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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/10
 LAST UPDATED 02/10/10 **HB** 203/aHBIC/aHTRC

SPONSOR Garcia, T. _____

SHORT TITLE Business Retention Gross Tax & Gaming Tax **SB** _____

ANALYST Gutierrez _____

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	(\$438.4)	(\$311.6)	Recurring	General Fund
		\$113.8	Recurring	Lincoln County
	\$438.4	\$750.0	Recurring	Ruidoso Downs Racetrack

(Parenthesis () Indicate Revenue Decreases)

Relates to SB39

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

State Racing Commission (SRC)

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment for House Bill 203 addresses two of the technical issues. First it strikes the word “area” allowing for the entire county to vote on the county business retention gross receipts tax. Second it inserts a section stating that the racetrack will owe money to the state if the credit the racetrack receives is in excess of the revenue generated from the county business retention gross receipts tax that is distributed to the general fund. The racetrack will owe the difference between the two and can not claim the county gaming tax credit until the excess amount has been remitted to the state.

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment for House Bill 203 lowers the county gaming tax credit to a maximum of \$750 thousand and allows the credit to be taken by those racetracks with a net win of less than \$15 million in the previous calendar year (Ruidoso Downs). This amendment also changes the date in which the credit can begin to January 1, 2010.

Synopsis of Original Bill

House Bill 203 authorizes counties containing gaming operator licensees that are racetracks to impose a local option county business retention gross receipts tax up to ¼ percent in 1/16 increments and amends the gaming control act to provide a gaming tax credit for certain gaming operators that are racetracks (Albuquerque Downs and Ruidoso Downs). This bill distributes the revenue from the business retention gross receipts tax to the general fund to offset the gaming tax credit with the remaining revenue distributed to the county. The business retention gross receipts tax is subject to a majority vote.

Because this bill contains an emergency clause, its provisions will become effective upon signature by the governor.

FISCAL IMPLICATIONS

Currently, only Ruidoso Downs would qualify for the gaming tax credit under this bill’s amended provisions. Although any county with a racetrack may impose the business retention gross receipts tax, this analysis assumes only the county who also qualifies for the credit (Lincoln County) would impose the tax. The analysis above also assumes Lincoln County imposes the full 0.25 percent tax. The table below shows the fiscal effects if different rates are imposed by Lincoln County. The bill states that the tax shall be in effect for no more than five years.

Fiscal Impact assuming full 0.25% increment in Lincoln County

(dollars in thousands)	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>	<u>FY17</u>	<u>TOTAL</u>
General Fund	(438)	(312)	-	-	-	280	470	-
Lincoln County	-	114	415	470	524	562	206	2,290
Ruidoso Downs Racetrack	438	750	750	750	750	470	-	3,908

Fiscal Impact assuming 0.1875% increment in Lincoln County

(dollars in thousands)	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>	<u>FY17</u>	<u>TOTAL</u>
General Fund	(438)	(312)	-	-	-	280	470	-
Lincoln County	-	-	124	165	205	234	37	764
Ruidoso Downs Racetrack	438	750	750	750	750	470	-	3,908

Fiscal Impact assuming 0.125% increment in Lincoln County

(dollars in thousands)	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>	<u>FY17</u>	<u>TOTAL</u>
General Fund	(276)	(306)	(27)	(27)	(19)	318	338	-
Lincoln County	-	-	-	-	-	-	-	-
Ruidoso Downs Racetrack	276	583	610	637	656	338	-	3,099

Fiscal Impact assuming 0.0625% increment in Lincoln County

(dollars in thousands)	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>	<u>FY17</u>	<u>TOTAL</u>
General Fund	(138)	(153)	(14)	(13)	(10)	159	169	-
Lincoln County	-	-	-	-	-	-	-	-
Ruidoso Downs Racetrack	138	291	305	318	328	169	-	1,549

These estimates are based on the December 2009 consensus forecast. Assuming the racetracks re-invest the savings from this bill back into the racetrack, the racetracks are estimated to experience growth of zero percent in FY 2012, one percent in FY 2013, and two percent in following years.

Looking at the last two calculations in the table above, it is apparent that Lincoln county can choose to impose only the 1/16 or the 2/16 increment of the tax and thus would not generate enough revenue from the tax for Ruidoso Downs to take full advantage of the credit.

SIGNIFICANT ISSUES

The recently licensed racetrack in Raton complicates any prediction of their net take for the year, although it is estimated that Raton will not fall below the \$15 million threshold in FY11. However, Raton may be close to the \$15 million threshold in CY10 and thus there may be some incentive to slow down the opening in CY10. It may be prudent to add an amendment to this bill stating that the gaming tax credit only applies if the racetrack was operating for the entire calendar year during the calendar year in which net take was less than \$15 million.

This bill presents a tax problem of applying different tax burdens to similar taxpayers for the same activity which raises concerns of fairness.

The county business retention gross receipts tax may be imposed by any county with a racetrack (Bernalillo, Lincoln, Dona Ana, San Juan, Lea and Colfax counties). 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 about 2.07 percent was imposed by local governments statewide in FY09. Combined with the state gross receipts tax of 5 percent, the weighted average statewide tax rate was therefore 7.07 percent.

ADMINISTRATIVE IMPLICATIONS

TRD:

IT systems must be changed to accommodate the new credit and calculate the annual distribution; however, only one (possibly two) taxpayers are expected to claim the credit so processing the credit would be a limited and manual process. A new county local option gross receipts tax would also need to be added but could be taken care of as part of the normal semi-annual rate change process. A new Business Credit will need to be added to GenTax CRS program creating a low IT impact as follows:

- 1) Changes to configuration for the business credit input - 40 hours
- 2) Changes to configuration for new transactions – 40 hours
- 3) Changes to revenue accounting – 40 hours
- 4) Testing – 40 hours

Total 160 hours

RELATIONSHIP

This bill relates to SB39 which lowers the gaming excise tax rate during a 3-year period on those racetracks with an annual net win of less than \$14 million (Ruidoso racino) to where their tax rate is 10 percent by FY13 and beyond; the same rate as non-profits.

TECHNICAL ISSUES

TRD:

The new CBRGRT is logically enacted pursuant to the County Local Option Gross Receipts Taxes Act. Under Section 7-20E-7 NMSA 1978 the receipts from taxes collected pursuant to the provisions of the County Local Option Gross Receipts Taxes Act are to be transferred to the respective counties “within the month following the month in which the tax[es are] collected.” The distribution in Section two of the proposed bill envisions “the balance of the net receipts attributable to [the CBRGRT] collected in the prior fiscal year” to be available each September in order to distribute an amount, offsetting the credit claims, to the General Fund and to distribute the remainder to the county; however, the entire balance of receipts collected throughout the previous fiscal year will have already been distributed to the county in the months following the months in which they were collected.

There is also no definition of “department” in the Gaming Control Act. Therefore, the reference to “department” in Section 3 (page 6, line 16) is unclear.

BLG/svb:mt

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