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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/17  
 SPONSOR Small LAST UPDATED 03/07/17 HB 376/aHTRC  
 SHORT TITLE Annual Tax Statements of Withholding SB \_\_\_\_\_  
 ANALYST Clark

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0	minimal	\$0	minimal	Nonrecurring	Taxation and Revenue Department

Parenthesis ( ) indicate expenditure decreases

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment strikes the paragraph providing for a penalty for failing to file the annual statement of withholding by the due date. This eliminates the potential revenue impact and reduces the operating budget impact by no longer requiring the Taxation and Revenue Department to track and penalize late filers and non-filers.

#### Synopsis of Original Bill

House Bill 376 amends Section 7-3-7 NMSA 1978 to require every employer to annually submit a statement of withholding with the Department on or before the last day of January. For employers with 25 or more employees, there would be a requirement that this information be filed using an electronic medium approved by the Taxation and Revenue Department (TRD). The current requirement for filing an annual statement of withholding related to pensions and annuities or payment of winnings is changed from on or before the last day of February to on or before the last day of January. Statements related to payment of winnings must be made using an approved electronic medium.

A penalty in the amount of 5 percent per month of gross wages reported for all employees in that year, not to exceed 20 percent, is added for any employer, payor, or person who was required to

file the statement of withholding and fails to do so by the due date. The provisions of this act are applicable to tax years beginning on or after January 1, 2017.

### **FISCAL IMPLICATIONS**

If any existing filers are unaware of the changes made in this bill to the filing requirements and deadlines, they would be subject to substantial penalties. This could result in additional penalty payments, particularly in 2018 – the first year in which the new filing requirements would be in effect. Because of this, LFC staff recommend some type of provision be made to allow for notification of violations without immediate application of penalties for the initial period in which these provisions would take effect.

### **SIGNIFICANT ISSUES**

TRD notes the bill enhances compliance for the state by requiring employers to provide New Mexico with the same information currently provided to federal agencies. It requires employers to file annual withholding reports with TRD that are currently being filed with the federal government and most other states. This mirrors compliance requirements implemented by the Internal Revenue Service (IRS) and most other states. A significant intended purpose of these changes is to reduce tax fraud and identify potential identity theft, but obtaining W-2s also increases compliance unrelated to tax fraud. IRS increased penalties for failure to properly and timely file W-2 forms.

Current federal law requires employers to file Copy A of Form W-2 with the Social Security Administration. The federal filing date is the last business day in January. This bill mandates that employers provide TRD the same information required by federal law. New Mexico statute references the Internal Revenue Code; several “income” definitions require information provided on Form W-2. By requiring employers to provide the department a duplicate copy of information provided to federal agencies, TRD is better equipped to adjudicate returns and ensure compliance with state tax law.

### **ADMINISTRATIVE IMPLICATIONS**

There would be a high administrative impact, but there are positive and negative impacts. The impact shown in the table is the negative impact due to the GenTax software system requiring modification to capture W2 information and assess penalties for non-compliance. Additionally, filing options must be developed to support electronic systems currently used by tax filers. On the positive side, requiring employers to file electronically is a positive impact to department operations.

#### **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