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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/17

SPONSOR Ely LAST UPDATED \_\_\_\_\_ HB 457

SHORT TITLE Tax Info Available to Local Gov't 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> | Possible Moderate Impact | Possible Significant Impact | Possible Significant Impact | Possible Significant Impact | Recurring                 | Taxation and Revenue Department |

Parenthesis ( ) indicate expenditure decreases

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

House Bill 457 increases the level of detail allowable in reporting of taxpayer information by the Taxation and Revenue Department (TRD) to local governments. It amends Section 7-1-8.9 NMSA 1978 to change from allowing TRD to supply “a range of” taxable gross receipts by taxpayers within a municipality or county to government officials or employees of that municipality or county to “the” taxable gross receipts by taxpayer.

The bill clarifies that if release of the information is subject to an agreement with the federal Internal Revenue Service (IRS), authorization from IRS to reveal that information must be received.

There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends.

### FISCAL IMPLICATIONS

There is no revenue impact, but there could be a significant administrative impact.

## SIGNIFICANT ISSUES

TRD provided the following analysis.

This bill requires that the taxable gross receipts; the names, taxpayer identification numbers (TIN) and addresses of registered gross receipts taxpayers are to be revealed to local government officials or employees. Releasing this type of detailed information directly to a local government official could be problematic and will have a significant administrative impact on TRD. Under current law, local governments may already receive: (1) the RP 455, which is a quarterly report that lists all taxpayer that are remitting GRT within the jurisdiction, without specific tax amounts paid; (2) a range report, which like the RP 455, list each taxpayer remitting GRT in the jurisdiction, but provides a range of how much is remitted by each taxpayer (\$0-\$50; \$50-\$100; \$100-\$500; \$500-\$1,000; \$1,000-\$5,000; \$5,000-\$10,000, etc.); (3) in a case where a local government needs to understand an increase or decrease to a monthly distribution, a V-9 report, which is the range report with actual amounts reported; and (4) where more taxpayer specific data, such as amended returns or refund claims is necessary to understand an increase or decrease to a monthly distribution, actual taxpayer returns and information. To obtain some of these reports, local governments must enter an agreement with TRD and must take confidentiality training. The information may only be shared with local government employees that are identified in the agreement. Any disclosure by a city employee to a non-authorized recipient is classified as a misdemeanor. Several of these reports were added to the list of obtainable items in 2015 and TRD is finalizing the process to share this more detailed information with local governments via a secure method.

There is a strong proclivity under New Mexico statutes (and in most jurisdictions) to maintain the confidentiality of taxpayer information for reasons of both identity theft, to protect the privacy rights of taxpayers, and to prevent improper use of information. Under law, all taxpayer return information is confidential unless a specific disclosure authorization exists in law. These laws exist to strike a balance between the rights of individuals to privacy and the ability of organizations to use data for the purposes of their business. Providing local governments with detailed taxpayer information may be in conflict with an individual taxpayer's right to privacy, particularly in small towns. Take for example a situation where a local government official has a business that is in competition with another local business. That official now has access to the competitor's, TIN, address, and gross receipts.

Due to the confidential nature of taxpayer return information, local government officials will be required to enter into a legally binding agreement with TRD and take confidentiality training. This training helps the individual understand the laws and guidelines required by the State of New Mexico and the IRS with full awareness of the potential consequences of unauthorized inspection or disclosure. Disclosure is "making information known in any manner, such as by phone, fax, mail, e-mail, chat, texting, or discussion." It is the responsibility of TRD employees or agents to ensure that confidential information is not disclosed to unauthorized persons.

Tax data currently held currently in TRD databases are considered co-mingled; meaning Federal and State tax information are held together within our IT data infrastructure. In a co-mingled environment, Federal oversight rules apply. Hence, sharing of IRS provided/derived/co-mingled information outside of TRD tax administration is prohibited without written authorization from the IRS.

As such, the bill should require the municipalities or counties to enter a Memorandum of Understanding (MOU) with the IRS, which would require the receiving entities to have appropriate security controls in place to protect tax payer information. Specifically, Publication 1075 provides directions and mandates how to secure tax payer information. The IRS – Office of Safeguards has oversight authority to audit, evaluate and opine on the effectiveness of the security controls implemented to protect tax payer information. Without a direct county/municipality MOU with IRS, TRD will be have a significant risk exposure.

Specifically, providing confidential tax/tax payer information from TRD to other local government entities significantly increases our liability risk in terms of upholding taxpayer confidentiality, privacy and availability. TRD expects this bill to significantly increase the number of tax information requests and we do not have the infrastructure or a mechanism or the resources to manage, maintain, administer and track confidential reports with tax payer information. In addition, TRD cannot control downstream distribution of tax payer information, its intended purpose or modification or disclosure of it nor enforce compliance controls.

TRD would also need to prioritize specific referrals into its audit workload and that prioritization may yield significant wait times for local officials with specific underreporting referrals.

### **ADMINISTRATIVE IMPLICATIONS**

TRD reports that, due to the issues mentioned above, the bill could have a significant administrative impact on the department.

From an administrative standpoint, TRD expects to have a significant increase in the number of calls and requests from local governments in regards to the reports they receive. Local governments will have access to detailed information about taxpayers. They will be contacting TRD on a regular basis regarding anomalies in the gross receipts taxes, when taxpayers do not pay timely, amendments, etc. Currently, TRD staffing allows for one GRT-focused economist for revenue forecasting, the tax expenditure report, FIR production, and to handle local government inquiries. Depending on the volume of requests, TRD may not have sufficient staff and resources to process an increased volume of requests or to entertain an exponentially higher load of inquiries. In short, absent resource allocation, TRD may not be able to meet local government needs.

JC/jle