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FISCAL IMPACT REPORT

SPONSOR: Komadina DATE TYPED: 02/21/01 HB _____
 SHORT TITLE: “Place of Business” Defined SB 454
 ANALYST: Hayes

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	(*)		Recurring	General Fund
	(*)		Recurring	County Fire Protection & Environmental taxes
	*		Recurring	some Municipalities
	(*)		Recurring	other Municipalities
	*		Recurring	TRD Administrative Fees

(Parenthesis () Indicate Revenue Decreases)

Relates to HB190

*Taxation and Revenue Department does not have information on the value of services provided to municipalities by service providers located outside the particular municipality purchasing the services.

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD), bill analysis and fiscal impact report
Taxation and Revenue Department Selected Laws and Regulations
 Attorney General’s Office

SUMMARY

Synopsis of Bill

This bill amends Section 7-1-14 NMSA 1978 and proposes that the reporting location for taxable gross receipts attributable to the sale of services to a municipality be reported to that municipal location. The particular services affected include waste disposal, hydrology, engineering and legal services.

Significant Issues

The bill's effect on the provision of services for refuse collection (presumably a subset of "waste disposal") is somewhat unclear. Receipts of a municipality related to refuse collection is taxed under the Governmental Gross Receipts Tax. A municipality billing its citizens for refuse collection would be liable for Governmental Gross Receipts Tax even if the services were performed by a private contractor. A nontaxable transaction certificate (NTTC) could be issued and the private contractor would have no tax liability.

On the other hand, if a municipality paid the contractor out of general tax revenues, the contract would be taxable under gross receipts tax which would be reported to the municipal location as specified in this bill. If the contractor billed citizens directly, it could be argued the service provider was not actually "*contracting to provide... services to a municipality*" and the gross receipts might be reported under the traditional "place of business" definitions.

The appropriate reporting location for gross receipts tax purposes seems to present a continuing source of confusion to many taxpayers, at least when the location is other than their usual place of business. When the "place of business" in the common usage of the phrase is identical to "place of business" as used in tax law, there is no confusion. The bill's proposal to change the reporting location based on the entity to whom the service is sold creates a fairly minor, but completely new, level of complexity in tax reporting.

Compliance with the reporting requirement in this bill would require close monitoring by the municipalities affected. TRD's Report 455 entitled Listing of Taxpayers Reporting Gross Receipts to Municipality would provide the necessary information to municipal governments, but monitoring and follow-up would be the responsibility of the municipality. The Taxation and Revenue Department receives no information regarding the entity for whom services were performed and would have no way to evaluate whether particular types (or portions) of services were correctly reported.

Department follow-up on questions from municipalities regarding specific taxpayers, and follow-up on misreported locations would impose an additional burden on the agency, and taxpayer amendments to tax returns would result in negative adjustments to the distribution of taxes associated with the original report location. At least until taxpayers become familiar with the new rule, such adjustments could be frequent and could cause hard feelings among jurisdictions.

Many business contracts include provisions to adjust the amount of the contract for changes in tax rates. The Taxation and Revenue Department is unsure whether such provisions are common for service contracts with municipalities, but this and other transition issues are possible. It is the department's experience that this is the type of tax law change which may give rise to unforeseen issues.

FISCAL IMPLICATIONS

The negative impact on the state's general fund would result from service providers with out-of-state business locations or in unincorporated areas where the effective state tax rate is 5.0%. Changing the reporting location to the municipality purchasing the services changes the effective state tax rate to 3.275%. The negative impact on county fire protection and environmental taxes results from similar changes in reporting location. A positive fiscal impact on TRD administrative fees imposed on local option taxes would also result from any shift of reporting location into municipal area. Those fees are currently dedicated to TRIMS/NMFA computer system development bonds.

In sum, certain municipalities would benefit from this bill and others may be harmed. In a municipality such as Albuquerque with a large service provider base, it is difficult to assess how this bill may affect its receipts.

ADMINISTRATIVE IMPLICATIONS

Taxpayers must be provided with a notice of changes in tax reporting requirements, such as the taxpayer filing kit which includes tax forms and instructions. Pursuant to TRD's schedule, the next package of tax forms and instructions that taxpayers receive will be for the reporting period of July 2001 taxable activity. TRD anticipates taxpayer confusion, misreporting and subsequent amendments to reporting locations resulting in an adverse administrative impact to the agency.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

HB190 also addresses the municipality as the "place of business," but it does not define specific types of services such as hydrology, engineering, etc. HB190 is broader in application since it applies to all services rendered to a municipality.

TECHNICAL ISSUES

The bill needs to have an effective date section specifying the first day of implementation. It is suggested that the bill be amended to state the effective date as July 1, 2001.

Additional language may be required to define what services are covered by this legislation. Services such as "waste disposal" and "hydrology" may be sufficiently defined; however, "engineering" and "legal services" may present problems. For example, portions of bond underwriter services include some level of legal services performed.

CMH/ar