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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/11
 LAST UPDATED 03/16/11 **HB** _____

SPONSOR Campos

SHORT TITLE Tax Definition of Livestock **SB** 552/a SCORC/aHTRC

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	<5.0	< 5.0	Recurring	General Fund
	< 5.0	< 5.0	Recurring	Local Funds

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		0.0	0.0	0.0	Recurring	General Fund (TRD operating)

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Livestock Board (NMLB)
 New Mexico Department of Agriculture (NMDA)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HTRC Amendment

House Taxation and Revenue Committee Amendment to Senate Bill 552, as amended, restores the bill to its original form with several useful clarifications and additions. The amendment provides that for the purpose of the Livestock Code, the definition there (which includes exotic animals in captivity) controls for any Livestock Code purpose. For the purpose of rules governing meat inspection, wild animals, poultry and birds are included.

The amendment reverses the adverse fiscal impact reported in the bill as amended by SCORC.

Synopsis of SCORC Amendment

Senate Corporations and Transportation Committee Amendment to Senate Bill 552 adopts for tax purposes the definition of livestock in the livestock code. This definition extends the gross receipts tax exemption for sale of agricultural products to include “exotic animals in captivity.”

The TRD analysis of the bill as amended estimates a significant revenue impact from this modest amendment. This entire analysis is included here in lieu of the original FIR analysis prior to amendment.

Synopsis of Original Bill

Senate Bill 552 provides an alternative definition of “Livestock” for the purpose of a gross receipts tax exemption for the sale of agricultural products. The definition of “livestock” in the livestock code at 77-1B-2L NMSA 1978 is slightly different from the definition of “Livestock” in this bill. The differences between these definitions denies the GRT exemption to the sale of exotic animals in captivity, but extends the exemption to the “carcasses thereof.”

Synopsis of SB 552 as amended by SCORC

TRD describes the bill as amended as follows:

Under current law, Section 7-9-18 NMSA 1978 provides an exemption from the gross receipts tax for the receipts of selling livestock. This proposal adds a definition of “livestock” to Section 7-9-18. The bill would define “livestock” as all domestic or domesticated animals that are used or raised on a farm or ranch, specifying what animals are included and excluding canine or feline animals. The following animals are specifically included in the definition of livestock: horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae. The SCORC amendment redefines the phrase “livestock” to mean all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and *exotic animals in captivity* and also includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico; provided that for the purposes of Chapter 77, Article 9 NMSA 1978, “animals” or “livestock” have the meaning defined in that article. “Animals” or “livestock” does not include canine or feline animals. For the purpose of the rules governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of “animals” or livestock”.

Effective Date: Not specified; 90 days following adjournment (June 17, 2011).

FISCAL IMPLICATIONS

The HTRC amendment restores the original fiscal estimate as reported by LFC:

If anything, this bill will generate very small amounts of revenue by excluding “exotic species in captivity.” There may be a very few ranches in the state that offer wild game hunts for exotic species, such as rhinoceros, cape buffalo, dall sheep, oryx or mouflon. The fees for these exotic game hunts would become taxable pursuant to the provisions of this bill. This small increase in revenue is shown as less than \$5.0, although could be

substantially more if more than one ranch in the state specializes in farm raising exotic animals for custom hunts.

A Google search on “exotic game ranches new mexico” generated the website for Good Ranch Hunting. This 52,000 acre ranch in Yeso, New Mexico (The ranch is located 38 miles WNW of Ft. Sumner, NM) advertises, among other hunts, exotic ram hunts include Texas Dall, Corsican, Black Hawaiian, Barbado & Mouflon rams. The ranch also offers mule deer and antelope hunts, although those are “farmed cervidae” and hunting fees for these species would be eligible for the GRT exemption.

~~HTRC amendment reverses this following adverse impact: TRD notes that, “...adding “exotic animals in captivity” to the definition of livestock is responsible for almost all of the revenue loss of this proposal. While dogs and cats are still excluded from the new definition of livestock, the proposed expansion may now include a large portion of other pet purchases. Merriam Webster defines exotic as “not native to the place where found.” Using this definition the majority of birds, reptiles, fish, and other small animals purchased in pet stores would now qualify as “livestock” and become deductible. Using data from the American Pet Products Association qualifying live animal purchases in FY 2012 are expected to be approximately \$500 million nationally, and \$3 million in New Mexico.”~~

SIGNIFICANT ISSUES

The definition of “livestock” in the livestock code at 77-1B-2L NMSA 1978 includes “all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals,” whereas the definition in this bill includes “all domestic or domesticated animals that are used or raised on a farm or ranch, including horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico and the carcasses thereof, but does not include canine or feline animals.”

“Farmed cervidae” are elk and deer, including white-tailed deer, red deer, mule deer, fallow deer, sika deer, moose, caribou, reindeer, and muntjac or barking deer. Apparently, the original intent of this bill was to allow the gross receipts tax exemption to farmed cervidae, but deny it to market hunting of other exotic species. After the amendment, however, TRD determines that there may be an unintended expansion of the exemption to exotic fish, birds, reptiles and other animals sold in pet stores.

To the extent that this expansion was intended and not simply an unintended consequence, the proposal will further narrow the gross receipts tax base. It will move New Mexico away from the tax policy goal of a broad based tax with a low rate.

The fiscal effect of the original bill was described by LFC as follows:

“If anything, this bill will generate very small amounts of revenue by excluding “exotic species in captivity.” There may a very few ranches in the state that offer wild game hunts for exotic species, such as rhinoceros, cape buffalo, dall sheep, oryx or mouflon. The fees for these exotic game hunts would become taxable pursuant to the provisions of this bill. This small increase in revenue is shown as less than \$5.0, although could be substantially more if more than one ranch in the state specializes in farm raising exotic

animals for custom hunts.

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PERFORMANCE IMPLICATIONS

HTRC amendment reverses the following:

~~After amendment, the bill provides an additional gross receipts tax exemption for pet shop proprietors. In general, TRD cannot audit or monitor exemptions because exemptions are not reported to the Department.~~

ADMINISTRATIVE IMPLICATIONS

TRD would have to add farmed cervidae to Regulation 3.2.106.7 NMAC

~~TRD would have to propose and promulgate regulations to explain clearly the line between domestic and exotic farm raised animals.~~

For the purposes of the exemption in Section 7-9-18 NMSA 1978, the term “livestock” is currently defined in Regulation 3.2.106.7 NMAC as:

3.2.106.7 - DEFINITIONS

B. LIVESTOCK:

- (1) The term “livestock” means:
 - (a) horses, including racehorses and pet horses; and
 - (b) those other domestic animals which are neither fish nor fowl and which are raised or used principally for one or more of the following purposes in the ordinary course of business:
 - (i) as food for human consumption, such as beef cattle;
 - (ii) for production of food for human consumption, such as dairy cattle for milk and related products;
 - (iii) for fiber, hides or pelts, such as sheep for wool; or
 - (iv) as breeding stock for animals raised or used principally for the purposes enumerated in Items (i) through (iii) of this subparagraph.
- (2) The term “livestock” excludes animals, other than horses, not used as food for human consumption, for production of food for human consumption, for fiber, hides or pelts or as breeding stock for one of the foregoing purposes, fish and fowl.
- (3) The following examples illustrate the provisions of Subsection B of Section 3.2.106.7 NMAC.
 - (a) Example 1: X owns a kennel. X breeds and sells dogs as part of the business. X must report the gross receipts derived from the sale of dogs. Dogs are not livestock.
 - (b) Example 2: Animals raised and used as laboratory animals, such as rats, mice, hamsters, guinea pigs, rabbits and primates, are not livestock.

This regulation 3.2.106.7 NMAC would need to be amended to reflect the new definition. The current regulation excludes “animals raised and used as laboratory animals, such as rats, mice, hamsters, guinea pigs, rabbits and primates.” The new definition of livestock would likely include most of these animals.

TECHNICAL ISSUES

~~TRD points out that the phrase “used or raised on a farm or ranch” may be unclear and that this exemption will still require regulation. Of particular note, a pet store owner would have no means of knowing whether an exotic fish bird or reptile was sold to a breeder or a casual, hobby owner.~~

~~Because the amendment reverses the fiscal impact of the bill from a small revenue gain to a more expansive revenue loss, the bill may fail the constitutional test of Article IX, Sec. 15. [Laws to be passed by bill; alteration of bill; enacting clause; printing and reading of bill.], which states,~~

~~“No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose...”~~

OTHER SUBSTANTIVE ISSUES

A Wikipedia search for “Muntjac” yielded the following information:

Muntjac, also known as **Barking Deer**, are small [deer](#) of the genus *Muntiacus*. Muntjac are the oldest known deer, appearing 15-35 million years ago, with remains found in [Miocene](#) deposits in France, Germany and Poland. The present-day species are native to [South Asia](#) and can be found from and [Sri Lanka](#) to southern [China](#), [Taiwan](#), [Japan](#), [India](#) and [Indonesian](#) islands. Inhabiting tropical regions, the deer have no seasonal [rut](#) and mating can take place at any time of year; this behaviour is retained by populations introduced to [temperate](#) countries. [Reeves's Muntjac](#) has been introduced to [England](#), with wild deer originating from escapes from [Woburn Park](#) around 1925. Muntjac have expanded very rapidly, and are now present in most English counties south of the [M62 motorway](#) and have also expanded their range into [Wales](#). The British Deer Society coordinated a survey of wild deer in the UK between 2005 and 2007 and reported that muntjac deer had noticeably expanded their range since the previous census in 2000. It is anticipated that muntjac may soon become the most numerous species of deer in England and may have also crossed the border into Scotland with a couple of specimens appearing in Northern Ireland in 2009; they have been spotted in the republic of Ireland in 2010, almost certainly having reached there with some human assistance.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Exotic game ranches would continue to claim the gross receipts tax exemption for receipts from farm-raised exotic livestock used for hunting purposes, but the exemption would not extend to sales of exotic fish, birds or reptiles sold by pet shop proprietors. Farmed cervidae would not be added to the definition of livestock for the purpose of the gross receipts tax exemption.

LG/bym:mew