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

**ORIGINAL DATE** 2/9/15

**SPONSOR** Adkins **LAST UPDATED** ______ **HB** 246

**SHORT TITLE** Small Business & Restaurant Gross Receipts **SB** ______

**ANALYST** van Moorsel

## REVENUE (dollars in thousands)

| Estimated Revenue | | | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| FY15 | FY16 | FY17 | FY18 | FY19 | | |
| $0.0 | ($440.0) | ($460.0) | ($470.0) | ($490.0) | Recurring | General Fund |
| $0.0 | ($290.0) | ($300.0) | ($320.0) | ($330.0) | Recurring | Local Governments |
| $0.0 | ($730.0) | ($760.0) | ($790.0) | ($820.0) | Recurring | Total |

(Parenthesis ( ) indicate revenue decreases

**SOURCES OF INFORMATION**
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

**SUMMARY**

Synopsis of Bill

House Bill 246 creates a new section of the Gross Receipts and Compensating Tax Act to create a gross receipts tax (GRT) deduction for gross receipts from the retail sale of goods or the sale of food if the sales occur between on the first Saturday after Thanksgiving, and the seller averaged gross annual revenues of less than $1 million in the last five years.

The bill requires taxpayers to separately state the deduction and requires TRD to compile a report analyzing the effectiveness of the deduction and present it to the Revenue Stabilization and Tax Policy Committee and the LFC beginning in 2018.

The bill states the purpose of the deduction is to increase sales at small, local businesses and restaurants. The effective date of this bill is July 1, 2015. The sunset date of this bill is July 1, 2019. As such, the deduction would only be in effect the first Saturday after Thanksgiving in 2016, 2017, and 2018.

## FISCAL IMPLICATIONS

TRD estimates the number of retail and food service classified taxpayers with greater than zero, but less than $1 million in annual revenue is about 36 percent of the total in the selected sectors, but they account for about eleven percent of gross receipts tax paid.

TRD used taxpayer-level data to determine the average proportion of taxpayers by revenue and NAICS sector, using total gross receipts as a proxy for gross revenue. TRD notes this has the effect of only considering New Mexico receipts.

TRD reports it collects gross receipts tax data on a monthly, rather than a daily basis, adding that some assumptions and references to outside information were necessary in arriving at this estimate. TRD used the Small Business Saturday Consumer Insights Survey, released in December, 2014 by the National Federation of Independent Business (NFIB) and American Express, which estimates nationwide Small Business Saturday sales of $14.3 billion in 2014, up 2.1 percent from $14 billion in 2013. Using Bureau of Economic Analysis data on personal consumption expenditures by state, New Mexico personal consumption expenditures are about 0.6 percent of total national expenditures on average for the five most recent available years (2008 – 2012).

Combining these two figures, TRD estimates New Mexico sales on Small Business Saturday 2014 to have been about $86.8 million. Considering TRD data for the month of November shows about $2.27 billion in total gross receipts in the applicable sectors, this seems like a reasonable estimate: $86.8 million is about 3.8 percent of total November taxable gross receipts, and so accounts for an above-average sales day (1/30 = 3.33 percent). Assuming that small businesses, as defined, constitute about eleven percent of the total, TRD estimates this deduction would have represented about $9.5 million in gross receipts and $650 thousand in gross receipts tax revenue in 2014. The size of the deduction is assumed to grow at the rate of GRT growth as estimated in the February 2015 consensus revenue forecast.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

## SIGNIFICANT ISSUES

The bill aims to make a new GRT deduction for gross receipts from retails sales by a business or restaurant on "Small Business Saturday," the Saturday after Thanksgiving. However, as TRD points out, it may not be easy for consumers to determine which small businesses qualify for the deduction by virtue of their annual revenues, as these data are not easily available.

## PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement 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

TRD states the bill will require extensive changes to Gentax and related systems, as well as the development of business rules for the calculation of average annual revenues. TRD states the effective date of July 1, 2015 is too soon to make the required changes.

This bill requires the deduction to be separately stated from other deductions. As TRD's Combined Reporting System (CRS) is currently implemented, the deduction could be accounted for using special rate codes or location codes, but system performance, both in information technology system and manual processing terms, is degraded as more codes are added. The added complexity also decreases the likelihood of correct filing by taxpayers. Historically, taxpayer compliance with separately stated deductions has been low. TRD is therefore limited in its ability to report accurately on the deduction, if accurate information is not filed by the taxpayer.

More than 7,000 taxpayers in Gentax report under more than one CRS account. Procedures would have to be developed to deal with the average revenue calculation for these taxpayers.

## TECHNICAL ISSUES

TRD states the bill does not clearly provide a procedure for businesses that have been open for less than five years to qualify for the deduction. There should be language to clarify how their gross annual revenue is to be calculated. Further, TRD contends the measurement of "gross annual revenue" is not sufficiently explained. For example, the treatment of franchises of larger chains may be able to qualify, although it seems unlikely that they are the target group. TRD suggests revenue should be explicitly defined as either New Mexico revenue or revenue everywhere. TRD adds using "total gross receipts reported in New Mexico" could solve this problem.

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

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