

Municipal League leads charge to revisit 'hold harmless'

By Patrick Malone

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The New Mexico Legislature's failure to address the thorny "hold harmless" issue during its recently concluded session has set the stage for cities and counties to seek reinstatement of taxes on food, or to rush to raise taxes even sooner.

It raises questions about whether those with the least to spare could be hardest hit by a tax on food, and whether cities and counties will exercise the full taxing authority available to them before the Legislature can do anything to limit it.

In 2004, New Mexico exempted food and some medical services from gross receipts taxes. After that, the state provided hold-harmless subsidies to cities and counties to replace the lost revenue. In last-minute action during the 2013 legislative session, lawmakers passed a bill to phase them out over a 15-year period beginning in 2015.

The New Mexico Municipal League, which is leading the lobbying charge to revisit the hold-harmless phase-out, had a lukewarm reception for some of the bills offered this year, and frigid responses to others.

Fresh off a session devoid of remedies acceptable to cities, the Municipal League already has drafted legislation it hopes will be introduced next year with provisions that target a broad swath of stakeholders.

The draft legislation calls for reinstating the tax on food at the rate applicable in a particular locality (generally between 2.5 percent and 3 percent), expanding the qualifying threshold for tax rebates to low-income earners, reducing the business tax on goods from out of state, decreasing state gross receipts tax and repealing the 2013 hold-harmless provisions in their entirety — including the three-eighths of 1 percent taxing authority that cities and counties were granted and the 15-year phase-out of state support. Instead, the state would cease back-filling hold-harmless revenue in 2015 and distribute the windfall in accordance with the draft legislation.

Immediate repeal of the gradual withholding of gross receipts tax from cities and counties would generate an estimated \$150 million in revenue for the state in 2015, according to New Mexico Municipal League Executive Director William Fulginiti. The initiatives in the draft legislation would consume an estimated \$100 million of it, and about \$50 million would remain in the state's general fund.

Fulginiti said the low-income tax rebate provision aims to assuage worries that New Mexico

residents who are struggling financially would shoulder a disproportionate burden from the reinstatement of the food tax. Recipients of Supplemental Nutrition Assistance Program (SNAP) food benefits would not be expected to pay tax on those purchases, but they often supplement their benefits with purchases out of their own pockets that are subject to taxes.

“Their disposable income is not nearly as high, so we want to give them a break,” Fulginiti said.

Kim Posich, executive director of the New Mexico Center on Law and Poverty, said he is fairly receptive to the possibility of reinstating a tax on food, although he acknowledged that not everyone who shares the mission of looking out for the interests of low-income New Mexicans would agree with him.

“The food tax deduction, I never supported that,” he said. “Many people — the advocates around me — did. But I thought the money could be used a lot more effectively.”

Posich recognizes the standard argument against food tax.

“Anything that takes even small amounts of money out of the hands of low-income people is not a very smart idea,” he said. “They don’t put that money in the bank. They use it at stores immediately, so you’re taking it out of the local economy.”

But invested in the right programs by the government, Posich said, the revenue from food taxes can have greater benefits for the population he wants to protect.

“I would not oppose getting rid of the food tax deduction if those funds were put into the hands of low-income people in a more effective way,” he said. “If they were going to do it just to put more money into city and county governments’ hands without some direction about how it was going to be used, I couldn’t support that.”

Communities that enact taxes under the authority of the 2013 hold-harmless change — as Corrales, Las Cruces and Otero County already have — and have bonded against the tax hikes would be insulated from the portion of the draft legislation that would repeal taxing authority, Fulginiti said.

Rep. Jason Harper, R-Rio Rancho, unsuccessfully carried legislation this year that would have reduced city and county taxing authority under hold harmless. He frets that its failure to pass will prod cities and counties to quickly enact taxes to gird against future limits on their taxing authority that could be looming in next year’s legislative session.

“Hopefully, our cities and counties won’t decide to raise taxes on everybody and bond out against it over the interim,” Harper said. “That would be terrible for all of our citizens to have their taxes raised like that.”

Fulginiti said he expects more communities to raise taxes before the conversation at the Legislature resumes next year.

Steve Kopelman, executive director of the New Mexico Association of Counties, disagrees. “I think the answer to that is probably not,” he said. “I don’t think many county commissions would do it just for that reason.”

The New Mexico Association of Counties has not taken a formal position on reinstating a tax on food.

Fulginiti said the draft legislation has had a warm reception from key legislators in the House and the Senate, but he worries that its greatest challenge could be the veto pen of Gov. Susana Martinez — provided she is re-elected and remains governor next year.

“I think we’re going to have to convince the governor,” Fulginiti said. “I haven’t checked with her on it. We’ll let the election play out first.”

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