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

ORIGINAL DATE 2/03/09
SPONSOR Lujan, B. **LAST UPDATED** **HB** 510

SHORT TITLE Clinical Nonprofit Lab Service Gross Receipts **SB**

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	**FY10**	**FY11**		
	($544.9)	($1,182.7)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

House Bill 510 creates a new phased-in gross receipts tax credit for receipts from services provided by a not-for-profit clinical laboratory for which payment is not received. In FY10, the credit will be equal to 33 percent of the value of unpaid services. In FY11 the credit will increase to 67 percent and in FY12 and beyond the credit will equal the entire value of unpaid services.

The value of unpaid services will be the amount charged for the services but limited to 130 percent of the reimbursement rate for services under the Medicaid program. To qualify for the credit, clinical laboratory services must remain unpaid after one year from the date of billing and must meet the following criteria: the services must have been provided to a person without health insurance or whose health insurance would not cover the services, and who was not eligible for Medicaid. The services must also not be reimbursable under a program established in the Indigent Hospital and County Health Care Act.

The effective date of these provisions will be July 1, 2009.

FISCAL IMPLICATIONS

TRD:
The credit can only be claimed against gross receipts tax due. Under Section 7-9-29 NMSA 1978, gross receipts from nonprofit organizations with 501(c)(3) status, are exempt. There would be no fiscal impact for laboratories with 501(c)(3) status; however, there are laboratories in New Mexico without 501(c)(3) status that could still be considered "not-for-profit." Data provided to the Legislative Finance Committee by a laboratory organized as a not-for-profit corporation indicates they had $1.3 million in qualifying unpaid bills in calendar year 2006. The above estimate illustrates the revenue impact due to their credit claims as the bill is phased in. It is assumed that qualifying unpaid bills grow at 7% annually.

SIGNIFICANT ISSUES

The proposal would bring tax relief to certain clinical labs for the value of uncompensated services they provide. However, the proposal also reduces the incentive for these businesses to undertake collection efforts, since amounts they do not collect will increase their credit.

LFC research found only one taxpayer, TriCore Reference Laboratories, operating in New Mexico on a not-for-profit basis. TriCore's business is split into two branches. One branch services inpatient needs in hospitals so would not be eligible for the proposed credit. The other branch services the commercial market. TriCore's commercial labs are not located in hospitals or physician offices, so they would be eligible for the proposed credit.

According to a similar bill introduced during the 2008 session, representatives of TriCore reported that services are often provided without compensation in the following types of scenarios:

- If a specimen is collected at a physician's office or nursing home and submitted to the lab without correct or complete insurance information;
- If a test is ordered without the proper diagnosis code or ordering code;
- If a test is ordered that is not reimbursed by Medicaid or Medicare;
- If a patient does not inform the lab that they have insurance until after the date by which insurance must be billed has passed.

LFC notes that while individual credits, deductions and exemptions 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.

LFC notes that receipts of health practitioners have historically grown faster than receipts of other industries. Removing receipts from high-growth sectors from the gross receipts tax base makes it more difficult for tax revenue to keep pace with inflation.

ADMINISTRATIVE IMPLICATIONS

TRD:
This proposal will have a low to moderate impact on the Department. One fourth of an additional FTE would be required to manually approve, process, and track the credits. New forms, instructions, publications, and processing procedures will be developed initially. It will be difficult for the Taxation and Revenue Department (TRD) to determine or verify if the person receiving services was insured, covered by Medicaid or whether health insurance did not cover the service at the time service was provided. The proposal will have a low IT impact estimated at 120 hours to add a new business credit to the GenTax CRS program.

Provisions of the bill would be extremely difficult to audit. In audit, TRD would have to determine the reimbursement rate for the unpaid service from voluminous code books for medically defined services which are easily coded incorrectly. Auditors would need as much information as a Medicaid investigator and would have to determine what services were performed and the correct reimbursement rate.

The bill does not contain a sunset date and there is no provision for reporting on this credit. It is important for policy makers to have regular information and an opportunity to review the effectiveness of the credit.

TECHNICAL ISSUES

The bill does not define “not-for-profit.” The bill should be amended to reference federal tax code.

If a taxpayer receives payment for their unpaid services after the credit is claimed the taxpayer will be able to keep the full amount of the credit and their full payment. A claw-back provision should be added to insure the taxpayers do not, in effect, receive double payment for their services.

The proposal should state that the credit can only be taken in the report period in which the one-year period lapses to make clear that a lab cannot wait until the credit is fully phased in to 100% and then claim credits for unpaid services going back as far as they have kept records.

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity****: taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc

HPC:
Receipts from a physician’s services that might be provided in a free standing clinical and/or anatomical laboratory owned by the pathologist are excluded from the deduction. It appears that the pathologist’s professional services would receive the deduction, but the facility fee would not be eligible. Is this the intent of the bill?

POSSIBLE QUESTIONS

Is there a tax policy argument why the small subset of clinical laboratories that are not-for-profit and are not located in a physician’s office or hospital should receive preferential tax treatment?

BLG/mt