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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/09

SPONSOR Nava LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Education Gross Receipts Surtax SB 412

ANALYST Gutierrez

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$391,900	\$404,268	Recurring	Public Schools Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB331 and HB346

### SOURCES OF INFORMATION

LFC Files

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 412 imposes an education surtax of 0.75% on gross receipts and compensating tax. The bill would create a distribution pursuant to Section 7-1-6.1 NMSA 1978 of the net receipts attributable to the education surtax on gross receipts tax to the public school fund. TRD is to administer and enforce the collection of the education surtax.

Provisions of the bill will become effective on July 1, 2009, contingent upon the enactment into law of a bill of the first session of the forty-ninth legislature (House Bill 331) that provides a new method for determining the state equalization guarantee distribution for public schools. If no such bill is enacted into law, none of the provisions of this bill shall become effective.

### FISCAL IMPLICATIONS

#### Gross Receipts Tax

Taxable gross receipts are expected to total \$50.5 billion in FY10, \$52.2 billion in FY11, \$54.4 billion in FY12 and \$56.7 billion in FY13. By creating an education surtax of 0.75 percent to the gross receipts tax rate, the bill will increase gross receipts tax revenue by \$378.6 million in FY10, \$391.4 million in FY11, \$407.9 million in FY12, and \$425.1 million in FY13.

### Compensating Tax

TRD estimates that total receipts subject to the compensating tax will be \$1.77 billion in FY10, \$1.72 billion in FY11, \$1.79 billion in FY12, and \$1.87 billion in FY13. By adding an education surtax of 0.75 percent to the compensating tax rate, the bill will increase revenue by \$13.3 million in FY10, \$12.9 million in FY11, \$13.4 million in FY12, and \$14 million in FY13.

This bill provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions, as earmarking reduces the ability of the legislature to establish spending priorities.

### **SIGNIFICANT ISSUES**

In addition to the current state gross receipts tax rate of 5 percent, New Mexico's municipalities and counties are authorized to impose over 4 percent of local option gross receipts taxes (that figure excludes several additional local option taxes that have been authorized for selected local governments). Due to increasing imposition of local option taxes, the statewide gross receipts tax rate is increasing steadily. On average, a local option gross receipts tax of about 2.16 percent will be imposed by local governments statewide by FY10. Combined with the state gross receipts tax of 5 percent, the statewide tax rate is therefore 7.16 percent. This bill would increase the average statewide gross receipts tax rate to 7.91 percent in FY10.

### **ADMINISTRATIVE IMPLICATIONS**

This bill will have minimal impacts on the Taxation and Revenue Department.

### **RELATIONSHIP**

Senate Bill 412 relates to:

- HB331 which provides for a new public school funding formula as well as maintenance and periodic recalibration of the formula.
- HB346 which also imposes an education surtax on gross receipts and compensating tax for distribution to the public school fund but HB346 imposes a 0.5 percent surtax and also increases the personal income tax (PIT) with the difference from July 1, 2008 PIT rates and the new rates distributed to the public school fund.

***The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:***

1. ***Adequacy:*** revenue should be adequate to fund government services.
2. ***Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
3. ***Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
4. ***Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
5. ***Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

***More information about the LFC tax policy principles will soon be available on the LFC website at [www.nmlegis.gov/lcs/lfc](http://www.nmlegis.gov/lcs/lfc)***

## **OTHER SUBSTANTIVE ISSUES**

According to LFC's policy analysis of public education (Volume I, January 2009, page 17), full funding of the formula is estimated at \$322 million after accounting for \$14 million appropriated for districts to increase instructional calendars by one additional day in FY09 and \$8 million for the second-year implementation of elementary physical education. Depending on the scope of changes or the views of different panels, this amount could be much higher or much lower. As a result, there is skepticism as to whether the current estimate of \$322 million is accurate or simply an acceptable amount. How this amount was determined and why it differs so much from the \$850 million initially identified continues to be of concern.

### **TRD:**

The bill is silent regarding the effect on the value of the investment credit, which is determined by the compensating tax rate. Additionally, clarification is needed for application of tax credits that may be applied to gross receipts and compensating tax.

## **TECHNICAL ISSUES**

### **TRD:**

On page 2, lines 9-17, of the bill the surtax is imposed on tangible personal property but not services that are subject to the compensating tax.

BLG/svb