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

SPONSOR Smith

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HB

SHORT TITLE Remote Sellers Gross Receipts

SB 539/aSFC

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	**FY14**	**FY15**	**FY16**	**FY17**		
	Small					Gross Receipts

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 539 removes the repealer of the exemption for out-of-state services whose work product is used in New Mexico.

Synopsis of Original Bill

Senate Bill 539 imposes gross receipt or compensating tax on the seller or buyer of goods delivered from out-of-state to a buyer located in New Mexico. The bill also repeals the exemption for out-of-state services whose work product is used in New Mexico.

FISCAL IMPLICATIONS

It is unlikely that this bill will generate a significant fiscal impact because:

- Sellers of goods who have nexus with New Mexico are already subject to tax.
- Under section 7.9.7.1, the TRD is barred taking collection action on “internet” buyers subject to compensating tax.
- It is not clear that sellers of services actually establish nexus with New Mexico.
- Purchasers of out-of-state services are not subject to compensating tax

SIGNIFICANT ISSUES

Current law puts local accountants, attorneys, and other service providers at a disadvantage relative to out-of-state service providers. An in-state bookkeeping service is liable for tax; ADP Corporation is not. While compliance would be difficult to enforce, that is not a good reason to provide an exemption. The latest estimate for this tax expenditure is $20 million.

For the reasons noted above, analysts are hesitant to formally score the bill. However, TRD believes that the potential effect of the e-commerce portion of this bill is a very large positive impact on revenues. With the continued rise of e-commerce, the impact only stands to grow. A 2009 study by University of Tennessee researchers estimated a 2012 revenue loss to New Mexico of $120 million from not taxing E-commerce. The 2010 Census estimates that Business to Consumer (B2C) E-Commerce grew by over 10% from 2009 to 2010, much higher than the 3.5% gain in total B2C value. Impacts are estimated using that 10% growth rate. The primary issue is the ability to obtain compliance with respect to the potential array of transactions subject to taxation. In the table below there is presented a revenue estimate that assumes that a 2% of potential revenues could be realized in FY14, growing to 4% in FY15, 8% in FY16 and 15% in FY17. Of course, achieving even these levels of compliance will require significant new audit and compliance initiatives by the Taxation and Revenue Department (TRD), and much of the compliance in initial years will be dependent on voluntary payment of gross receipts tax (GRT) tax obligations with respect to the new e-commerce transactions made taxable by implementation of SB-539.

e-Commerce Estimated Revenue Impact*					**Recurring or Nonrecurring**	**Fund(s) Affected**
FY13	**FY14**	**FY15**	**FY16**	**FY17**		
—	$1,687.0	$3,643.0	$7,869.0	$15,935.0	Recurring	General Fund
—	$1,124.0	$2,429.0	5,246.0	$10,623.0	Recurring	Local Governments
—	**$1,124.0**	**$2,429.0**	**5,246.0**	**$10,623.0**	**Recurring**	**Total**

TECHNICAL ISSUES

Repealing Section 7-9-13.1 in its entirety may have unforeseen and negative consequences. The exemption on R&D sales to the federal government is reprinted below:

(2) sold to the United States by persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress; or

(3) sold to persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress.

This could have unforeseen effects on a very large part of the gross receipts

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

Exemption; gross receipts tax; services performed outside the state the product of which is initially used in New Mexico; exceptions. (1989)

Statute text

A. Except as provided otherwise in Subsection B of this section, exempted from the gross receipts tax are the receipts from selling services performed outside New Mexico the product of which is initially used in New Mexico.

B. The exemption provided by this section does not apply to research and development services other than research and development services:

(1) sold between affiliated corporations;

(2) sold to the United States by persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress; or

(3) sold to persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress.

C. An "affiliated corporation" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation. "Control" means ownership of stock in a corporation which represents at least eighty percent of the total voting power of that corporation and has a stated or par value equal to at least eighty percent of the total stated or par value of the stock of that corporation.

History

History: 1978 Comp., § 7-9-13.1, enacted by Laws 1989, ch. 262, § 4.

Annotations

Compiler's notes. — Laws 1993, ch. 31, § 13A, effective July 1, 1993, repealed Laws 1989, ch. 262, § 11, which

SS/svb