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

SPONSOR Keller/Sandoval **ORIGINAL DATE** 02/02/13 **LAST UPDATED** **HB**

SHORT TITLE Transfer Tax Credits Between Taxpayers **SB** 130

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
$0.0	$0.0	($310.0)	($350.0)	($390.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$0.0	$69.0	$45.0	$114.0	Recurring	Taxation and Revenue Department

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Cultural Affairs (DCA)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 130 amends Sections 7-2-18.2, 7-2-18.4, 7-2-18.11, 7-2-18.14, 7-2-18.17, 7-2-18.22, 7-2A-8.6, 7-2A-15, 7-2A-17.1 NMSA 1978, to allow taxpayers who have been approved for these tax credits to sell, exchange or transfer them to another taxpayer. As part of this new provision, the TRD must issue to the applicant a dated and numbered document granting the tax credit and stating the amount of the credit. If the credit is sold, exchanged or transferred, the parties involved must notify the TRD of this within ten days.
Additionally, the same sections are amended to require that taxpayers apply for the tax credits within one year

FISCAL IMPLICATIONS

TRD assumed unclaimed credits would be fully used. New Mexico personal and corporate income tax data from tax years 2007 through 2010 was used to analyze the fiscal impact. From the 2010 personal and corporate income tax data, the amount of these credits that were not used and carried forward was estimated. It was assumed that due to the option of these credits being sold, exchanged or transferred, 75 percent of the carried forward amount would now be applied against tax liability. Historical growth rates for these credits were estimated using data from tax years 2007 through 2010. A recent 12 percent growth rate was used to obtain the fiscal impact for the subsequent years.

SIGNIFICANT ISSUES

Practitioners would classify transfers as suboptimal tax policy. Middleman charge 20 cents to forty cents on the dollar to broker tax credits. Making these credits fully refundable would allow claimants to accrue 100 percent of the benefit and cut out the middle man.

TRD notes the following:

> "The intent of this legislation is to encourage use of several tax credits currently available under law by allowing for the transfer of the economic value of the credits to a third party. However, the bill only identifies six tax credit provisions (i.e., Preservation of Cultural Property, Qualified Business Facility Rehabilitation, Job Mentorship, Solar Market Development, Angel Investment, and Rural Health Care Practitioner) as eligible for this transferability provision. Certainly, this bill incentivizes greater use of these credits, but the issue as to why these six specific credits were selected for this transferability treatment is not articulated. The ability of a claimant under existing law to "monetize" the economic benefit of these six tax credit provisions would set these credits in a new "class" of tax credit provision under the proposed legislation."

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill 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 claims high impact. This bill adds new processes to the administration of these credits. The claimant will now need to get approved through the Taxation and Revenue Department (TRD) before claiming the credit, in addition to obtaining approval from the agency who currently certifies eligibility for the credit. Additionally, a time limitation on getting the TRD approval is imposed that will affect the other agencies involved in the certification of the credits. Coordination will be required and there is a high education need. 6 new forms and instructions will need to be created and 6 forms and instructions will need revision at a cost of $24,000. A process of approving the credits and issuing the document granting will need to be developed as well as a system of transferring the credits. Also, the Department would need to track each credit as it is sold, exchanged, or transferred to ensure that the person(s) that receives it is using only the remaining balance. This is a manual process and will require 1 new FTE at a cost of $45,000 per year to manage the approvals and the tracking.

This bill may also make it difficult to gather data to produce the Tax Expenditure Report

TECHNICAL ISSUES

TRD notes a several technical issues:

- For the credit under Section 7-2-18.2, the original law requires the taxpayer to obtain certification from the "committee" which is then defined. The amendment adds the language on Subsection G, page 5, lines 8-18, that the "department" issue a document granting the credit but the amendment does not define department. If the "committee" is issuing a certification, then the "department" should not have to issue a document granting a credit, unless the intention is for partial credits to be transferred. The same holds true for Section 7-2-18.11 – school principal issues certificate, Section 7-2-18.14 – Energy, Minerals and Natural Resources Department provides certification, Section 7-2-18.17 – Economic Development Division issues certificate, Section 7-2-18.22 – Department of Health issues certificate, Section 7-2A-8.6 – committee issues certificate & Section 7-2A-17.1 – school principal issues certificate.

- Transition rules from the old to the new law, will be needed. This bill includes a limitation period on when a credit may be claimed under Sections 7-2-18.2, 7-2-18.4, 7-2-18.11, 7-2-18.14, 7-2-18.22, 7-2A-8.6, 7-2A-15, and 7-2A-17.1 to require that the credit be applied for within one year of a certain qualifying date. It could be argued that this is giving retroactive application of the new law to existing circumstances, i.e., a credit that could currently be claimed without regard to how long ago the qualifying act occurred is now limit to a certain time period. A taxpayer that would qualify for a credit could lose the credit under this bill by not filing in a timely manner. The courts, however, have upheld retroactive application to statutes where it is clear from the intent of the legislation that the bill needs to have retroactive effect. Furthermore, this bill does not become effective until January 1, 2014, thereby giving ample opportunity for a taxpayer to file for the credit prior to the limitations period going into effect.

The Historic Preservation Division has currently been using the approval date of the Part 2 application. SB 130 includes new language that states the credit would originate when a project is completed. The current process for establishing when projects are completed is confusing and project completion dates can be difficult to establish. There is a good record of when the CPRC acts on a completed project, which includes a public hearing wherein the decision is made, and the project amount established. Letters are sent to applicants including the date of the decision, the eligible project dollar amount and credit amount, and the applicable tax year. Further clarification is needed regarding if only "new" projects will be eligible for the tax credit following January 1, 2014.

This bill does not contain a sunset date. The LFC recommends adding a sunset date.

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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