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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/10  
 SPONSOR Cisneros LAST UPDATED 03/02/10 HB \_\_\_\_\_  
 SHORT TITLE Food Tax, Gross Receipts and Distributions SB 12  
 ANALYST Gutierrez

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	\$199,384.0	\$217,204.0	Recurring	General Fund
	\$3,204.0	\$3,535.0	Recurring	Counties
	(\$3,221.0)	(\$6,449.0)	Recurring	Municipalities
	\$209.0	\$230.0	Recurring	Tax Increment Development Districts
	\$40.0	\$43.0	Recurring	Aviation Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 12 increases the state gross receipts and compensating tax rate to 5.25 percent. This bill also repeals the food deduction but creates a 5.25 percent credit for food so that only local tax rates will apply to food at an average tax rate of slightly over 2 percent. The state would discontinue that portion of local government hold harmless distributions that are attributable to local option taxes. However, the state would continue to make a separate hold harmless distribution to municipalities equal to 1.225 percent of food sales for which a tax credit is claimed. The rate of this distribution would decrease in FY12 to 1.05 percent. This bill also amends the compensating tax, to impose the tax on purchases that are not subject to the gross receipts tax only because the seller does not have nexus with the state.

The effective date of this bill's provisions is July 1, 2010.

## FISCAL IMPLICATIONS

This estimate uses the December 2009 consensus estimate of taxable gross receipts (TGR). According to that estimate, TGR will be \$46.32 billion in FY11, \$48.99 billion in FY12, \$51.26 billion in FY13 and \$53.47 billion in FY14. The compensating tax base is estimated to be \$1.58 billion in FY11, \$1.66 billion in FY12, \$1.75 billion in FY13, and \$1.83 billion in FY14. This estimate also assumes the current 3.25 percent administrative fee continues into the future. See Attachment 1 for a table showing how the local governments' impact is distributed in FY12 and Attachment 3 for a breakdown of the fiscal year impacts.

## SIGNIFICANT ISSUES

### HISTORY OF STATE RATE

July 1, 1990 to present - 5.0%

July 1, 1986 through June 30, 1990 - 4.75%

July 1, 1983 through June 30, 1986 - 3.75%

July 1, 1981 through June 30, 1983 - 3.5%

July 1, 1978 through June 30, 1981 - 3.75%

Before July 1, 1978 - 4.0%

In addition to the current state gross receipts tax rate of 5 percent, New Mexico's municipalities and counties are authorized to impose over 4 percent of local option gross receipts taxes (that figure excludes several additional local option taxes that have been authorized for selected local governments). Due to increasing imposition of local option taxes, the statewide gross receipts tax rate is increasing steadily. On average, a local option gross receipts tax of about 2.07 percent was imposed by local governments statewide in FY09. Combined with the state gross receipts tax of 5 percent, the weighted average statewide tax rate was therefore 7.07 percent in FY09. Assuming no other local option taxes are imposed during this time, this bill would increase the average statewide gross receipts tax rate to 7.32 percent (see Attachment 2 for current local option tax rates).

### TRD:

#### Compensating tax loophole example:

Example of Problem: If a business buys a backup generator from a New Mexico seller down the street the gross receipts tax will be paid. If the business buys the generator in Colorado and brings it back into New Mexico they will pay the compensating tax. But there's a loophole, if they get the generator shipped into New Mexico by a seller without physical presence in New Mexico neither the compensating nor gross receipts tax will be collected.

Fix: This bill redefines when the compensating tax can be applied – to ensure that tangible personal property acquired from out-of-state sellers without physical presence in New Mexico is subject to the state's compensating tax. The bill conforms with the Commerce Clause of the US Constitution and recent New Mexico court decisions governing the applicability of the compensating and gross receipts taxes.

## ADMINISTRATIVE IMPLICATIONS

TRD notes the administrative complexity of this bill is above average and will also require significant effort to educate the tax payers and retailers in order to ensure a smooth transition.

## OTHER SUBSTANTIVE ISSUES

New Mexico's GRT is imposed on a wider array of goods and services than the sales taxes of most other states. One consequence is that many business-to-business transactions are taxed, a procedure often termed "pyramiding". This practice increases overhead for New Mexico businesses, and may put them at a disadvantage when competing with businesses in other states. In addition, small businesses that purchase more of their inputs from other firms will experience a larger tax burden, placing them at a disadvantage with larger businesses. Estimates have put the share of the GRT imposed on business-to-business transactions between one-third and one-half of the total tax base.

To the extent that the GRT is shifted forward to consumers in the form of higher prices, the incidence of the tax may fall more heavily on low income households than on higher income households. Evidence for this impact is limited, since the ultimate incidence of tax imposed on business-to-business transactions is difficult to predict or measure.

BLG/svb

***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](http://www.nmlegis.gov/lcs/lfc)***

**Total Local Government Impact  
Fiscal Year 2012 (thousands)**

<u>County</u>		<u>Municipality Cont.</u>		<u>Municipality Cont.</u>	
Bernalillo County	1,207	Carlsbad	213	Magdalena	(2)
Catron County	21	Carrizozo	(1)	Maxwell	0
Chaves County	(22)	Causey	0	Melrose	(1)
Cibola County	(2)	Chama	(6)	Mesilla	0
Colfax County	(1)	Cimarron	0	Milan	(11)
Curry County	(14)	Clayton	(11)	Moriarty	(9)
De Baca County	21	Cloudcroft	1	Mosquero	0
Dona Ana County	640	Clovis	(143)	Mountainair	4
Eddy County	(9)	Columbus	106	Pecos	50
Grant County	(6)	Corona	0	Peralta	(0)
Guadalupe County	15	Corrales	109	Portales	(50)
Harding County	30	Cuba	34	Questa	105
Hidalgo County	16	Deming	(62)	Raton	84
Lea County	(10)	Des Moines	0	Red River	(3)
Lincoln County	(3)	Dexter	(3)	Reserve	(2)
Los Alamos County	(37)	Dora	(0)	Rio Rancho	68
Luna County	(1)	Eagle Nest	0	Roswell	(192)
McKinley County	(47)	Edgewood	(67)	Roy	(1)
Mora County	16	Elephant Butte	(0)	Ruidoso	(13)
Otero County	(11)	Elida	(1)	Ruidoso Downs	(50)
Quay County	12	Encino	0	San Jon	0
Rio Arriba County	(6)	Espanola	(107)	San Ysidro	(1)
Roosevelt County	(1)	Estancia	(3)	Santa Clara	108
San Juan County	(58)	Eunice	(4)	Santa Fe	(584)
San Miguel County	(4)	Farmington	(293)	Santa Rosa	(9)
Sandoval County	176	Floyd	0	Silver City	(94)
Santa Fe County	1,421	Folsom	0	Socorro	65
Sierra County	3	Fort Sumner	(5)	Springer	29
Socorro County	5	Gallup	52	Sunland Park	0
Taos County	(16)	Grady	0	Taos	(133)
Torrance County	6	Grants	63	Taos Ski Valley	1
Union County	15	Grenville	0	Tatum	(3)
Valencia County	225	Hagerman	53	Texico	69
County Supported Medicaid Fund	(45)	Hatch	(11)	Tijeras	1
<b>County Total</b>	<b>3,535</b>	Hobbs	(143)	Truth or Consequence	77
		Hope	0	Tucumcari	85
<b>Municipality</b>		House	0	Tularosa	100
Alamogordo	35	Hurley	62	Vaughn	(1)
Albuquerque	(6,079)	Jal	101	Virden	0
Angel Fire	3	Jemez Springs	(0)	Wagon Mound	(0)
Artesia	31	Lake Arthur	0	Willard	0
Aztec	(39)	Las Cruces	(367)	Williamsburg	0
Bayard	102	Las Vegas	(71)	<b>Municipal Total</b>	<b>(6,449)</b>
Belen	(63)	Logan	(4)		
Bernalillo	24	Lordsburg	43	<b>Local Gov Total</b>	<b>(2,914)</b>
Bloomfield	3	Los Lunas	31		
Bosque Farms	105	Los Ranchos De Albuquerque	101	Local Government	
Capitan	63	Loving	43	Total Excluding	
		Lovington	(34)	Albuquerque	3,165

<b>Local Option Tax Rates as of January 1, 2010</b>				
	City Imposed Rate	County Imposed Rate	Total Local Rate	Total Tax Rate*
Bernalillo County	0.0000%	0.9375%	0.9375%	5.9375%
Albuquerque	0.8125%	0.8125%	1.6250%	6.6250%
Los Ranchos de Albuquerque	1.1250%	0.8125%	1.9375%	6.9375%
Rio Rancho (part)	1.4375%	0.8125%	2.2500%	7.2500%
Tijeras	1.0000%	0.8125%	1.8125%	6.8125%
Catron County	0.0000%	0.5000%	0.5000%	5.5000%
Reserve	1.4375%	0.3750%	1.8125%	6.8125%
Chaves County	0.0000%	0.9375%	0.9375%	5.9375%
Dexter	1.2500%	0.5625%	1.8125%	6.8125%
Hagerman	1.4375%	0.5625%	2.0000%	7.0000%
Lake Arthur	0.7500%	0.5625%	1.3125%	6.3125%
Roswell	1.4375%	0.5625%	2.0000%	7.0000%
Cibola County	0.0000%	1.5625%	1.5625%	6.5625%
Grants	1.8125%	1.0625%	2.8750%	7.8750%
Milan	1.4375%	1.0625%	2.5000%	7.5000%
Colfax County	0.0000%	0.6250%	0.6250%	5.6250%
Angel Fire	2.0625%	0.2500%	2.3125%	7.3125%
Cimarron	1.4375%	0.2500%	1.6875%	6.6875%
Eagle Nest	1.8125%	0.2500%	2.0625%	7.0625%
Maxwell	0.5000%	0.2500%	0.7500%	5.7500%
Raton	2.5625%	0.2500%	2.8125%	7.8125%
Springer	1.4375%	0.2500%	1.6875%	6.6875%
Curry County	0.0000%	0.7500%	0.7500%	5.7500%
Clovis	1.8125%	0.6250%	2.4375%	7.4375%
Grady	0.9375%	0.6250%	1.5625%	6.5625%
Melrose	1.5000%	0.6250%	2.1250%	7.1250%
Texico	1.5625%	0.6250%	2.1875%	7.1875%
DeBaca County	0.0000%	1.1875%	1.1875%	6.1875%
Fort Sumner	1.4375%	0.8125%	2.2500%	7.2500%
Dona Ana County	0.0000%	1.2500%	1.2500%	6.2500%
Hatch	1.4375%	0.8750%	2.3125%	7.3125%
Las Cruces	1.5625%	0.8750%	2.4375%	7.4375%
Mesilla	1.8125%	0.8750%	2.6875%	7.6875%
Sunland Park	1.4375%	0.8750%	2.3125%	7.3125%
Eddy County	0.0000%	0.6250%	0.6250%	5.6250%
Artesia	1.8125%	0.2500%	2.0625%	7.0625%
Carlsbad	2.0625%	0.2500%	2.3125%	7.3125%
Hope	1.2500%	0.2500%	1.5000%	6.5000%
Loving	1.4375%	0.2500%	1.6875%	6.6875%

<b>Local Option Tax Rates as of January 1, 2010</b>				
	City Imposed Rate	County Imposed Rate	Total Local Rate	Total Tax Rate*
Grant County	0.0000%	1.0625%	1.0625%	6.0625%
Bayard	1.4375%	0.6875%	2.1250%	7.1250%
Santa Clara	1.4375%	0.6875%	2.1250%	7.1250%
Hurley	1.4375%	0.6875%	2.1250%	7.1250%
Silver City	1.5625%	0.6875%	2.2500%	7.2500%
Guadalupe County	0.0000%	1.3125%	1.3125%	6.3125%
Santa Rosa	1.8125%	1.0625%	2.8750%	7.8750%
Vaughn	1.3125%	1.0625%	2.3750%	7.3750%
Harding County	0.0000%	0.6250%	0.6250%	5.6250%
Mosquero (part)	1.0625%	0.3750%	1.4375%	6.4375%
Roy	1.4375%	0.3750%	1.8125%	6.8125%
Hidalgo County	0.0000%	0.9375%	0.9375%	5.9375%
Lordsburg	1.5625%	0.8125%	2.3750%	7.3750%
Virden	0.7500%	0.8125%	1.5625%	6.5625%
Lea County	0.0000%	0.3750%	0.3750%	5.3750%
Eunice	1.4375%	0.2500%	1.6875%	6.6875%
Hobbs	1.4375%	0.2500%	1.6875%	6.6875%
Jal	1.4375%	0.2500%	1.6875%	6.6875%
Lovington	1.3750%	0.2500%	1.6250%	6.6250%
Tatum	1.4375%	0.2500%	1.6875%	6.6875%
Lincoln County	0.0000%	0.3750%	0.3750%	5.3750%
Capitan	1.4375%	0.2500%	1.6875%	6.6875%
Carrizozo	1.6250%	0.2500%	1.8750%	6.8750%
Corona	1.5625%	0.2500%	1.8125%	6.8125%
Ruidoso	3.0625%	0.2500%	3.3125%	8.3125%
Ruidoso Downs	1.5625%	0.2500%	1.8125%	6.8125%
Los Alamos (county and city)	1.4375%	0.7500%	2.1875%	7.1875%
Luna County	0.0000%	1.3750%	1.3750%	6.3750%
Columbus	1.4375%	1.0000%	2.4375%	7.4375%
Deming	1.3750%	1.0000%	2.3750%	7.3750%
McKinley County	0.0000%	1.6250%	1.6250%	6.6250%
Gallup	1.0813%	1.1250%	2.2063%	7.2063%
Mora County	0.0000%	0.8125%	0.8125%	5.8125%
Wagon Mound	1.3750%	0.4375%	1.8125%	6.8125%
Otero County	0.0000%	0.8125%	0.8125%	5.8125%
Alamogordo	2.0625%	0.4375%	2.5000%	7.5000%
Cloudcroft	1.8125%	0.4375%	2.2500%	7.2500%
Tularosa	1.8125%	0.4375%	2.2500%	7.2500%

<b>Local Option Tax Rates as of January 1, 2010</b>				
	City Imposed Rate	County Imposed Rate	Total Local Rate	Total Tax Rate*
Quay County	0.0000%	1.3125%	1.3125%	6.3125%
House	1.4375%	1.1875%	2.6250%	7.6250%
Logan	1.8125%	1.1875%	3.0000%	8.0000%
San Jon	1.8125%	1.1875%	3.0000%	8.0000%
Tucumcari	1.8125%	1.1875%	3.0000%	8.0000%
Rio Arriba County	0.0000%	1.1875%	1.1875%	6.1875%
Chama	1.8125%	0.8125%	2.6250%	7.6250%
Espanola (part)	2.0625%	0.8125%	2.8750%	7.8750%
Roosevelt County	0.0000%	1.0625%	1.0625%	6.0625%
Causey	0.5000%	1.0625%	1.5625%	6.5625%
Dora	0.7500%	1.0625%	1.8125%	6.8125%
Elida	1.3125%	1.0625%	2.3750%	7.3750%
Floyd	0.5000%	1.0625%	1.5625%	6.5625%
Portales	1.5625%	0.0106%	1.5731%	6.5731%
Sandoval County	0.0000%	1.1250%	1.1250%	6.1250%
Bernalillo	1.5625%	0.3750%	1.9375%	6.9375%
Corrales	1.6875%	0.3750%	2.0625%	7.0625%
Cuba	2.3125%	0.3750%	2.6875%	7.6875%
Jemez Springs	1.4375%	0.3750%	1.8125%	6.8125%
Rio Rancho (part)	0.0169%	0.3750%	0.3919%	5.3919%
San Ysidro	1.2500%	0.3750%	1.6250%	6.6250%
San Juan County	0.0000%	1.1875%	1.1875%	6.1875%
Aztec	1.8125%	0.8125%	2.6250%	7.6250%
Bloomfield	1.7500%	0.8125%	2.5625%	7.5625%
Farmington	1.1875%	0.8125%	2.0000%	7.0000%
San Miguel County	0.0000%	1.3750%	1.3750%	6.3750%
Las Vegas	1.8125%	0.8750%	2.6875%	7.6875%
Mosquero (part)	1.0625%	0.8750%	1.9375%	6.9375%
Pecos	1.4375%	0.8750%	2.3125%	7.3125%
Santa Fe County	0.0000%	1.5000%	1.5000%	6.5000%
Edgewood	1.5000%	1.2500%	2.7500%	7.7500%
Espanola (part)	2.0625%	1.2500%	3.3125%	8.3125%
Santa Fe	1.8125%	1.2500%	3.0625%	8.0625%
Sierra County	0.0000%	1.1875%	1.1875%	6.1875%
Elephant Butte	1.3125%	1.0625%	2.3750%	7.3750%
Truth or Consequences	1.4375%	1.0625%	2.5000%	7.5000%
Williamsburg	1.3750%	1.0625%	2.4375%	7.4375%
Socorro County	0.0000%	0.8125%	0.8125%	5.8125%
Magdalena	1.3125%	0.4375%	1.7500%	6.7500%
Socorro	1.4375%	0.4375%	1.8750%	6.8750%

<b>Local Option Tax Rates as of January 1, 2010</b>				
	City Imposed Rate	County Imposed Rate	Total Local Rate	Total Tax Rate*
Taos County	0.0000%	2.0000%	2.0000%	7.0000%
Questa	1.5625%	1.5000%	3.0625%	8.0625%
Red River	1.8125%	1.5000%	3.3125%	8.3125%
Taos	1.5625%	1.5000%	3.0625%	8.0625%
Taos Ski Valley	2.0625%	1.5000%	3.5625%	8.5625%
Torrance county	0.0000%	1.3750%	1.3750%	6.3750%
Encino	1.0625%	0.8750%	1.9375%	6.9375%
Estancia	1.5625%	0.8750%	2.4375%	7.4375%
Moriarty	1.4375%	0.8750%	2.3125%	7.3125%
Mountainair	1.6875%	0.8750%	2.5625%	7.5625%
Willard	1.3125%	0.8750%	2.1875%	7.1875%
Union County	0.0000%	0.9375%	0.9375%	5.9375%
Clayton	1.8125%	0.9375%	2.7500%	7.7500%
Des Moines	1.4375%	0.9375%	2.3750%	7.3750%
Folsom	1.4375%	0.9375%	2.3750%	7.3750%
Grenville	1.4375%	0.9375%	2.3750%	7.3750%
Valencia County	0.0000%	1.2500%	1.2500%	6.2500%
Belen	1.8125%	0.8750%	2.6875%	7.6875%
Bosque Farms	1.6875%	0.8750%	2.5625%	7.5625%
Los Lunas	1.5625%	0.8750%	2.4375%	7.4375%
Peralta	1.4375%	0.8750%	2.3125%	7.3125%

\* Includes the State tax rate of 5%



Estimated Revenue Impact by Component*						Fund(s) Affected
FY2010	FY2011	FY2012	FY2013	FY2014	FY 10-14	
<b>Increase Gross Receipts and Compensating Tax by 0.25% and Fix Compensating Tax Loophole</b>						
0	40	43	45	47	174	Aviation Fund
0	209	230	253	279	972	TIDDs
0	25	279	285	294	883	Counties
0	454	3,008	3,173	3,331	9,967	Municipalities
0	131,462	140,327	146,932	153,298	572,020	General Fund
<b>0</b>	<b>132,191</b>	<b>143,888</b>	<b>150,688</b>	<b>157,248</b>	<b>584,016</b>	<b>Subtotal</b>
<b>Repeal Food Deduction</b>						
<b>(Local governments switch from hold harmless distributions to actual tax revenue from their local options)</b>						
0	3,179	3,324	3,482	3,651	13,637	Counties
0	(4,254)	(4,451)	(4,662)	(4,889)	(18,257)	Albuquerque
0	579	605	633	664	2,481	Other Municipalities
0	67,921	71,198	74,576	78,199	291,894	General Fund
<b>0</b>	<b>67,425</b>	<b>70,675</b>	<b>74,029</b>	<b>77,626</b>	<b>289,755</b>	<b>Subtotal</b>
<b>Reduce 1.225% Food Hold Harmless Distribution to Municipalities by 0.175% to 1.05%</b>						
0	0	(69)	(72)	(76)	(217)	Los Alamos
0	0	(5,610)	(5,877)	(6,162)	(17,649)	Municipalities
0	0	5,680	5,949	6,238	17,867	General Fund
<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>Subtotal</b>
<b>Total Combined Draft Bill Impact</b>						
0	40	43	45	47	174	Aviation Fund
0	209	230	253	279	972	TIDDs
0	3,204	3,535	3,695	3,869	14,302	Counties
0	(3,221)	(6,449)	(6,733)	(7,056)	(23,458)	Municipalities
0	199,384	217,204	227,457	237,735	881,781	General Fund
<b>0</b>	<b>199,616</b>	<b>214,563</b>	<b>224,717</b>	<b>234,874</b>	<b>873,770</b>	<b>Total</b>

\* In thousands of dollars. Parentheses ( ) indicate a revenue loss. \*\* Recurring (R) or Non-Recurring (NR).

Source: Taxation and Revenue Department