New Mexico's counties.

HISTORY

When the food and medical deductions (§7-9-92 and §7-9-93) were enacted in 2004, the deduction approved by the Legislature removed the gross receipts tax on food for home consumption that met the qualifications for the federal Supplemental Nutritional Assistance Program¹ (SNAP). Only retail food stores qualifying to participate in SNAP are able to use the deduction; these stores must sell a variety of food (including breads/cereals, dairy, meat, fruit and vegetables) or specialize in one staple group such as a bakery or a butcher shop. Excluded from the deduction are alcoholic beverages, tobacco, and prepared hot foods sold for immediate consumption.

The medical deduction included receipts from payments by a managed health care provider or health care insurer for commercial contract services or Medicare part C services provided by a health care practitioner that are not otherwise deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act may be deducted from gross receipts, provided that the services are within the scope of practice of the person providing the service. Receipts from fee-for-service payments by a health care insurer may not be deducted from gross receipts.

The Legislature recognized that these tax changes could have significant impacts to local government revenues and specifically included a hold harmless provision to offset the loss of revenue that municipalities and counties would otherwise have incurred as a result of these deductions. The legislation required taxpayers to report the food and medical deductions separately and the Taxation and Revenue Department was tasked with tracking the hold harmless deductions and distributions to local government entities on a monthly basis. The legislation also included a repeal of the 0.5% credit for municipal gross receipts tax rates against the State rate. The total legislative package was estimated to be revenue neutral and the law went into effect January 1, 2005.

Since 2005, the food deduction has proved to be much more costly than originally anticipated. *According to testimony presented before the Legislative Finance Committee on August 19, 2011, as of FY11, the food GRT deduction reduced taxable gross receipts by a total of \$3.1 billion. This reduced state GRT collections by \$3,053,424,613 million. In addition, based on this deduction amount, the state has made \$98,808,038 million in hold harmless payments to local governments. (Attachment A)*

Gross Receipts Taxes (GRT) have become an increasingly important source of revenue for counties. Although counties are less dependent on GRT than municipalities, these taxes have helped to diversify county revenues and provide additional stability for county general funds especially during the

economic downturn. According to these reports, county distributions for the past three fiscal years (*Attachment B*) are estimated at:

FY 2008-2009 Food & Medical Hold Harmless	\$24,812,899.52
FY 2009-2010 Food & Medical Hold Harmless	\$26,034,445.28
FY 2010-2011 Food & Medical Hold Harmless	\$27,039,628.62

*Based upon Taxation & Revenue RPD500 Local Government Monthly Distribution Reports
Municipal distributions are estimated to be as much as four-times those of the county governments.
Los Alamos is also considered in municipal totals.*

COUNTY FINANCIAL OUTLOOK

In addition to the unforeseen impacts of the food and medical tax deduction, the nation has struggled with an economic recession since 2007, which has been widespread and remains uncertain. Federal, state and local governments have been forced to re-evaluate the decisions that were made during a different economic era. Labor forces have been reduced, capital outlay funding has been limited; people and organizations across the nation are doing more with less.

In early October, the NACo conducted its seventh survey to identify how counties large and small appear to be settling into the “new normal” of revenue, staffing and service delivery levels after years of revenue losses in a U.S. economy struggling toward recovery. The survey, released this week, [“Coping with the New Normal: An Economic Status Survey of Counties”](#) is a series of twice yearly efforts by NACo to capture information about counties as they struggle with the current fiscal situation. Counties of all budget sizes, including Colfax Lincoln, Santa Fe, and Socorro County, responded providing a good representative distribution of counties in the nation by population.

The survey shows counties are continuing to make difficult budget decisions and are still scaling back or deferring certain activities to help them through their current fiscal year. Although most financial analysts believe that the recession ended more than a year ago, local economies affecting county governments continue to struggle toward recovery. As this economic slowdown drags on, counties have made increasingly more severe – or long term in nature – budget adjustments to try to adopt balanced budgets and still maintain mandated service deliveries. Key findings include the following:

- Only 35 percent of responding counties (69 counties) report that they adopted balanced budgets this fiscal year with no anticipated shortfalls.
- More than half of responding counties (51 percent or 107 counties) report that declining revenues from the state and federal government was the number one contributor to their shortfalls.
- Two thirds of responding counties (66 percent or 143 counties) report employing fewer county employees this fiscal year as compared to the number of county employees in FY2010.

The cuts are being felt by Americans all across the country since county governments are responsible for providing so many essential services important to communities. These services include maintaining roads and bridges, operating airports and other transit systems, delivering critical health care services, providing law enforcement, courtroom and jail services, funding schools, and numerous social services for seniors and families. Many counties are the first line of defense for emergency and pandemic preparedness and response. The budget cuts and staffing adjustments, the new survey shows, have touched nearly every aspect of county government services:

- Planning, Zoning, Engineering, Surveyors, Code Enforcement (46 percent reported cuts);
- Roads, Highways, Transportation (45 percent reported cuts);

- Administration, Budget, HR (42 percent reported cuts);
- Sheriff, Police & Fire & Rescue (35 percent reported cuts);
- Human Services, Children, Seniors, Veterans (33 percent reported cuts);
- Public Works, Building & Grounds, Water, Sewer, Waste Management (31 percent reported cuts);
- Health (26 percent); Libraries (26 percent), and Jails and Corrections (25 percent reported cuts).

County Detention Center Reimbursement Act

On behalf of the New Mexico Association of Counties, I thank Representative Rhonda King for sponsoring the Jail Reimbursement Act, and thank the Appropriation and Finance Committees and the entire Legislature for the money counties receive from the state for housing felony offenders. The original amount appropriated to counties was \$5 million dollars. After a first year increase, the funding has been reduced in each subsequent year.

The New Mexico Sentencing Commission estimates that the actual cost to counties of housing felony offenders is close to \$30 million. NMAC is fully aware that the state is not in the financial position to pay for those prisoners. However the counties and the Association believe the state should adequately compensate counties for housing state prisoners.

Capital Outlay Funds

The New Mexico Association of Counties and counties throughout the state understand capital outlay funding is limited, and even non-existent, as the economy recovers. NMAC continues to work closely with the Department of Finance to identify funding options for projects.

CONCLUSION

The fiscal reality of the 2004 Legislation, and the ongoing struggle to function on limited revenues has pushed discussion on the repeal of the food and medical hold harmless provision to local governments to the forefront. Based upon the fact that the overall food and medical tax deductions was more significant than anticipated it is evident that simply repealing the hold harmless provision for local governments will not be enough to help stabilize the General Fund. In fact, by transferring this burden, a potentially more substantial and undefined economic impact could devastate the currently precarious stability of New Mexico's local budgets. On behalf of New Mexico counties, I would respectfully request that the State Legislature keep the municipal and county hold harmless provision on food and medical tax in place.

In closing, thank you for this opportunity to provide an update on county finances. We realize that these are difficult times and look forward to working with the Legislature, and our local, state and federal partners to serve the citizens of New Mexico.

LFC HEARING BRIEF

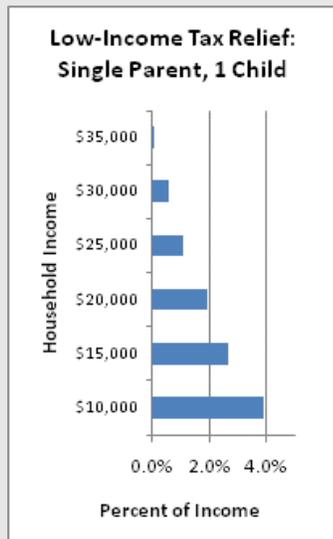
DATE: August 19, 2011

PURPOSE OF HEARING:
Inventory of New Mexico's
Tax Expenditures – Food
Deduction

WITNESS: Richard May,
Cabinet Secretary,
Department of Finance and
Administration, Demesia
Padilla, Cabinet Secretary,
Taxation and Revenue
Department; Tom Clifford,
Policy and Research Director,
TRD, Elisa Walker-Moran,
Chief Economist, LFC.

PREPARED BY: Charles
Kassicieh, Economist, LFC

EXPECTED OUTCOME:
Information and update on
Food Deduction



BACKGROUND INFORMATION ON FOOD DEDUCTION

Food deductions reduce the gross receipts tax (GRT) that would otherwise be due on sales of food for home consumption. The United States Supplemental Nutrition Assistance Program (SNAP), historically and commonly known as the Food Stamp Program, is a service provided by the government that assists low-income or no-income households to purchase food. They are coupons that can be used to buy food. These are distributed by the state government to people without money to purchase food, even though the program is administered by the US Department of Agriculture.

In 2004 HB 625 removed the gross receipts tax on food for home consumption. Beginning January 1, 2005 food meeting the qualifications for the federal Supplemental Nutritional Assistance Program¹ (SNAP) became deductible. Only retail food stores qualifying to participate in SNAP are able to use the deduction; these stores must sell a variety of food (including breads/cereals, dairy, meat, fruit and vegetables) or specialize in one staple group such as a bakery or a butcher shop. Excluded are alcoholic beverages, tobacco, and prepared hot foods sold for immediate consumption. Unlike almost all other exemptions and deduction the food deduction must be separately stated in order to calculate hold harmless distributions to counties and municipalities. The food deduction costs the General Fund about \$200 million per year.

ARE THERE RULES OF ELIGIBILITY

Food Stamps

There are several rules that must be met prior to becoming eligible for food stamps. They include having proper identification and a U.S. citizen. One must be able to supply information regarding how much money your household receives as well as how much one owns in property and in bank accounts.

Food Tax Deduction

Under the provisions of HB 625, businesses selling food for home consumption do not owe GRT on those sales. However there is a separate sin tax in place that taxes items such as liquor at a higher sales tax as compared to other taxable items.

FISCAL IMPACTS

With a continued high unemployment rate, more and more people are turning to SNAP. In May of 2010, there were over 361 thousand people that used food stamps. However, in May 2011 that number had jumped by more than 15% to 417 thousand participants. The total benefits paid out totaled nearly \$542 million in FY 2010, with the average participant receiving \$126.54 each month. The national average is \$133.79.

¹ The Supplemental Nutritional Assistance Program was formerly known as the food stamp program.

As of FY11, the food GRT deduction reduced taxable gross receipts by a total of \$3.1 billion. This reduced state GRT collections by \$3,053,424,613 million. In addition, based on this deduction amount, the state made \$98,808,038 million in hold harmless payments to local governments.

EVALUATING EFFECTIVENESS

Costs/Benefits

The food stamp program clearly provides very significant benefits to needy New Mexico households. With the Federal government covering most of the fiscal impacts, there is a clear net benefit to New Mexico from this program. One potential concern with the program may be that there are people that use the food stamps that don’t need it or who take more than they really need.

The net benefits of the food GRT deduction are more difficult to determine. Benefits to low income families are limited, because their food purchases using food stamps were already exempt. Thus, most of the benefits of the measure go to middle class and upper class households. In addition, because the entire cost is funded by the State General Fund, the forgone revenue is not available for education, health care, public safety and other state needs. If the goal of the program is to lower the costs of meeting basic needs of New Mexico households, it would seem a more targeted approach would be through some kind of income tax relief such as the Working Families Tax Credit.

Program:	FY11 Fiscal Impacts
Working Families Tax Credit	\$45 million
Low & Middle Income Exemption	\$30 million
Low-Income Comprehensive Tax Rebate (LICTR)	\$24 million

Alternatives

Food Pantries

Most communities have food pantries where area residents can go to get assistance. Each food pantry has its own rules about who can get food based on residency in the area, income and other requirements. Some are open only certain days of the week and during limited hours as they are volunteer-staffed.

Community Feeding Centers

Soup kitchen facilities are also available in many communities. They often serve meals five days a week, and may be open for all three meals of the day, depending on the facility. Balanced meals are served in a communal room where people can eat together.

Income Tax Credit

A handful of states tax food at their regular sales tax rate but provide a refundable income tax credit to offset the tax on food paid by low-income households. This allows the expenditure to be targeted only to low-income NM residents. Unlike NM’s current food deduction, this would not subsidize the purchase of imported cheese by a high income European tourist.

NEW MEXICO COUNTY HOLD HARMLESS DISTRIBUTIONS

Food/Medical Deductions Distributions

Taxation Revenue Monthly Local Government Distribution Reports

	Fiscal Year July 2008 - June 2009			
	Food Deductions	Medical Deductions	Food Distributions	Medical Distributions
Bernalillo County	\$1,025,931,523.75	\$446,821,347.72	\$6,455,451.46	\$2,791,643.74
Catron County	\$1,310,372.49	\$0.00	\$3,256.93	\$0.00
Chaves County	\$106,302,000.82	\$21,523,926.54	\$579,667.20	\$110,860.45
Cibola County	\$25,641,071.27	\$3,546,090.05	\$273,438.26	\$38,514.86
Colfax County	\$12,317,250.81	\$2,692,349.79	\$30,793.12	\$7,361.58
Curry County	\$65,230,469.28	\$20,558,637.55	\$367,433.68	\$115,642.30
De Baca County	\$2,157,113.29	\$7,366.40	\$12,219.57	\$69.06
Dona Ana County	\$191,604,161.11	\$75,744,687.30	\$985,887.04	\$384,650.23
Eddy County	\$90,349,923.44	\$17,248,165.12	\$229,686.76	\$43,274.14
Grant County	\$44,655,940.75	\$9,789,618.81	\$281,567.12	\$62,717.51
Guadalupe County	\$4,960,162.01	\$2,303,120.49	\$53,024.77	\$24,470.67
Harding County	\$416,630.93	\$1,713.23	\$1,301.96	\$6.74
Hidalgo County	\$3,657,450.42	\$2,182.22	\$27,998.39	\$17.74
Lea County	\$104,792,038.95	\$5,743,152.24	\$262,765.12	\$14,509.10
Lincoln County	\$34,012,551.87	\$3,819,370.00	\$85,674.09	\$9,561.20
Los Alamos	\$33,812,633.36	\$15,720,871.81	\$1,069,324.53	\$497,375.22
Luna County	\$29,348,123.87	\$4,844,948.71	\$167,124.12	\$27,285.22
McKinley County	\$108,514,868.72	\$6,810,225.17	\$1,249,123.45	\$72,358.71
Mora County	\$2,456,327.89	\$29,411.69	\$19,677.56	\$238.97
Otero County	\$73,012,218.97	\$20,727,703.06	\$278,000.35	\$78,291.20
Quay County	\$11,629,306.06	\$713,354.95	\$138,248.20	\$8,252.60
Rio Arriba County	\$46,289,445.76	\$3,059,103.11	\$301,210.78	\$20,406.53
Roosevelt County	\$23,008,613.33	\$896,612.85	\$244,466.56	\$9,526.55
San Juan County	\$183,597,719.96	\$51,968,719.21	\$1,531,257.89	\$423,073.68
San Miguel County	\$32,420,928.01	\$7,715,889.64	\$226,193.01	\$53,046.65
Sandoval County	\$133,503,552.87	\$22,916,210.47	\$350,893.35	\$59,598.27
Santa Fe County	\$306,285,258.36	\$81,319,839.73	\$2,543,045.08	\$673,387.32
Sierra County	\$14,543,529.81	\$843,063.06	\$138,279.17	\$7,813.93
Socorro County	\$20,073,548.75	\$1,425,403.83	\$75,327.28	\$5,370.67
Taos County	\$61,605,243.53	\$7,587,548.35	\$551,058.15	\$69,888.31
Torrance County	\$6,132,343.33	\$2,141,463.44	\$50,361.73	\$17,935.75
Union County	\$5,061,838.75	\$393,093.41	\$47,454.70	\$3,683.81
Valencia County	\$86,187,377.50	\$9,582,575.95	\$494,063.66	\$56,791.77
TOTALS	\$2,890,821,540.02	\$848,497,765.90	\$19,125,275.04	\$5,687,624.48

FY 2008-2009 Food & Medical Hold Harmless	\$24,812,899.52
FY 2009-2010 Food & Medical Hold Harmless	\$26,034,445.28
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NEW MEXICO COUNTY HOLD HARMLESS DISTRIBUTIONS

Food/Medical Deductions Distributions

Taxation Revenue Monthly Local Government Distribution Reports

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	Food Deductions	Medical Deductions	Food Distributions	Medical Distributions
Bernalillo County	\$1,013,316,211.14	\$479,148,460.53	\$6,369,884.72	\$2,997,124.31
Catron County	\$934,229.57	\$0.00	\$3,651.39	\$0.00
Chaves County	\$106,206,126.90	\$22,173,429.14	\$569,139.26	\$112,690.72
Cibola County	\$25,727,685.25	\$3,621,012.18	\$274,212.78	\$39,322.20
Colfax County	\$11,320,226.81	\$3,137,070.59	\$28,300.58	\$8,390.02
Curry County	\$69,249,393.88	\$22,892,285.27	\$390,167.95	\$128,584.29
De Baca County	\$2,177,612.40	\$0.00	\$17,741.94	\$0.00
Dona Ana County	\$223,839,221.99	\$84,829,197.50	\$1,148,531.84	\$432,246.82
Eddy County	\$95,145,675.26	\$17,637,240.14	\$241,718.03	\$44,206.06
Grant County	\$45,707,294.86	\$12,236,057.89	\$287,891.04	\$77,784.61
Guadalupe County	\$3,954,011.12	\$2,133,287.55	\$42,331.87	\$22,666.23
Harding County	\$384,553.52	\$0.00	\$1,201.72	\$0.00
Hidalgo County	\$3,924,566.49	\$4,300.83	\$32,253.99	\$34.94
Lea County	\$101,615,200.57	\$7,620,212.16	\$254,597.11	\$19,249.48
Lincoln County	\$35,369,701.91	\$4,075,558.94	\$89,687.57	\$10,224.14
Los Alamos	\$34,497,098.70	\$16,638,667.84	\$1,090,961.53	\$526,197.87
Luna County	\$32,669,632.64	\$5,312,741.53	\$185,786.09	\$29,955.51
McKinley County	\$116,566,758.71	\$5,817,250.06	\$1,337,724.52	\$61,905.64
Mora County	\$509,875.04	\$14,365.54	\$3,831.03	\$116.72
Otero County	\$76,801,149.72	\$20,291,395.42	\$293,698.72	\$77,250.55
Quay County	\$11,319,590.52	\$431,474.33	\$134,520.48	\$5,123.79
Rio Arriba County	\$47,226,517.84	\$3,039,265.32	\$367,060.61	\$24,024.83
Roosevelt County	\$25,211,823.37	\$1,111,135.58	\$267,875.59	\$11,805.79
San Juan County	\$237,683,552.03	\$56,351,934.92	\$1,950,054.16	\$459,241.47
San Miguel County	\$32,735,376.55	\$8,425,305.89	\$228,109.38	\$57,923.94
Sandoval County	\$138,380,164.66	\$24,991,879.24	\$357,031.28	\$65,053.11
Santa Fe County	\$297,963,039.76	\$93,957,776.91	\$2,470,509.30	\$777,731.12
Sierra County	\$17,311,218.34	\$932,910.86	\$184,298.72	\$9,826.31
Socorro County	\$19,165,916.26	\$1,280,250.08	\$71,872.17	\$4,844.14
Taos County	\$58,258,832.89	\$8,007,611.27	\$597,255.53	\$84,924.30
Torrance County	\$4,818,154.75	\$2,334,107.62	\$39,562.51	\$19,520.66
Union County	\$5,159,907.94	\$139,566.04	\$48,374.14	\$1,308.41
Valencia County	\$86,259,860.89	\$8,676,358.59	\$494,332.34	\$50,997.41
TOTALS	\$2,981,410,182.28	\$917,262,109.76	\$19,874,169.89	\$6,160,275.39

NEW MEXICO COUNTY HOLD HARMLESS DISTRIBUTIONS

Food/Medical Deductions Distributions

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	Food Deductions	Medical Deductions	Food Distributions	Medical Distributions
Bernalillo County	\$1,053,113,427.85	\$504,629,370.31	\$6,619,768.47	\$3,157,310.32
Catron County	\$962,945.88	\$26,880.00	\$3,831.11	\$134.40
Chaves County	\$117,837,994.47	\$22,020,398.69	\$645,498.93	\$110,732.06
Cibola County	\$25,890,129.04	\$3,591,345.25	\$275,993.17	\$39,198.47
Colfax County	\$12,499,365.09	\$4,097,628.08	\$31,248.36	\$11,515.54
Curry County	\$72,311,308.26	\$25,913,137.25	\$407,803.15	\$145,739.31
De Baca County	\$2,367,565.76	\$0.00	\$19,236.50	\$0.00
Dona Ana County	\$239,058,496.21	\$91,682,593.51	\$1,238,209.55	\$465,821.50
Eddy County	\$104,253,960.70	\$19,453,075.43	\$264,195.65	\$48,743.41
Grant County	\$46,955,029.30	\$14,634,548.10	\$297,108.29	\$92,025.78
Guadalupe County	\$5,282,542.72	\$2,357,093.65	\$56,427.01	\$25,044.16
Harding County	\$334,302.54	\$0.00	\$1,046.16	\$0.00
Hidalgo County	\$4,165,087.98	\$12,107.46	\$28,654.66	\$68.10
Lea County	\$106,395,629.64	\$7,273,723.81	\$266,548.22	\$18,406.85
Lincoln County	\$34,326,967.12	\$3,986,096.02	\$116,888.30	\$13,429.35
Los Alamos	\$35,283,173.12	\$21,278,344.35	\$1,115,830.35	\$672,927.64
Luna County	\$38,179,293.60	\$5,369,178.26	\$217,297.56	\$30,211.99
McKinley County	\$120,420,772.33	\$7,131,816.54	\$1,377,223.60	\$75,967.81
Mora County	\$3,611,789.74	\$222,203.08	\$29,081.05	\$1,805.40
Otero County	\$81,053,055.71	\$18,707,860.11	\$317,223.47	\$71,268.47
Quay County	\$10,234,552.65	\$373,338.47	\$121,624.69	\$4,433.45
Rio Arriba County	\$46,381,756.01	\$3,574,592.54	\$389,893.34	\$30,524.77
Roosevelt County	\$27,166,769.44	\$1,348,209.88	\$288,646.89	\$14,324.71
San Juan County	\$204,107,272.86	\$61,488,814.06	\$1,708,047.57	\$501,251.48
San Miguel County	\$33,563,515.75	\$9,693,234.42	\$238,098.06	\$67,226.16
Sandoval County	\$146,351,945.89	\$27,158,878.76	\$384,104.65	\$70,839.70
Santa Fe County	\$282,623,054.70	\$100,375,248.93	\$2,349,719.63	\$830,225.38
Sierra County	\$19,583,587.84	\$1,391,247.26	\$73,439.97	\$5,265.83
Socorro County	\$17,976,468.34	\$954,029.02	\$191,443.28	\$10,100.12
Taos County	\$64,871,572.24	\$9,433,707.99	\$667,785.48	\$104,308.34
Torrance County	\$5,511,704.19	\$2,691,989.40	\$46,455.83	\$22,688.94
Union County	\$5,299,737.99	\$135,299.56	\$49,685.05	\$1,267.94
Valencia County	\$85,449,837.73	\$11,910,903.05	\$488,535.96	\$70,227.28
TOTALS	\$3,053,424,612.69	\$982,916,893.24	\$20,326,593.96	\$6,713,034.66