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

SPONSOR Chandler/ Armstrong, D. /Armstrong, G./ Brown
ORIGINAL DATE 1/25/22
LAST UPDATED 1/30/22
HB 47/ec/aHHHC

SHORT TITLE Exclude Home Health Care From DSB Sourcing
SB

ANALYST Torres

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24	FY25	FY26		
($500.0)	($2,100.0)	($2,175.0)	($2,225.0)	($2,300.0)	Recurring	General Fund
($160.0)	($650.0)	($665.0)	($685.0)	($710.0)	Recurring	Counties
$500.0	Positive, about $2,000.0 in total annually, shifting among municipalities. See Fiscal Implications				Recurring	Municipalities

Parenthesis ( ) indicate revenue decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

No Response Received
New Mexico Municipal League
New Mexico Counties

SUMMARY

Synopsis of HHHC Amendment

The Health and Human Services Committee amendment for HB47 includes technical clarifications to make clear the reporting location of the businesses for tax purposes is at the location of primary use.

Synopsis of Original Bill

House bill 47 provides an exception to the destination-based sourcing rules for reporting gross receipts tax (GRT) under Section 7-1-14 NMSA 1978 for home health services, hospice services, and personal care services performed in New Mexico. This exception reverts those services to origin-based sourcing for gross receipts. In other words, the business location of the service provider will be used to determine gross receipts tax liability rather than the location of where the service is performed. The bill defines home health services, hospice services, and personal care services.

This bill contains an emergency clause and would become effective immediately upon signature by the governor, though the implementation is set to either April 1, 2022 or June 1, 2022, whichever has not yet passed when the bill becomes effective.

FISCAL IMPLICATIONS

Gross receipts tax data for the first five months of destination-based sourcing show an increase in remainder-of-county healthcare related matched taxable gross receipts of $78.3 million. Discounting some of the increase for potential growth, 90 percent of the increase is assumed to be a result of destination-based sourcing. HB47 would move that amount of activity back to municipalities where the state would pay 1.225 percent, and counties would lose county-specific increment revenue. County specific increment revenue includes county fire protection excise tax and county environmental services gross receipts tax, together totaling up to three-eighths of one percent. Those revenue losses are reflected in the table above. Similarly, municipalities would gain the 1.225 percent from the state, and is reflected above.

More significant than the total revenue gains and losses for the state, counties, and municipalities is the indeterminate shifting of revenues between municipalities that is likely to occur. For two closely located cities, GRT is likely to shift significantly towards the location of the providers, if they are not located in the population center of the area.

Beginning in FY22, the administration of gross receipts taxes changed from origin-based sourcing to destination-based sourcing. In general, this change requires tax to be determined by the location of the destination of the good or service rather than the previous method of determination at the location of the seller. This change allows local gross receipts taxes to be applied to out-of-state providers, leveling the playing field for New Mexico businesses. It also allows municipal and county governments to receive revenue from out-of-state sellers.

In the first five months of available tax data, total gross receipts tax revenues to the state's municipalities is up 28 percent over the same period in FY21 and up about 17 over FY20. The increase is in large part because of the impacts of destination based sourcing.

This bill has a cost that is difficult to determine. The committee recommends bills adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration.

Administrative & Compliance Impact: The transition from origin to destination based sourcing rules that went into effect July 1, 2021 has proven problematic for taxpayers. The Tax Information and Policy Office of TRD has experienced a high-volume of requests for clarification and assistance to understand the new law. The allowance of a further exception to the rules would add another layer of complexity to an already complicated set of reporting requirements and require further customer service resources and time.

This change would require TRD to update current forms, publications, and media to work on getting the information out to the public on this additional change to destination-based sourcing.

As part of forms, GRT Filers Kits are printed and mailed bi-annually to align with potential rate changes on July 1 and January 1. The Tax Information and Policy Office estimates making the required changes would take 80 hours of employee time.

The contingent effective dates of either April 1, 2022 or June 1, 2022 adds to the complexity and resource needs to ensure complete readiness for TRD and taxpayers. TRD recommends an effective date of July 1, 2022 or January 1, 2023 to align with GRT rate changes and ensure proper implementation of the legislation.

SIGNIFICANT ISSUES

It is unclear how the bill would address medical services that are provided over the internet through telehealth.

Specified health service providers are likely burdened by the reporting required of destination-based sourcing as clients may reside in different tax districts. Yet, HB47 fails to meet the LFC tax policy principle of equity, as it provides specific tax treatment to a given industry. Making industry specific exemptions in the tax code is likely to encourage additional exceptions as each industry seeks its preferred tax treatment.

The Taxation and Revenue Department notes the following:

> The exception to destination-based sourcing rules for the home health care industry would make tax reporting easier for the industry. Due to the nature of the industry, a single employee may service clients located in multiple tax jurisdictions in a given day or period. Permitting the industry to report tax liability on an origin basis would reduce their reporting burden and increase compliance.
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> However, this bill creates another exception to the current destination-based sourcing rules not for a category or class of professions, but for three specific professions. This would be the only example in the current statute that a specific profession is called out as not having to follow the destination sourcing rules. Currently under Section 7-1-14 NMSA 1978, there are five categories of services that have separate rules for determining the reporting location for GRT. For all these categories, a whole class of services is specified. Professional services, for example, covers not only lawyers, but anyone who is required to have a master's degree or higher to perform the services question, or is required to have a license from the state to perform the services.
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> The exclusion of home health care services from destination-based sourcing may be viewed as preferential treatment of a specific industry. The exclusion may also set precedent in the tax code for other professions with a similar reporting structure of a home office and staff in various field locations providing services to expect special treatment. This may cause concerns over favoritism and lead to other industries requesting a similar allowance, potentially resulting in more complex tax code as industries shift between sourcing rules. Furthermore, the administrative complexity of reporting receipts of one individual to multiple locations may be ameliorated or even eliminated through billing software that is available on the market. Finally, TRD's regulations regarding destination sourcing allow the use of "reasonable estimates" in sourcing receipts, as has been expressed in multiple presentations by the Department to affected taxpayers. Using reasonable estimates to source receipts would also considerably

alleviate the administrative burden under current sourcing rules.

In 2021 Tax Expenditure Report, TRD summarizes 'Principles of Good Tax Policy.'[1] The proposed exceptions to the destination-based statues challenge the concepts of equity and simplicity among GRT taxpayers. Regarding equity, this exception erodes horizontal equity where similarly-situated taxpayers face similar tax burdens. Regarding simplicity, taxpayers incur compliance burdens as they prepare, submit, and keep records about tax returns. Likewise, TRD incurs administrative costs to collect taxes, review the accuracy of tax returns and tax payments, and bring taxpayers into compliance. The exception to the destination-based sourcing as noted above further complicates the tax code for both taxpayers and TRD. The more complicated the code, the higher the cost everyone must bear to ensure compliance.

ADMINISTRATIVE IMPLICATIONS

TRD may be unable to make the appropriate change by the April 1, 2022 deadline.

TECHNICAL ISSUES

On page 4, lines 11 and 12, the bill states that, the reporting location is "the location of the performer of the service or seller of the product of the service." These can be two different locations. The performer of the services may be an individual working for a company that is performing these services in-person at the customer's home, but the seller of the services is the location of the company. The likely intent of this bill is to simplify for the provider of the home health services where the reporting location should be, allowing the location to be wherever their business is located. The language currently does not do this (nor does the language of the current statute do this for 'professional services'). To meet the assumed intent of the exception language, TRD suggests that this language be revised to specify that the location of the services is the location where the business resides or is located.

TRD recommends an effective date of July 1, 2022 or January 1, 2023 to align with GRT rate changes and ensure proper implementation of the legislation.

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

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[1] 2021 New Mexico Tax Expenditure Report, New Mexico Taxation and Revenue Department, https://www.tax.newmexico.gov/forms-publications/