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

ORIGINAL DATE 02/07/13
SPONSOR Beffort **LAST UPDATED** **HB**

SHORT TITLE Out-of-State Purchaser Gross Receipts **SB** 85

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
NFI						

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Economic Development Department (EDD)
New Mexico Municipal League (NMML)

SUMMARY

Synopsis of Bill

Senate Bill 85 bill provides a gross receipts tax deduction, until July 1, 2018, for small businesses for the sale of services to out-of-state purchasers. The receipts may be deducted provided that the small business has entered into a separate contract with the out-of-state purchaser to provide those services and the services are delivered by remote delivery. The bill defines a small business as one with fewer than ten employees. To qualify for this deduction, the business must have paid gross receipts taxes for the five consecutive years prior to the first year in which this deduction is taken. Deductions taken under this section must be reported separately by the taxpayer, and the department must annually report to the Revenue Stabilization and Tax Policy Committee (RSTP) on the deductions taken pursuant to this section.

Effective Date: July 1, 2013

FISCAL IMPLICATIONS

The bill imposes no revenue impact on either the State or local governments, since the deduction duplicates that of Section 7-9-57 NMSA 1978.

SIGNIFICANT ISSUES

TRD notes that the language of the proposal is similar to Section 7-9-55 NMSA 1978, which provides a deduction for transactions in interstate commerce to the extent that the taxation is not preempted by general rules regarding interstate commerce. This covers most regular interstate transactions that can be envisioned. The provisions also largely duplicate those of Section 7-9-57 NMSA 1978 which require the purchaser provide the seller an NTTC or other evidence acceptable to the Secretary. The Section 7-9-57 deduction is not allowed if the purchaser or the purchaser's agent makes first use of the services in New Mexico. Therefore, this proposed deduction makes two significant changes: (1) it relieves the service provider (seller) of obtaining a resale certificate or alternative evidence (insignificant fiscal impact) and (2) it would permit the out-of-state purchaser to make first use of the services in the state without tax, as long as the product of the service were delivered remotely to an out-of-state address. For example, a travel agent could make a booking for a business traveler whose home address was Arizona but who was physically present in New Mexico when making the request. The ticket confirmation would be mailed or emailed to the traveler's remote website. This also has insignificant revenue impact.

EDD states the bill's purpose may be to lower the overall costs of companies attempting to provide research and development services to out-of-state clients. However, the specification that the deduction would apply to companies with fewer than ten employees and have paid gross receipts taxes pursuant to the provisions of the Gross Receipts and Compensating Tax Act for the five consecutive years prior to the first year in which the deduction is taken, implies that the target beneficiary of the deduction is a very small industry sector. If this GRT deduction is intended to reduce the costs of research and development prior to manufacture it may further reduce the pyramiding for this industry.

NMML urges consideration of the impact of exemptions, credits and deductions on local governments.

ADMINISTRATIVE IMPLICATIONS

TRD notes that this deduction will impose minimum processing impacts, but substantial costs for designing a separate form, building the manual-entry computer system to process the separate reports and extracting information from the system to prepare the annual report for the legislature, totaling 300 IT hours. Instructions and publications related to the gross receipts and compensating tax program will need modification. Reporting and processing systems will need to be developed. One major problem is that "small business" is an unverifiable construct. What happens in the year that a small business hires its tenth employee? Would that tenth employee retroactively disallow the business from claiming this deduction? The bill creates a unique status for an insignificant number of taxpayers. The implementation costs and compliance costs for eligible taxpayers create a huge imbalance between costs and benefits.

The receipts from the transactions addressed are already deductible under current law. In addition, the small business would still need to maintain records to support the deduction for federal audit purposes. There would be very little incentive for the small business to claim this deduction. The bill demands that the business conform to separate procedures (i.e., separately stated deductions on a separate form provided by the Department).

Requiring taxpayers to separately state deductions is an inaccurate method of capturing this information. Historically the Department has found that taxpayers do not follow this instruction very well, since there is no penalty for failure to report or to erroneously report. If three or fewer taxpayers elect to claim this new deduction, confidentiality laws would limit the information that could be reported to RSTP committee in determining if the deduction is performing its purpose.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

SS/svb:bm