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FISCAL IMPACT REPORT

SPONSOR: Cravens DATE TYPED: 2/04/03 HB _____

SHORT TITLE: Direct Seller Gross Receipts Deduct SB 156

ANALYST: Gilbert

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$(1,155.0)	\$(1,260.0)	Recurring	General Fund
	\$(770.0)	\$(840.0)	Recurring	Local Government Funds

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 156 amends NMSA 1978, § 7-9-66 to provide a gross receipts tax deduction on commissions earned by “direct sellers” as defined in Section 3508 of the Internal Revenue Code. The effective date for this deduction would be July 1, 2003.

Significant Issues

“Direct sellers” as defined in federal code, are *independent contractors engaged in selling consumer products in the home or otherwise than in a permanent retail establishment.*

Examples of the taxpayers affected by this bill include: multi-level sales organizations, cosmetics and gifts salespersons and other independent sellers of consumer products. The proposed deduction appears not to apply to real estate commissions since *qualified real estate agent* is defined separately from *direct seller* in Section 3508 of the Internal Revenue Code.

FISCAL IMPLICATIONS

According to the New Mexico Taxation and Revenue Department (TRD), the fiscal impact of this bill was derived using data from the 1997 *Census of Trade in New Mexico*. In 1997, there were 208 “Direct Selling Establishments”—a subset of the category “Non-store Retailers”. Total receipts and payroll for this category were \$202.0 million and \$25.0 million, respectively. Using payroll as a proxy for commission sales and assuming an average annual growth rate of 5%, the FY 2004 base is estimated to be approximately \$35.0 million. An effective state and local tax rate of 6.06% yields the fiscal impact listed in the revenue table.

ADMINISTRATIVE IMPLICATIONS

According to TRD, their tax compliance specialists in the Audit and Compliance Division will require training. TRD will also need to revise the CRS-1 filers kit.

OTHER SUBSTANTIVE ISSUES

NMSA 1978, § 7-9-66, Subsection A already provides a deduction for commissions from the sale of tangible personal property not subject to the gross receipts tax. Subsection B provides a deduction for commissions paid to the owner of a dealer store for selling a principal’s tangible personal property.

RLG/yr