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FISCAL IMPACT REPORT

SPONSOR Shendo **LAST UPDATED** _____
ORIGINAL DATE 2/13/23
BILL
SHORT TITLE Tribal GRT Rates **NUMBER** Senate Bill 90
ANALYST Torres, I.

REVENUE* (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
	See Fiscal Implications				Recurring	General Fund
	See Fiscal Implications				Recurring	Counties and Municipalities
	Likely positive, potentially significant				Recurring	Tribal Governments

Parenthesis () indicate revenue decreases

*Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but likely significant increased costs for state projects on tribal lands			Recurring	General Fund – state road fund – public school capital outlay – other funds

Relates to House Bill 15 of the 2022 Regular Session

Sources of Information

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

New Mexico Attorney General (NMAG)

Indian Affairs Department (IAD)

SUMMARY

Synopsis of Senate Bill 90

Senate Bill 90 (SB 90) removes limitations on a tribe's sales tax rate to qualify for cooperative agreements and a 75 percent credit against the gross receipts tax due. Currently, only tribes with a tax less than or equal to the total gross receipts tax rate receive a 75 percent tax credit against the gross receipts due to the state.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

The legislation would require that tribal gross receipts tax rates be equal to or greater than the rates that border their boundaries. Currently, the tribal GRT rates must be at or below these rates. The ability to raise rates more than their current limits may result in tribes increasing their gross receipts tax rates and may result in an increase in tribal tax revenue collections.

The change proposed in this bill would allow tribal jurisdictions to impose gross receipts tax rates applicable throughout their boundaries more than the amounts currently allowed. These amounts are currently limited by other laws, including Section 7-19D-9 and 7-20E-9 NMSA 1978. Even if a jurisdiction stayed within these limits applicable to municipalities and counties, the credits would not increase. “The amount of credit shall be equal to the *lesser* of 75 percent of the tax imposed by the tribe on the receipts from the transaction or 75 percent of the revenue produced by the sum of the gross receipts tax rates on the receipts from the same transaction.” The 25 percent credit against the tribal tax is worded similarly – “the *lesser* of 25 percent of the tax imposed by the tribe ... or 25 percent of the tax revenue produced ... by rates imposed on the receipts from the same transaction.”

Any increase in rates for the tribal tax would limit the credit amounts to the lower amount – effectively the state rate plus the county remainder rate. Thus, the rate in excess of the state plus county rate would result in 100 percent of the additional revenue distributed to the imposing jurisdiction.

Increasing tribal sales tax rates will increase the costs of state projects on tribal lands. State construction on tribal lands would be subject to the increased rates and will result in a transfer of funds from the state to the relevant tribe. Similarly, the cost of such projects will increase proportional to the amount tribes increase their rates. Projects most likely to be impacted include road projects and public construction.

SIGNIFICANT ISSUES

The limit currently imposed was due to the state’s interest in maintaining a maximum tax rate within state boundaries. This interest may be economic or competitive in nature, seeking to limit the ability of municipalities, counties, and tribal land from creating a tax environment deemed detrimental to the state’s business competitiveness. By uncoupling tribal sales tax rates from local rates, the state’s tax environment could grow in complexity and rate divergence. It could also increase the state’s highest maximum rate which may be a deterrent to businesses making decisions on marginal tax rates.

In last year’s HB15, the public school finance authority noted:

PSFA has relied on the New Mexico Attorney General Opinion No. 03-03 which concluded that Indian tribes, pueblos and nations (collectively referred to as "tribes") do not have authority to impose taxes on contractors performing work for the State of New Mexico on the tribes' reservations. (See attached). In 2014, the PSCOC through the PSFA obtained a legal opinion which also relied on the New Mexico Attorney General Opinion No. 03-03 and two United States Supreme Court cases confirming in that particular instance that the Zuni Pueblo may not tax the PSFA, PSCOC, the Zuni Public School District, or their contractors for work performed to the Zuni Public School. (See attached). Consequently, the PSFA, PSCOC have not paid taxes to tribes for state funded

school construction projects on tribal lands.

Similarly, the Indian Affairs Department had added:

The New Mexico Taxation and Revenue Department (NMTRD) is authorized to enter into cooperative agreements with pueblos and tribes to collect tribal gross receipts taxes on transactions on tribal lands and remit the collected taxes to the tribal governments. According to the current tax law, Section 7-9-88.1(B)(3) NMSA 1978, qualifying gross receipts, sales or similar taxes levied by tribes on taxable transactions must not be greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by the state and its political subdivisions located within the exterior boundaries of the tribe.

There are instances where the exterior boundary of a tribe extends across multiple counties. Under the current law, arbitrary taxing rates for pueblos and tribes will occur because of the tribe's exterior boundary covering several counties.

Tribal governments have the inherent authority to decide their taxation rate. Like any other government, tribes may adjust their gross receipts tax rate. When tribes increase their gross receipts tax so it is more than the state and its political subdivisions located within the exterior boundaries of the tribes, NMTRD is unable to collect the full amount of the tribal gross receipts taxes because of the definition of a qualifying tax in New Mexico law. Tribes are limited to collecting the same amount of gross receipts taxes that the neighboring counties and local governments are collecting. Therefore, tribes are not able to collect the full amount of tribal gross receipts taxes under the current New Mexico law.

ALTERNATIVES

The maximum tax rate allowed could be set equal to the current maximum rate allowed for municipalities to avoid issues identified in the significant issues section of this report.

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