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

ORIGINAL DATE 01/22/10

SPONSOR Neville **LAST UPDATED** **HB**

SHORT TITLE Food Tax Retail Food Store Definition **SB** 81

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	**FY11**	**FY12**		
	($1,807.0)	($1,898.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB10 and SB31

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 81 expands the definition of retail food store to include establishments with over 75 percent of sales attributable to bottled water, ice and coffee can receive the gross receipts tax deduction for food enacted in 2004. This bill also changes the definition of food to meet the definition of the federal supplemental nutritional assistance program as opposed to the federal food stamp program (the name of the program was changed in October 2008).

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

FISCAL IMPLICATIONS

An analysis provided by TRD estimates that taxable gross receipts eligible for the proposed deduction for water, ice and coffee will be about $25.5 million in FY11. The tax base is estimated to grow by about 5 percent per year. With a FY10 statewide gross receipts tax rate of 7.07 percent, revenue will be reduced by about $1,807 thousand. Since local governments are held harmless from revenue losses associated with the food deduction expanded in this bill, the entire revenue loss will be borne by the general fund.

SIGNIFICANT ISSUES

LFC notes that while individual deductions from the gross receipts tax may have small fiscal impacts, their cumulative effect significantly narrows the gross receipts tax base. Narrowing the gross receipts tax base increases revenue volatility and requires a higher tax rate to generate the same amount of revenue.

ADMINISTRATIVE IMPLICATIONS

TRD:

> Implementation of the original food deduction proved very complex for the Department and especially for business taxpayers indicating that this change to the food deduction will require greater than average taxpayer education and employee training.

RELATIONSHIP

This bill relates to:

- SB10 which narrows the gross receipts deduction for food purchases to the sales of “staple foods”; and
- SB31 which also narrows the gross receipts food deduction by excluding soft drinks.

TECHNICAL ISSUES

On page 2, line 6, the name of the program is mistyped and should be supplemental not supplement.

OTHER SUBSTANTIVE ISSUES

TRD:

> The original intention of Section 7-9-92 was to deduct sales of home consumed food as defined by the federal Supplemental Nutritional Assistance Program (SNAP) bought from stores that participate in SNAP or meet the requirements participate in SNAP**.** Although coffee shops, such as Starbucks, do sell qualifying food for home preparation and consumption such as ground or whole bean coffee and bottled water they do not currently qualify for the food deduction because they do not meet the federal requirements to participate in SNAP.
>
> To qualify for participation in SNAP, a retail store must conform to at least one of two following criteria. It either must (criterion A) stock and offer a variety of foods on a continuous basis in each of four staple food categories – two of which must be perishable foods – or (criterion B) function as a specialty store attributing 50% or more of its gross retail sales to staple foods.
>
> The four categories of staple foods are:
>
> - Breads/cereals
> - Dairy products
> - Fruits and vegetables
> - Meat, fish, poultry

This bill would affect receipts from companies that sell water to businesses as well as for home use. Companies that deliver bottled water to homes and business will have to separate and tally home sales and business sales in order to qualify for the deduction.

DOH:

The proposed changes in SB81 conflict with the definition of a Retail Food Store in the Food Stamp Improvements Act of 1994 (P.L. 103-225, 108 stat.106).

BLG/mew

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