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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/10

SPONSOR Trujillo LAST UPDATED _____ HB 189

SHORT TITLE Restaurant Receipt Surtax & Tourism Fund SB _____

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	\$6,292.0	\$6,372.0	Recurring	Tourism Promotion Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
Tourism Department (TD)

SUMMARY

Synopsis of Bill

House Bill 189 creates the restaurant surtax which imposes a 0.25 percent surtax on the gross receipts of a prepared food or alcoholic beverage retailer. This bill also creates the tourism promotion fund and all revenues from the restaurant surtax are to be distributed to the tourism promotion fund for advertising and the promotion of New Mexico tourism. Money in the fund shall not revert to the general fund.

The effective date of this bill's provisions is July 1, 2010.

FISCAL IMPLICATIONS

TRD:

This estimate is made using the FY09 taxable gross receipts reported by certain businesses registered with North American Industry Classifications System designations of Full-Service Restaurants, Limited Service Eating Places, Special Food Services, Drinking Places, and a small portion of other designations in the major category of Accommodation and Food Services. The growth rate used for

this estimate is the forecast employment growth rate for New Mexico's Accommodation and Food Services Sector made by the University of New Mexico's Bureau of Business and Economic Research.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

In addition to the current state gross receipts tax rate of 5 percent, New Mexico's municipalities and counties are authorized to impose over 4 percent of local option gross receipts taxes (that figure excludes several additional local option taxes that have been authorized for selected local governments). Due to increasing imposition of local option taxes, the statewide gross receipts tax rate is increasing steadily. On average, a local option gross receipts tax of 2.07 percent was imposed by local governments statewide in FY09. Combined with the state gross receipts tax of 5 percent, the statewide weighted average tax rate was therefore 7.07 percent.

This bill increases the already high disparity in tax treatment of taxing prepared food more than food for home consumption.

To date, 23 states have passed legislation to conform their laws to the Streamlined Sales and Use Tax Agreement (SSUTA) - Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming. If New Mexico wishes to join the SSUTA in the future, the provisions of this bill would need to be repealed. Potential advantages for New Mexico of joining the SSUTA include encouraging remote vendors to collect and remit gross receipts tax and encouraging Congress to pass legislation requiring that all remote vendors collect and remit state and local sales taxes.

ADMINISTRATIVE IMPLICATIONS

TRD:

This bill will have a moderate impact. However, the effective date of this bill creates a very short time frame to implement systems changes and to insure proper taxpayer education. An effective date of January 1, 2011, would be more manageable for the Department.

OTHER SUBSTANTIVE ISSUES

TD:

New Mexico is one of only a handful of states without a dedicated source of funding for its advertising. TD is currently dependent upon the general fund for its advertising funding, and as such, must compete with other in-state agencies and programs for necessary funding.

The TD advertising contract for FY 2010 is \$2.6 million, while neighboring states spend considerably more (Arizona, \$6; Utah, \$7 million; Colorado \$15 million; and Texas \$24 million).

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc