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

SPONSOR Strickler **ORIGINAL DATE** 02/15/13 **LAST UPDATED** 03/08/13 **HB** 315/aSCORC

SHORT TITLE Tax Payment & Manufacturer Gross Receipts **SB**

ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	**FY14**	**FY15**	**FY16**	**FY17**		
$0.0	$0.0	$0.0	$0.0	$0.0	NA	NA

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Economic Development Department (EDD)
Attorney General's Office (AGO)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of SCORC Amendment

House Bill 315 amendment removes section 3 entirely which reinstates the separate reporting requirement.

Synopsis of Original Bill

House Bill 315 adds a new section of the Tax Administration Act for special agreements for alternative gross receipts taxpayers. This section allows the payment of gross receipts tax by a person who is not the liable taxpayer upon approval by the Secretary of TRD. This person must assume the rights and responsibilities as taxpayer pursuant to the Tax Administration Act:

1. An agreement to collect and pay over tax for persons in a business relationship;
2. An agreement to collect and pay over taxes for a direct sales company;
3. A manufacturer's agreement to pay gross receipts tax or governmental gross receipts tax on behalf of a utility company.

This person shall complete a form prescribed by the Secretary of TRD and provide information or documentation required by the department rules or instructions.

Section 7-9-46 NMSA 1978, deduction from gross receipts tax for manufacturers, is amended to eliminate the requirement by TRD to report annually to the revenue stabilization and tax policy committee details of this deduction. The bill also eliminates the taxpayer reporting requirements as well.

The applicability date of this bill is May 1, 2013. There is no effective date of this bill. This bill contains an emergency clause, and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

There are no fiscal implications to this bill.

The bill provides explicit authority for the Secretary of the Taxation and Revenue Department to allow a GRT taxpayer to assign its tax payment liability to a third party where certain business relationships exist, and approve an agreement whereby the assignee agrees to assume the rights and responsibilities assignor taxpayer. Such tax assignment agreements shall be for a specified period of time, and subject to the approval of the Secretary. The person approved to accept a GRT taxpayer's responsibilities shall be deemed to be the taxpayer with respect to all rights and responsibilities related to that tax except to apply credits and refund against that assigned tax liability.

SIGNIFICANT ISSUES

As reported by the AGO, the new statutory section proposed under HB 315 ("SECTION 1") would be codified under the Tax Administration Act, NMSA 1978 §§ 7-1-1 to -82. Despite altering rights with respect to payment liability for the gross receipts tax, no mention of the new right is made in the Gross Receipts and Compensating Tax Act, Section 7-9-1 to -114, which governs the gross receipts tax. Providing a reference in the gross receipts section may ease navigation of Chapter 7 by New Mexico taxpayers.

As reported by DFA:
This bill is intended to simplify the manufacturing GRT deduction that was passed during the 2012 legislative session, by allowing GRT liability for electricity and other utilities not consumed in the manufacturing process and not otherwise deductible to be passed on to manufacturers. Without this legislation, utility companies may be required to separately meter that portion of the manufacturer's operation that pertains to administrative procedures rather than manufacturing.

Utility companies are not well placed to determine which portion of the manufacturer's GRT liability is deductible and which is not. Under this proposal, the utility company can reassign the entire tax liability to the manufacturer, which is best able to determine which portion of the consumed utility is deductible.

The provisions under this proposal are not unlike Non-Taxable Transaction Certificates (NTTCs), which allow certain types of taxpayers to pass on the gross receipts tax to other tax-payers. This proposal codifies current practice and clarifies TRD's authority to transfer GRT liability from the seller to the buyer of goods or services. In particular, this bill could decrease the administrative burden on sellers of intermediate goods who may be unable to determine whether the final product is taxable or exempt.

Removal of the reporting requirements under Section 7-9-46 will simplify the payment process for manufacturers and will better ensure taxpayer confidentiality. Such reporting requirements create an administrative burden for taxpayers, and could potentially violate taxpayer confidentiality by revealing proprietary information to business competitors.

PERFORMANCE IMPLICATIONS

SCORC amendment reinstates the reporting requirement. The LFC tax policy of accountability is met since TRD is required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

Taxation & Revenue is the administering agency.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The GRT tax liability cannot be transferred to another person.

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

EWM/blm