

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 01/22/10

SPONSOR Feldman LAST UPDATED _____ HB _____

SHORT TITLE Untaxed Insurance Service Gross Receipts SB 29

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
\$642.0	\$6,135.0	\$6,748.0	Recurring	General Fund
\$462.0	\$4,420.0	\$4,862.0	Recurring	Municipalities
\$98.0	\$939.0	\$1,033.0	Recurring	Counties

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Bill 29 amends Section 59A-6-6 NMSA 1978 to allow the gross receipts tax to be applied to insurers' receipts for administrative services only contracts and it amends Section 7-9-24 NMSA 1978 to clarify that receipts from administrative service only contracts are not exempt from the gross receipts tax.

Because no effective date is provided in the bill, its provisions will become effective ninety (90) days after the 2010 legislative session adjourns.

FISCAL IMPLICATIONS

TRD:

This estimate was made using data from Mathematica's 2007 report "Quantitative and Comparative Analysis of Reform Option for Extending Health Care coverage

in New Mexico.” The estimate uses the percent of self-insured employer plans that make up total private insurance and the non-medical expenditures under private insurance. Downward adjustments were made to these amounts to account for lower self-insured administrative costs and expenditures not affected by this proposal. This estimate assumes all receipts are from businesses with New Mexico nexus and no contracts leave the state to untaxed non-nexus businesses. To the extent this takes place the true revenue impact may be reduced.

SIGNIFICANT ISSUES

New Mexico taxes services through the gross receipts tax. Although insurers are exempt from gross receipts tax (in lieu of that tax they pay licenses and fees provided for in the Insurance Code), insurers provide a *service* of administrating a self-insured plan in which the insurer does not assume the insurance risk. Because this is a service, it would be more equitable if this non-insurance activity of insurance companies would be taxed.

Under current law, the insurance company third-party administrative contracts are not subject to the premiums tax. Thus, there is effectively no state tax on these receipts.

TRD:

Contracts could be structured where non-nexus insurers provide administrative services outside New Mexico for New Mexican customers. Their receipts would not be taxable under current gross receipts or compensating tax rules, placing in-state insurers at a disadvantage.

PRC:

Section 59A-6-6 NMSA 1978 places all tax collection of insurers within the purview of the New Mexico Insurance Code. When insurers contract with a person or entity to administer a self-insured plan, the employer takes on the risk of ensuring solvency and other insurance risks. The insurer that has contracted to perform administrative services contracts for these persons or entities does not assume the risk when it provides these services. When the insurer “is not the party to an insurance contract that promises to pay losses or benefits,” the insurer is not acting in the capacity of an insurer, and consequently does not meet the definition of an insurer as regards the administrative services contract.

The proposed amendment to Section 59A-6-6 NMSA would ensure that for these non risk-based services performed by insurers, the state of New Mexico could collect gross receipts tax, as it does for other service-based industries, entities and persons. Because many firms, along with the State of New Mexico and other IBAC purchasers, are self-insured and have administrative contracts with insurers, there is a potential for a significant collection of gross receipts tax on the business that the insurers perform for these entities.

ADMINISTRATIVE IMPLICATIONS

This bill will have a minimal impact on TRD.

TECHNICAL ISSUES

There should be a definition for “administrative services only contracts”.

OTHER SUBSTANTIVE ISSUES

Since the state contracts with some third-party administrators, its costs for these contracts would increase due to the imposition of the gross receipts tax.

BLG/svb

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