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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/11

SPONSOR Crook LAST UPDATED _____ HB 165

SHORT TITLE Define "Modified Combined Tax Liability" SB _____

ANALYST Burrows

Revenue (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$12.0	\$13.0	Recurring	Aviation Fund
	\$202.0	\$213.0	Recurring	Counties
	\$5,313.0	\$5,787.0	Recurring	Municipalities
	(\$5,526.0)	(\$6,013.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Taxation and Revenue (TRD)

Responses Not Received From

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

House Bill 165 provides consistent definitions of "modified combined tax liability" for the following tax credits:

- the rural job tax credit,
- the investment credit,
- the technology jobs tax credit,
- the high-wage jobs tax credit,
- the affordable housing tax credit, and
- the alternative energy product manufacturers tax credit.

The amendments eliminate from the definition of “modified combined tax liability” those liabilities for the interstate telecommunications gross receipts tax, the governmental gross receipts tax, the leased vehicle gross receipts tax, the leased vehicle surcharge, and the 911 emergency and relay service surcharges imposed by Sections 63-9D-5 and 63-9F-11 NMSA 1978. The bill also removes present law language that prevents the possibility of receiving more than one credit for the same expenditure (see Technical Issues).

The bill also amends the definition of “net receipts” in the Tax Administration Act (TAA) to include tax credits claimed and allowed in the month against gross receipts, compensating or withholding taxes for the purpose of determining distributions and transfers in the TAA.

The effective date of the provisions of this bill is July 1, 2011.

FISCAL IMPLICATIONS

According to TRD, the proposal is not expected to significantly affect taxpayers’ liabilities. However, changing the definition of “net receipts” will have the effect of holding local government distributions harmless for any tax credits claimed against the GRT, compensating or withholding taxes. There are currently five distributions in TAA that are based on either GRT or compensating tax net receipts. In FY10 credits reduced compensating tax net receipts by \$2.4 million and GRT net receipts by \$17.4 million. Fiscal impacts shown reflect the portion of those credits that applied against local revenue distributions. The general fund, which receives any remaining revenue after distributions have been allocated, will be negatively impacted.

TRD reports that although the bill limits the liabilities against which the tax credits may be applied, no taxpayers have or are expected to apply these credits to the interstate telecommunications gross receipts tax, the governmental gross receipts tax, the leased vehicle gross receipts tax, the leased vehicle surcharge, and the 911 emergency and relay service surcharges.

SIGNIFICANT ISSUES

The bill’s largest impact will flow from the monthly distribution to municipalities in Section 7-1-6.4 1978 NMSA, which is based on “net receipts for the month attributable to the GRT from business locations” associated with the municipality.

Moreover, three distributions based on the net receipts attributable to the compensating tax will be impacted: the distribution to the small cities assistance fund in Section 7-1-6.2, the distribution to the small counties assistance fund in Section 7-1-6.5, and the distribution to municipalities in Section 7-1-6.55, which was fully phased in for FY10. There will also be a small impact on the distribution to the aviation fund in Section 7-1-6.7C that is based on the net receipts attributable to the gross receipts tax.

ADMINISTRATIVE IMPLICATIONS

TRD reports that small changes to the systems used to process tax credits may be required.

TECHNICAL ISSUES

The amendments to the Alternative Energy Products Manufacturers Tax Credit, the Rural Job Tax Credit, the High-Wage Jobs Tax Credit, and the Affordable Housing Tax Credit remove present law language that is designed to prevent claiming more than one credit for the same tax liability. TRD reports that such “anti-double dip” language is good tax policy because it can prevent an excessive subsidy. (See page 13, lines 11-13, page 30, lines 17-19, page 32, lines 21-23, and page 36, lines 5-7.)

TRD reports that the bill title is not accurate; the bill pertains to tax credits, not tax deductions. The title also does not reflect amendments to the definition of “net receipts” in the Tax Administration Act. There may be confusion interpreting what “includes” means on page 4, line 6 of the bill.

OTHER SUBSTANTIVE ISSUES

According to TRD, this bill will hold municipalities and counties harmless from the costs of tax credits, even though they may be the partial or primary beneficiary of the state’s tax credits.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The definition of “modified combined tax liability” will be inconsistent as it applies to these tax credits. Tax credits will continue to be deducted from the amount of total net receipts prior to distribution pursuant to the TAA. The definition of “modified combined tax liability” will continue to include language that prevents the possibility of claiming more than one credit for the same tax liability.

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