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

ORIGINAL DATE 2/14/17
SPONSOR Munoz **LAST UPDATED** **HB**

SHORT TITLE Transfer Of Liquor License Tax Credit **SB** 300

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					R or NR **	Fund Affected
FY17	FY18	FY19	FY20	FY21		
$0	***	***	***	***	Recurring	General Fund

Parenthesis ( ) indicate expenditure decreases. ** R = recurring; NR = non-recurring

*** Cannot accurately estimate the numbers of taxpayers that will take advantage of this tax credit. The only county that currently meets the eligibility requirements is McKinley, and there were no qualifying transfers that occurred during the first eight months of 2016.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	R or NR **	Fund Affected
Total	$85.0	$55.0	$55.0	$195.0	Recurring	TRD (General Fund)

Parenthesis ( ) indicate expenditure decreases. ** R = recurring; NR = non-recurring

Relates to legislation affecting liquor licenses (HB296, SB37, SB57, and SB211)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
New Mexico Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 300 creates a tax credit for buying and transferring a liquor license outside of an eligible county. The credit is 60 percent of the cost of any license that exceeds $400 thousand.

The purchaser of the liquor license can apply to the Department for this tax credit for the taxable year in which the taxpayer transfers the liquor license to a location outside of an eligible county. The Department may allow the credit to a taxpayer who is not a dependent of another individual who purchased a liquor license for $400 thousand or more and transfers the license to a location outside of an eligible county. The bill includes definitions for eligible county, liquor license, and price paid.

The credit can be claimed against the taxpayer's tax liability and any excess of the credit that cannot be claimed in the taxable year that the license was purchased can be carried forward for five (5) consecutive years. Married Individuals filing separate returns can claim only one-half of the tax credit that would have been claimed on a joint return. The credit can be allocated in proportion to the taxpayer's ownership interest in a business entity that is taxed for federal income tax purposes as a partnership and that business entity meets all the requirements to be eligible for the credit.

The Taxation and Revenue Department (TRD) shall compile and annual report on the tax credit that will include the number of taxpayers approved for the credit, the aggregate amount of credit approved and any other information necessary to evaluate the effectiveness of the credit. The report shall be presented to the Revenue Stabilization and Tax Policy Committee and the Legislative Finance Committee with an analysis of the effectiveness and cost of the tax credit and whether the credit is performing the purpose for which it was created.

This bill mentions that the purpose of the tax credit is to reduce the number of liquor licenses in an eligible county.

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends.

FISCAL IMPLICATIONS

LFC and TRD staffs cannot accurately estimate the numbers of taxpayers that will take advantage of this tax credit. TRD notes the only county that currently meets the eligibility requirements is McKinley, and there were no qualifying transfers that occurred during the first eight months of 2016.

However, TRD states each qualifying transaction reduces the General Fund by at least $240 thousand. During the first half of 2016 there were 5 license transfers/sales state-wide where the purchase price exceeded $400 thousand. These five transactions totaled approximately $2.7 million and, if they were qualifying transactions, would have cost the General Fund $1.6 million.

TRD notes information provided by Alcohol & Gaming Division indicates there are 44 dispenser and/or canopy liquor licenses in McKinley County. If the purchase price of each existing license was at least $400 thousand, and if 20 percent of these licenses (9 licenses) were transferred out of McKinley county, then the cost of the tax credit would be approximately $2.2 million. The expenditure will increase by 60 cents for each dollar over $400 thousand in purchase price.

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

There are seven liquor license types, and only three can be transferred out of its current local option district. The only county that meets the eligibility requirements for this credit is McKinley. Thus, this legislation implicates the policy principles of accountability, simplicity, efficiency, and equity.

The bill implicates accountability and equity by being preferential. The New Mexico Department of Regulation & Licensing, Alcohol and Gaming Division (AGD) has established a transparent process for the sale, resale, and transfer of liquor licenses. This legislation creates incentives for a very narrow band of license holders, in a discrete location within the state, while spreading the cost of the credit across general fund, non-location-specific revenue programs (PIT and CIT).

The bill implicates efficiency in its stated purpose: to reduce the number of liquor licenses in an eligible county. The legislation creates an incentive to compensate liquor license holders because of where the license is valid. New Mexico is a quota state and has a limited number of Dispenses type licenses. TRD believes consideration should be given to mechanisms outside the tax code to address license oversaturation problems in McKinley County.

The New Mexico Regulation and Licensing Department (RLD) notes the City of Gallup and the County of McKinley have been looking for solutions to local alcohol issues. City officials have met with AGD on several occasions to detail the issues faced. Officials have also brought the issues faced by McKinley County to AGD's attention. The Navajo Nation is also seeking solutions. This legislation is a focused attempt to deal directly with local issues faced in the local option districts that would be impacted by the bill.

The Alcohol and Gaming Division currently requires a copy of the purchase agreement in any application to transfer a license; the purchase agreement always includes a stated price for the license, but the parties have no obligation to accurately state the true purchase price of the license in the agreement, or nor must they indicate whether such purchase price reflects an "arm's length transaction."

To ensure consistency between TRD and AGD records, and to better ensure tax compliance, RLD states Section 60-6B-12 of the Liquor Control Act should be amended to require disclosure of the true purchase price and a disclosure statement indicating whether such price reflects an arm's length transaction.

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 estimates this bill will have a moderate administrative impact, stating an FTE is necessary to administer and support the expansion of credit programs. Non-recurring costs to update systems and forms will occur with annual tax year updates.

RLD notes there may be additional applications to transfer licenses out of McKinley County and current staff can absorb those applications.

TECHNICAL ISSUES

RLD states at pg. 1, line 24 and pg. 4, line 17, SB 300 references Section 60-6B-4 NMSA 1978. The correct statute to reference is Section 60-6B-12 NMSA 1978.

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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