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

SPONSOR Wirth **ORIGINAL DATE LAST UPDATED** 1/31/15 **HB**

SHORT TITLE Unitary Corp. Restaurant Tax Reporting **SB** 57

ANALYST van Moorsel

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
$0.0	$20.0	$40.0	$30.0	$30.0	Recurring	General Fund

(Parenthesis ( ) indicate revenue decreases

Relates to SB 56 – Unitary Corporation Combined Tax Reporting.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 57 amends the Corporate Income and Franchise Tax Act to require a restaurant that is a unitary corporation to file a combined return. The bill defines a restaurant as a coffee shop, cafeteria or other eating establishment that gives or sells food, including kitchens and catering facilities in which food is prepared on the premises for serving elsewhere or a bar area within or attached to the premises. "Restaurant" does not include a private or public school cafeteria.
Current law permits combined filing, but only requires it for unitary corporations that provide retail sales of goods in a facility of more than 30 thousand square feet that do not also have non-retail operations in New Mexico with at least 750 employees.

The provisions of SB 57 apply to taxable years beginning on or after January 1, 2016.

FISCAL IMPLICATIONS

In estimating the impact of SB57, TRD used Tax Year 2012 New Mexico corporate income tax (CIT) data. Income tax paid by the separate corporate entities “SCE” is approximately $162 million, and approximately $137 million is paid by unitary combined and federal consolidated filers. A review of several experiences and studies on combined reporting provided estimates ranging from zero change to a 20 percent revenue increase. TRD's analysis assumed requiring combined reporting for restaurants would result in a 20 percent revenue increase. However, this initial rate of increase is expected to diminish as taxpayers adjust their operations and corporate structures to minimize taxation. Consensus corporate income tax growth rates were used to estimate the impact in the subsequent years. The first fiscal year impact is a partial impact.

SIGNIFICANT ISSUES

DFA states in its analysis of a similar bill that mandatory combined reporting of corporate income treats a group of wholly owned or majority-owned companies and other entities (such as trusts and partnerships) as a single entity for tax purposes. In New Mexico, this would require a corporation to add its income to the income of its parent, sister, and subsidiary corporations, and then calculate its New Mexico taxable income as a share of that combined income.

DFA adds mandatory combined reporting may have the advantage of preventing unfair tax planning, such as occurs when corporations shift net losses to states with higher tax rates in an effort to minimize the overall tax burden. However, mandatory combined reporting may also discourage corporations with profitable operations in other states from locating to New Mexico. Mandatory combined reporting targets multi-state (and often multi-national) businesses doing business in New Mexico for an increased tax burden based on the income they earn both inside and outside New Mexico. This strategy may conflict with the State's economic development efforts to diversify the New Mexico economy.

Finally, DFA's analysis points out most western states with a corporate income tax currently mandate combined reporting. Many of these states also allow "single-weighted sales factor" apportionment of income for all industries, such as is being phased in in New Mexico pursuant to 2013 legislation. For companies with a large portion of sales outside the state, such as big box retailers, this method has the effect of reducing their corporate income tax liability.

DFA adds combined filing would create an administrative burden to taxpayers and TRD.

TECHNICAL ISSUES

TRD suggests the definition of "restaurant" may more precision to assure all taxpayers meant to be included are included and all taxpayers meant to be excluded are excluded. For example, TRD notes restaurant potentially includes retail stores that also sell food to the public. Also, restaurant does not exclude other institutional cafeterias like cafeterias in hospitals.

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

PvM/je