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

SPONSOR: McSorley DATE TYPED: 2/18/03 HB

SHORT TITLE: Food & Health Provider Gross Receipts Deduction SB 158/aSPAC

ANALYST: Smith

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	**FY04**			
	(24,200.0)	(58,000.0)	Recurring	General Fund (Food)
	(19,000.0)	(45,700.0)	Recurring	Local Governments (Food)
	(15,800.0)	(38,000.0)	Recurring	General Fund (Health Care)
	(13,900.0)	(33,300.0)	Recurring	Local Governments (Health Care)
	(32,900.0)	(79,000.0)	Recurring	General Fund (Distribution Change)
	32,900.0	79,000.0	Recurring	Local Governments (Distribution Change)
	71,400.0	171,400.0	Recurring	General Fund (Rate Increase)
	(1,500.0)	**(3,600.0)**	**Recurring**	**Net General Fund**
	0	**0**	**Recurring**	**Net Local Governments**

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

Responses Received From
TRD
LFC Files

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment includes services provided by speech language audiologists and pathologists as an eligible deduction. The total fiscal impact should change by a marginal amount.

Synopsis of Original Bill

Senate Bill 158 provides gross receipts deduction for food and healthcare services. A new municipal distribution is created to hold local governments harmless. Finally, the statewide gross receipts and compensating tax rate is raised to make up for the shortfall to the general fund.

- ***GRT Deduction for Food:*** Provides a gross receipts tax deduction for receipts from sales of food at retail food stores. For the purposes of the bill, "food" and "retail food store" are defined by reference to the federal food stamp program. According to program definitions, "food" includes most staple grocery food items and cold prepared foods packaged for home consumption. Specifically excluded from the definition of food for home consumption are alcoholic beverages, tobacco, and prepared hot foods sold for immediate consumption. "Retail food store(s)" must meet one of two criteria specified in the federal act. Under the first criterion, a retail food store must stock and offer for sale a variety of foods on a continuous basis in each of the four defined staple food categories, with perishable foods in a least two of those categories. Under the second criterion, more than 50 percent of a retail food store's total gross retail sales must be in staple foods. The purpose of the second criterion is to encompass legitimate food retailers that may specialize in specific types of food, such as fish, meat, poultry or produce.

- ***GRT Deduction for Health Practitioner Services:*** Provides a gross receipts tax deduction for receipts of licensed health practitioners. "Licensed health practitioners" include: chiropractors, dentists and dental hygienists, physicians or physician assistants, osteopathic physicians, doctors of oriental medicine, podiatrists, optometrists, psychologists, registered and licensed practical nurses, midwives, physical and occupational therapists, and respiratory care practitioners.

- ***Gross Receipts and Compensating Tax Increase:*** The statewide gross receipts and compensating tax rates are increased from 5.0% to 5.5% to generate additional revenue to fund the local government offsets and to compensate the state general fund for the reduction in the taxable base.

FISCAL IMPLICATIONS

- TRD notes that in order for this proposal to be approximately revenue neutral, the state gross receipts and compensating tax rate would need to be increased to 5.522%.

- USDA estimates of FY 2002 New Mexico food stamp program benefits (approximately $154 million) were subtracted from the taxable base because these sales are already deductible.

ADMINISTRATIVE IMPLICATIONS

TRD has significant concerns on this issue:

- Major computer system changes will be required to accept and track the deductions and to make the appropriate adjustments to local revenue distributions. Reprogramming the system to track the deductions by location is possible. The department is in the process of converting to a new computer system for processing gross receipts tax. The changes required by this bill would have to be implemented in the new system. This system is currently scheduled to become operational in October 2003. Thus, the effective date of January 1, 2004 should give the department enough time to incorporate the changes.

- Forms will need to be redesigned to accept and track the new deductions. Taxpayer education efforts will be greater than for normal changes. For effective administration of local distributions, taxpayers must separately calculate and report the deductions claimed for each business location. This would create an additional layer of administrative complexity, not only for the department, which must track the deductions and incorporate them into monthly local distribution calculations, but also for larger food retailers who may report gross receipts to several different locations.
- Ensuring that retailers apply the credit only for qualified food sales might be a problem. While most retailers are likely to claim only legitimate credits, it will be almost impossible to identify those who don't. Typically when examining retail businesses with large sums of cash flowing through, auditors have only cash register tapes with no (or very cryptic) descriptions of purchases at their disposal. However, this proposal does impose an additional penalty for overstating deductions. This measure may be help to ensure compliance.
- No state administers a sales tax exemption for food without litigation, protest and controversy. The definitional problems are acute and continuing. Fortunately, New Mexico can adopt other state's regulations to better create "bright lines". The Department will still face a significant regulatory effort, however.
- Provisions contained in the bill may add another layer of complexity for taxpayers who do not currently participate in the federal food stamp program, especially for smaller retailers who may lack computer pricing and scanning technology.

OTHER SUBSTANTIVE ISSUES

TRD points out the mitigating factors to the regressive nature of the sales tax on food:

- One is the exemption allowed for food purchased with food stamps. 66,000 low-income families in New Mexico, with 170,000 persons, are food stamp recipients. Receipts from food purchased with food stamps (approximately $154 million in FY 2002) are already deductible from gross receipts.
- The other mitigating provision is the Low Income Comprehensive Tax Rebate (LICTR) which is intended to offset to some degree the regressive impacts of the GRT. LICTR is a refundable credit of up to $450 per year for households with income of less than $22,000.

TRD also makes the following tax policy arguments:

- In addition to adding an element of stability to the gross receipts tax, receipts of health practitioners grow more quickly than general revenue. Exempting this sector reduces the state's ability to generate adequate revenue from the gross receipts tax.
- Food expenditures historically are a very stable component of consumption. Gross receipts tax collections from food may help dampen volatility of state tax revenue collections. Over the last ten years, gross receipts tax collections on food have grown at a stable 1.7% compound rate per year.
    - A broad gross receipts tax base helps to limit the tax rate. This proposal, by significantly cutting the tax base, shifts a noticeable amount of tax burden to remaining taxpayers. The .5% gross receipts tax rate increase will impose a combined state and local rate of as much as 7.75% on some taxpayers, including low-income taxpayers.

SS/njw:yr