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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/02/12  
**LAST UPDATED** 02/09/12    **HB** 165

**SPONSOR** Doyle

**SHORT TITLE** Define "Commercial Personal Property"    **SB** \_\_\_\_\_

**ANALYST** Smith

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14	FY15	FY16		
	Unknown	Unknown	Unknown	Unknown	Recurring	Local Governments

(Parenthesis ( ) Indicate Revenue Decreases)

This FIR is being revised to incorporate previously unavailable analysis from TRD.

### SOURCES OF INFORMATION

LFC Files

Responses Received From

**TRD**

### SUMMARY

#### Synopsis of Bill

HB-165 defines "commercial personal property." as tangible personal property classified for depreciation purposes as three, five, seven, ten or fifteen-year property pursuant to Section 168 of the federal Internal Revenue Code of 1986. This applies only to the Community Development Incentive The Community Development Incentive Act allows a city or county governing body to vote to exempt certain tangible personal property from any municipal or county operating or debt levy imposed on the tangible personal property.

**Effective Date:** July 1, 2012

### FISCAL IMPLICATIONS

TRD reports this legislation could cause shortfalls in smaller county tax bases that could not be offset by yield controlled millage rate changes. The impact, however, is unknown.

This bill will not impose any exemption from property tax outside the levies approved by the

electing jurisdiction.

### **SIGNIFICANT ISSUES**

The Community Development Incentive Act was originally enacted in 1991 and was substantially expanded in 2003. However, there is no record within the Department that any tangible personal property has been exempted from taxation pursuant to the provisions of the CDIA. There is the potential that the personal property assessment in any particular jurisdiction might be divided into tangible personal property exempt from taxation (for a period of up to 20 years) pursuant to the definition in this section and other, similar commercial property used by non-qualifying businesses and assessed as real property. As noted in the following technical issue, exemption for real property or tangible personal property included as a component part of real property can only be enacted by the people as a constitutional amendment.

### **TECHNICAL ISSUES**

TRD reports that this bill would permit municipalities or counties to exempt, by resolution, from property taxation three, five, seven, ten or fifteen-year property pursuant to Section 168 of the Internal Revenue Code. Since this bill would provide for an exemption of personal property from ad valorem taxation, Article VIII of the New Mexico Constitution, Section 3 requires that the bill be approved by a three-fourths majority vote of all the members elected to each house of the Legislature. Since a specific vote is required for this legislation to pass, the title of the bill should indicate the intention to provide for an exemption of personal property from ad valorem taxation.

Section 168 of the Internal Revenue Code details the appropriate depreciation method for each type of property. Under the IRC, leasehold improvement property and restaurant property are defined as tangible personal property, however, in New Mexico statute, these are both defined as real personal property. Thus, both of these facilities could become exempt as tangible personal property for the purpose of CDIA in electing communities, but would remain taxable in all other non-electing jurisdictions. To distinguish between real and personal property, it might be helpful to define “commercial personal property” as “tangible personal property, which is not an ingredient or component part of a construction project, but is classified for depreciation purposes as three-year property, five-year property, seven-year property, ten-year property or fifteen-year property pursuant to Section 168 of the federal Internal Revenue Code of 1986, as that section may be amended or renumbered.”

It appears that the reference to Section 168 applies only to the classification method used to determine the depreciation of tangible personal property outlined in subsection (e). However, the reference could be interpreted to include all the provisions of Section 168, which could become much more problematic. A suggested amendment would either make explicit reference to the relevant subsection or add the language from Section 168 directly to the New Mexico statute.

### **OTHER SUBSTANTIVE ISSUES**

This bill may be counter to the LFC tax policy principle of adequacy. According to the LFC staff General Fund Recurring Appropriation Outlook for FY14 and FY15, December 2011 forecasted revenues will be insufficient to cover growing recurring appropriations.

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

Perhaps the sponsor should consider a “sunset clause” so that the efficacy of the exemption could be evaluated.

HSS/amm:lj