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

ORIGINAL DATE 02/13/07
SPONSOR Heaton **LAST UPDATED** 02/19/07 **HB** 692

SHORT TITLE Oxygen Delivery Gross Receipts **SB**

ANALYST Hanika Ortiz/Schardin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	(7.9)		Recurring	General Fund
	(5.3)		Recurring	Local Governments

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

No Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 692 expands the gross receipts tax deduction for prescription drugs created in Section 7-9-73.2 to include oxygen and oxygen services provided by a licensed Medicare durable medical equipment provider.

FISCAL IMPLICATIONS

The Taxation and Revenue Department has not commented on the fiscal impact of this bill.

LFC notes that while individual deductions from the gross receipts tax may have small fiscal impacts, their cumulative effect significantly narrows the gross receipts tax base. Narrowing the gross receipts tax base increases revenue volatility and requires a higher tax rate to generate the same amount of revenue.

The bill will also reduce local government gross receipts tax collections. Many of New Mexico's local governments are highly dependent on gross receipts tax revenue.

SIGNIFICANT ISSUES

Oxygen used for breathing and prescribed and administered by a physician already qualifies as a prescription drug under section 201(g)(1) of the federal Food, Drug, and Cosmetic Act [21 USC 321(g)(1)] because it is intended for use in the cure, mitigation, treatment, or prevention of disease.

Under current law, TRD is already counting oxygen as a prescription drug, so the bill would only extend the deduction to oxygen and oxygen services that are not prescribed by a doctor. TRD believes this will impact a small number of transactions with tax base of about $200 thousand per year. Taxed at a statewide rate of 6.6 percent, the proposal would reduce revenue by about $13.2 thousand per year. About 60 percent of that revenue loss would be to the general fund and the remaining 40 percent to local governments.

ADMINISTRATIVE IMPLICATIONS

The bill will have a minimal administrative impact on TRD. TRD reports that gross receipts tax deductions are easier to administer when they begin on January 1 or July 1 because that is when revised instructions are sent to taxpayers. The bill will also clarify an issue that has been raised in certain taxpayer audits by making receipts from both prescription and non-prescription oxygen eligible for the deduction.

TECHNICAL ISSUES

TRD recommends adding a provision to make the bill effective on July 1, 2007.

AMENDMENTS

Page 1, line 22 before the word “oxygen” place “prescribed.”

SS/csd