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FISCAL IMPACT REPORT

SPONSOR Griggs ORIGINAL DATE 2/27/21
 LAST UPDATED 3/07/21 HB _____

SHORT TITLE Recordation Tax Act SB 386

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24	FY25		
	Up to \$9,500.0	Up to \$10,500.0	Up to \$11,500.0	Up to \$12,500.0	Recurring	Recordation Tax -- General Fund
	Up to \$280.0	Up to \$310.0	Up to \$340.0	Up to \$370.0	Recurring	Recordation Tax -- County Administrative Fee
	\$132,400	\$135,000	\$137,700	\$140,500	Recurring	Section 9 - Local Governments - Food Excise
	\$18,900	\$19,300	\$19,700	\$20,100	Recurring	Section 9 - General Fund - Food Excise
	(\$112,700)	(\$103,800)	(\$94,500)	(\$84,800)	Recurring	Section 18 - Local Government – Eliminated Hold Harmless
	\$112,700	\$103,800	\$94,500	\$84,800	Recurring	Section 18 –General Fund - Eliminate Hold Harmless
	(\$83,000)	(\$87,000)	(\$95,000)	(\$99,000)	Recurring	Section 15 - General Fund – Social Security Exemption
	(\$26,300)	(\$26,800)	(\$27,400)	(\$28,000)	Recurring	Section 16 - General Fund – PIT– Military Retirement Exemption
TOTAL	\$31,800.0	\$19,80.00	\$3,300.0	(\$9,600.0)	Recurring	General Fund
TOTAL	\$19,980.0	\$31,510.0	\$43,540.00	\$56,070.0	Recurring	Local Governments

Parenthesis () indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
\$8,856.1	--	--	\$8,856.1	Nonrecurring	ITD – Contractual Services – Sections 1 - 14, 18

\$590.8	--	--	\$590.8	Nonrecurring	ITD – Staff Workload – Sections 1 -14, 18
--	\$645.2	\$645.2-	\$1,290.4	Recurring	ITD – Staff Workload– Sections 1 -14, 18
--	\$20.7	--	\$20.7	Nonrecurring	ITD – Staff Workload – Sections 15 and 16

Parenthesis () indicate expenditure decreases.

Conflicts with HB19, HB49, SB162, SB208, SB162, SB277, and SB259.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 386 enacts the Recordation Tax Act and the Food Gross Receipts Tax Act and distributes seven-eighths of the revenue from the food gross receipts tax to municipalities and counties. The bill provides an exemption for social security income from income tax, provides an exemption for military retirement income from income tax, and repeals the hold harmless distributions to municipalities and counties that offset the food and healthcare practitioner deductions from gross receipts.

- **Section 1** declares that Sections 1 through 6 of the bill comprise the “Recordation Tax Act.”
- **Section 2** imposes the recordation tax as an excise tax imposed at sale or other transfer of real property at the rate of 25 cents per \$100 of the previous year’s property tax assessed value. The basis for the recordation tax is subject to the 3 percent annual assessment limit of 7-36-21.2 NMSA 1978 and the one-third assessment ratio of 7-37-3 NMSA 1978. The tax imposed by this section shall be paid by the grantee or transferee of the interest in the real property to the county clerk of the county in which the real property is located.
- **Section 3** imposes a companion recordation tax imposed on mortgages and similar instruments recording indebtedness for real property at the rate of 10 cents per \$100 of the indebtedness above \$25 thousand. The tax imposed by this section shall be paid by the mortgagor, grantor, or debtor, as evidenced by the instrument offered for recording. The tax shall be paid to the County Clerk of the county in which the real property is located.
- **Section 4** requires the county administering these recordation taxes to report those collections to TRD and may deduct a 3 percent administrative fee prior to remitting the proceeds to TRD.
- **Section 5** establishes certain exemption, including properties that pay the 25 cents per \$100 recordation fee for the sale of real property are exempt from the 10 cents per \$100 recordation fee for real property indebtedness. Refinancing would be subject to the 10 cents per \$100 recordation of indebtedness tax. Reciprocally, if the mortgagor pays the 10 cents per \$100 recordation of indebtedness tax, then the property transferred is exempt from the 25 cents per \$100 recordation of real property sale tax.

- **Section 6** The recordation tax is limited to \$100 thousand, which implies a sale value of \$40 million or a debt instrument of \$100 million.
- **Sections 7 through 11** impose a new, standard rate of a food tax, with the proceeds being distributed primarily to the counties and municipalities. The rate would be 4 percent.
- **Section 10** provides standard exemptions from the food tax with reference to the exemptions in the Gross Receipts and Compensating Tax Act: food stamps, occasional sales, sales to 501(c)(3) nonprofits, out-of-state sales, and sales to disabled street vendors.
- **Section 12** adds both the Recordation Tax Act and the Food Tax to the list of subsection A taxes administered by the provisions of the Tax Administration Act.
- **Section 13** amends 7-1-6.15 NMSA 1978, the section that allows TRD to adjust distributions based on amended returns or other errors to remove reference to adjustments of the county and municipal food and medical services hold harmless distributions repealed in this act.
- **Section 14** provides that 68.75 percent of the total collections from food sales within a municipality would be distributed to the municipality based on food gross receipts in each municipality, 18.75 percent of total collections within municipalities would be distributed to the county in which the municipality is located, and 87.5 percent of total revenue collected based on food sales in county areas (remainder of counties) would be distributed to those counties. In both cases 12.5 percent of revenues derived from food sales would be distributed to the state general fund. TRD “may” deduct the standard 3 percent administrative fee from distributions to counties and municipalities. These administrative fees become general fund revenues and are not appropriated to the department.
- **Section 15** permits social security recipients to exempt 100 percent of the amounts included in their personal income tax returns.
- **Section 16** allows a military retiree an exemption for 100 percent of that military retirement pension.
- **Section 17** conforms the definition of gross receipts to include the proposed food tax.
- **Section 18** repeals both the food and medical services hold harmless distributions.
- **Section 19** makes the Section 15 and 16 personal income tax deductions applicable starting in the 2021 tax year.

The effective date of the provisions of the act is July 1, 2021. The Taxation and Revenue Department (TRD) recommends an effective date of date of January 1, 2022, or July 1, 2022, to ensure proper implementation of the legislation in TRD administration and systems processes.

FISCAL IMPLICATIONS

Sections 1 through 6 of the act provide a Real Property Recordation tax imposed at 0.25 percent on all real property sales and 0.10 percent on refinancing and similar activities. Although TRD has estimated the real estate transfer tax for HB19, the constraints are dissimilar:

- (1) HB19 transfer tax is imposed at 0.75 percent for sales between \$500 thousand and 1.25 percent for sales over \$750 thousand.
- (2) The recordation fee in this bill is 0.25 percent for real property sales (25 cents per \$100 of sales), but the basis for the tax is the prior-year assessed value for property tax purposes. This assessed value is limited by the “3 percent limitation” of 7-36-21.2 NMSA 1978 and the one-third tax ratio (also sometimes known as the assessment ratio) of 7-37-3 NMSA 1978. Acknowledging that the “assessed value,” as used in this section includes the one-

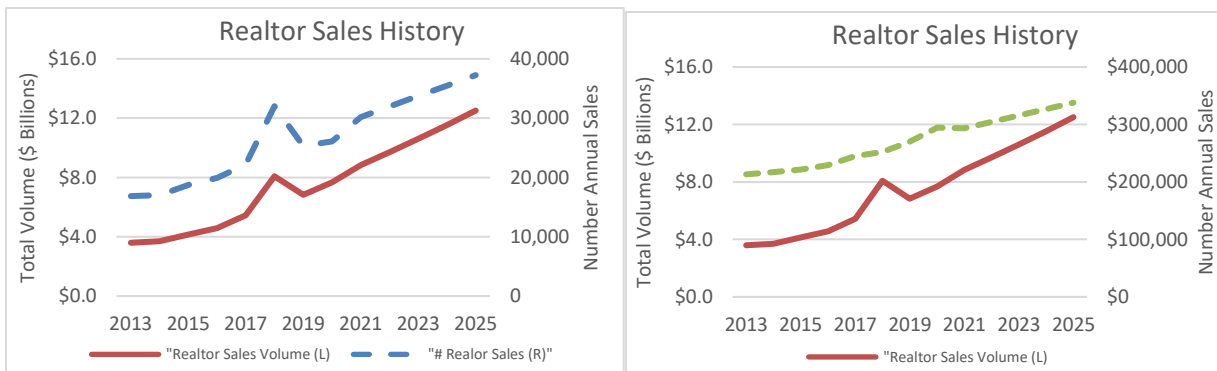
third assessment ratio somewhat motivates the differential rate imposed in Section 2 from the rate imposed in Section 3.

- (3) The recordation fee in this bill also imposes a tax on indebtedness, such as refinancing, where the rate is 0.10 percent (10 cents per \$100 of indebtedness) only on the amount of the refinancing in excess of \$25 thousand.
- (4) Section 5 provides, if the recordation tax on real property sales in Section 2 has been paid, then the property is exempt from the Section 3 recordation tax on indebtedness. Reciprocally, if the Section 3 recordation tax on indebtedness has been paid, then the real property is exempt from the Section 2 recordation tax on real property sales.

The base data source for this estimate is the New Mexico Realtors Association <https://www.nmrealtor.com/housing-trends/>, which indicated a total 2020 sales volume of \$7.8 billion for sales involving realtors. Data from the DP04 report from the *American Community Survey* available from the U.S. Bureau of Census implies assessed values may be, on average, 80 percent of one-third of sales values. However, the bulk of the recordation taxes will be imposed on Section 3 indebtedness.

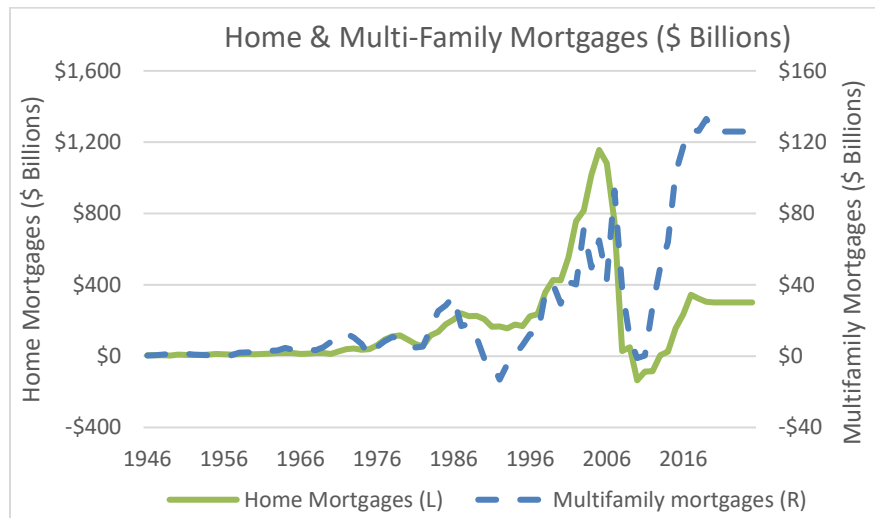
https://www.nmrealtor.com/housing-trends/										
	2020 YTD Sales	2020 YTD Median Sold Price	Active Listings	Sales	Median Sold Price	Volume	Avg. Days on Market	Avg. Sales Price	Pending Listings	
Jan	1,629	\$219,500	5,202	1,629	\$219,500	\$430,954,167	75	\$264,551	2,037	
Feb	3,298	\$219,995	8,037	1,669	\$220,000	\$438,694,602	78	\$262,849	2,137	
Mar	5,345	\$223,000	9,356	2,047	\$228,000	\$576,629,097	68	\$281,695	1,995	
Apr	7,246	\$224,900	10,241	1,901	\$225,500	\$500,364,514	67	\$263,211	1,884	
May	9,049	\$223,500	11,370	1,803	\$220,000	\$456,510,679	54	\$253,195	2,573	
Jun	11,383	\$225,000	12,611	2,334	\$231,000	\$640,497,587	61	\$274,421	2,843	
Jul	14,155	\$228,900	13,956	2,772	\$246,000	\$880,789,353	62	\$317,745	2,717	
Aug	16,783	\$232,000	15,282	2,628	\$250,000	\$818,112,982	66	\$311,306	2,791	
Sep	19,232	\$235,000	16,284	2,449	\$255,000	\$792,190,736	61	\$323,475	2,432	
Oct	21,663	\$237,000	17,605	2,431	\$259,900	\$794,810,815	58	\$326,948	2,301	
Nov	23,787	\$239,900	18,364	2,124	\$259,000	\$713,738,958	54	\$336,035	1,741	
Dec	26,075	\$240,000	18,935	2,288	\$264,950	\$756,843,979	54	\$330,788	1,699	
Total CY 2020				26,075		\$7,800,137,469		299,142		

A projection of the near-term total volume of realtor-brokered sales can be achieved using this history and a linear trend. Notably, the anomaly in 2018 was an issue of the number of real property sales, not the average sales price.



Although not explicit, these data probably include single family residential, one- to four-unit multifamily, larger multifamily, bare land, and commercial sales. There is no data that indicates the proportion of these different classes of residential and nonresidential sales. There is no data that establishes the loan-to-value ratio for any of these sales. There is data from the Federal Reserve

Economic Database that establishes the relative ratio of multifamily mortgages to home mortgages. Finally, there is no reliable data available that indicates the history or trend of refinancing mortgages.



Nonresidential real property sales are difficult to measure. A not-very-sophisticated model developed for HB19 implied 2019 nonresidential sales of about \$3 billion, representing \$1 billion in assessed value. There is some data available from Freddie Mac on refinancing activity. Ultimately, this recordation tax is indeterminate. As an order of magnitude, LFC staff have applied the 0.1 percent recordation tax rate to the projection of realtor sales to set an upper bound for the revenue impact of the recordation tax.

TRD methods differs significantly from this LFC staff estimate. However, TRD has acknowledged its methodology may not have given an accurate assessment of the likely impacts, even though the estimates provided by TRD are not significantly different from the LFC staff estimate.

Estimated Revenue Impact*					Recurring or Nonrecurring**	Fund(s) Affected
FY2021	FY2022	FY2023	FY2024	FY2025		
--	\$1,610	\$1,660	\$1,710	\$1,760	Recurring	Section 2- General Fund – Recordation Tax
--	\$8,890	\$9,160	\$9,430	\$9,710	Recurring	Section 3 - General Fund – Tax on Indebtedness Instruments
--	\$315	\$325	\$335	\$345	Recurring	Section 4 – County administrative fees

Methodology for Estimated Revenue Impact: [Sections 2-4] The Property Tax Division (PTD) of TRD used assessed value data combined with sales data from the New Mexico Real Estate Association to determine the residential impacts of sections 2 and 3. Nonresidential real property estimates were extrapolated from publicly available information. The 3 percent administration fee is applied to the results of Sections 2 and 3 revenue impacts to determine the revenue impact on counties in Section 4.

The remaining fiscal impacts have been copied directly from the TRD agency analysis. LFC staff confirm these estimates.

[Sections 7-14] The FY2019 food deductions are used as the base for the food excise tax base. The figures incorporate inflation, the excise percentage, and the distributions of the

revenue. The revenue impact of the food hold harmless payments repeal is from the February 2021 Consensus Revenue Estimating Group (CREG) forecast.

[Section 15] The Taxation and Revenue Department (TRD) estimated the impact of exempting social security income with base year 2017 microdata for New Mexico personal income tax (PIT) taxpayers. To scale social security benefits to tax year 2021, 2017 social security income was increased by the actual cost-of-living-adjustments (COLA) in the last four calendar years, and by a net population increase given the rate of individuals reaching social security eligible age and death rates. For fiscal years 2023 through 2025, the estimate was increased by the average COLA increase over the last five years and by the U.S. Census estimated population growth of individuals aged 65 and older. TRD also assumed that taxpayers would select the exemption, either this new exemption, or the exemption pursuant to Section 7-2-5.2 NMSA 1978, which decreased their tax liability the most.

TRD’s estimate based on microdata includes both resident filers and ‘B’ filers. ‘B’ filers file a PIT-B for New Mexico allocation and apportionment of income. TRD notes the following important information about pension, annuity and social security benefits which are reported on line 3 of the form: if the filer is a non-resident, the taxpayer is to enter zero, as these benefits are prohibited from being allocated to New Mexico per federal law.¹ If the filer is a part-year resident, first-year or full-time resident, then their taxable social security benefits are apportioned as per Section 7-2-11 NMSA 1978. TRD’s estimate of the impact accounts for the apportionment of income for ‘B’ filers.

[Section 16] Two sources of data were analyzed to arrive at an estimated revenue impact of exempting military retirement income from PIT. The first data source is the Department of Defense (DOD) annual Statistical Report on the Military Retirement System for federal fiscal year ended September 30, 2019. The second data source was a sample of New Mexico military retiree state income tax returns for tax year 2018. The analysis considers the new 5.9% marginal tax rate effective for Tax Year 2021.

The Statistical Report on the Military Retirement System provides an aggregate number of retirees and survivor beneficiaries by state and an aggregate amount of benefits distributed. As of September 30, 2019, New Mexico had 20,946 reported retirees and 2,770 survivor beneficiaries. Aggregate annual distribution of military retirement benefits was approximately \$604 million. This analysis assumes all such retirees were qualified by years of service or disability to receive lifetime benefits.

The sample of military retiree returns was used to establish an average personal income tax (PIT) decrease per retiree and survivor beneficiary based on exempting all military retirements’ benefits up to the amount of net income. Retiree annuities were increased by a cost-of-living adjustment, which for most retirees per the DOD report is based on the Urban Wage Earner and Clerical Worker Consumer Price Index (CPI-W). All other taxable income reported on the returns was kept flat. Subtracting the exemption amount, a new taxable income was calculated and the PIT rates applied to determine the new PIT due. An average PIT decrease per each year was calculated with the sample of 15 thousand returns.

¹ Line 3 instructions, Page 5 B of *Instructions for 2019 PIT-B Schedule of New Mexico Allocation and Apportionment of Income*, “Effective for retirement income received after December 31, 1995, federal law prohibits any state from imposing an income tax on certain retirement income (primarily pension income) of an individual unless that person is a resident of or domiciled in the state imposing the tax. 4 U.S. Code § 114. Limitation on State income taxation of certain pension income”

It is assumed that the sample of approximately 15 thousand military retiree returns is representative of the approximately 23,700 total reported retirees and survivors. The average PIT decrease per year was multiplied by the 23,700 retirees. It is assumed that the net immigration and emigration of military retirees into the state per year is zero, which is supported by historical retiree numbers in the last three years from the Statistical Report on the Military Retirement System. The estimate also assumes that net new retirees and deceased retirees per year is zero. To the extent the legislation causes more military retirees to move to New Mexico, the fiscal impact will be larger. Thus, the analysis assumes a constant 23,700 returns per year are eligible for the deduction. Finally, the analysis assumes 100% of qualifying retirees will claim the deduction in the first year of eligibility.

This bill creates two notable tax expenditures: 100 percent exemption for taxable social security income and 100 percent exemption for military retirement income. TRD has estimated the costs of these two exemptions in the range of \$110 million to \$125 million annually.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

SIGNIFICANT ISSUES

TRD comments on the policies imbedded in this bill.

[Sections 1-6] The excise taxes related to the transfer of real property and instruments of indebtedness, such as mortgages, meet the goal of adequacy in General Fund and county revenues' however they will also increase the tax burden on New Mexicans. New Mexico is colloquially referred to as a “land rich, cash poor” state, ranked 45th in median household income (2019) and the fifth largest state by land area. The divergence in income and land area may be a factor in the relatively low taxes on property in New Mexico, which this legislation intends to increase. New Mexico does not rely upon property taxes for State operations; its GRT rate is on the high end amongst state sales taxes, reflecting in part that no property tax supports the general fund. The taxation of property transactions also increases costs for businesses and may impact their decision to locate or expand in the state. New Mexico is considered one of the most attractive states for businesses to locate with respect to property tax and has been ranked the #1 state in the U.S. from a property tax perspective for businesses for several years. Changes to taxation related to property may negatively impact this attractive feature that the state offers. However, TRD also notes that many states have property transfer taxes, and New Mexico’s overall property tax rates remain attractive to business.

[Sections 7-14] The current GRT deduction for retail food receipts reduces the final cost of food for at-home consumption for most New Mexicans. The taxation of food is considered to be a regressive tax that disproportionately impacts low-income taxpayers that on average spend a larger percentage of their budget on food than wealthier taxpayers. This bill attempts to strike a balance by reimposing a 4 percent tax on food rather than the full state and local GRT rate, which ranges to over 9 percent in some municipalities. While many low-income households would be impacted by the food excise tax proposed in this bill, food purchased with Supplemental Nutrition Assistance Program benefits (food stamps) remains exempt, and this legislation has no impact on these purchases. SNAP

benefits are tax-exempt, but many low-income families' SNAP benefits do not cover the full cost of their food budget.

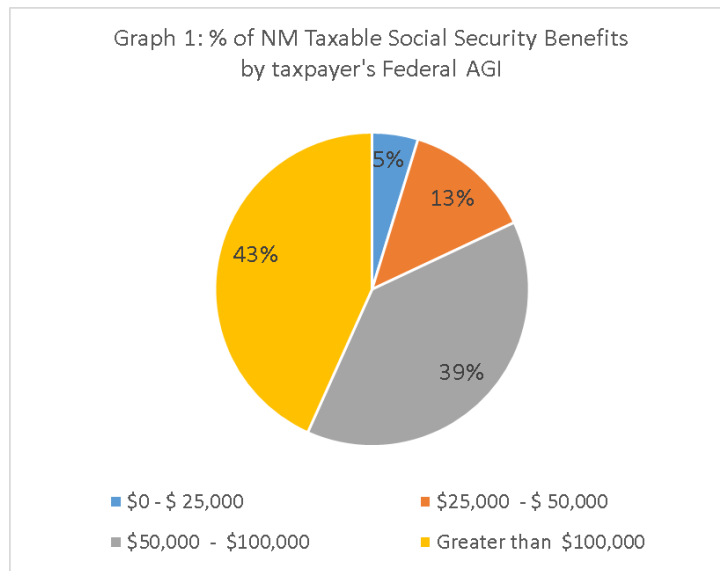
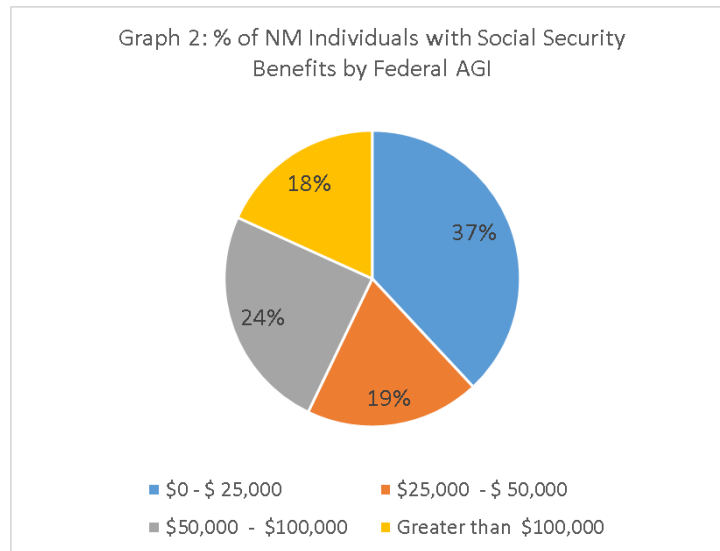
Stability in revenue is one desired outcome of tax policy. The receipts from food purchased for at-home consumption is a stable source of potential revenue in New Mexico that is also generally recession-proof. Due to the deduction, both states and local governments do not receive the steady revenue stream that would be provided by a food tax, and the state is also negatively impacted by the steady outflow of hold harmless payments to local governments until they are fully phased-out in FY30.

The food excise tax proposed in this bill would provide a stable revenue source to the general fund and local governments as well as end the expenditure of hold harmless payments. These benefits come at the cost of raising taxes on a basic necessity that will be felt most by the lowest income taxpayers.

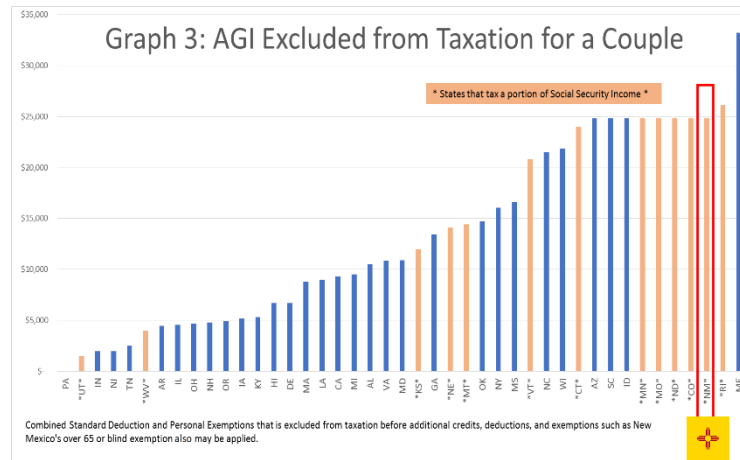
[Sections 15 and 16] PIT represents a consistent source of revenue for many states. While this revenue source is susceptible to economic downturns, it is also positively responsive to economic expansions. New Mexico is one of 42 states along with the District of Columbia, that impose a broad-based PIT. The PIT is an important tax policy tool that has the potential to further both, horizontal equity by ensuring the same statutes apply to all taxpayers, and vertical equity by ensuring the tax burden is based on taxpayer's ability to pay.

New Mexico statutes for state personal income tax are linked to the federal tax code. This is also termed "conformity." As the federal tax code changes, such as under the 2017 Tax Cuts and Jobs Act (TCJA), states see impacts on their revenue collection from PIT, depending on their level of conformity. New Mexico's level of conformity is currently high, given that PIT starts with federal adjusted gross income (AGI), applies federal standard deductions, and uses Internal Revenue Service (IRS) definitions such as the definition for "dependents". With that conformity, New Mexico's treatment of social security benefits follows the federal application.

Since 1984, a portion of Social Security benefits have been subject to federal income taxes. The taxable portion is dependent on the level of the taxpayer's combined income, which includes 50 percent of the Social Security benefits, plus income from other sources, including interest on tax exempt bonds. Because the combined income thresholds for taxation of benefits have remained unchanged since they were introduced in 1984 and 1993, but wages have increased over the years, the proportion of beneficiaries paying tax on their benefits has risen over time.



New Mexico’s taxable PIT base for social security benefits is reasonably stable, and a major portion of social security income is earned by relatively high-income individuals who do not depend solely on social security benefits for their income, and who have other sources of income as well. This is illustrated in Graph 1: 82 percent of taxable social security benefits are earned by individuals with AGI over \$50 thousand. In contrast, Graph 2 illustrates that taxpayers with AGI over \$50 thousand represent only 42 percent of all taxpayers. While any taxpayer with social security benefits may apply for this exemption, most of the financial benefit of this credit will be realized by higher earning individuals as indicated in Graph 1 above.



Thirteen states, including New Mexico, tax some portion of social security benefit income. However, those 13 states tend to have a higher threshold at which PIT takes effect. This essentially means that low-income individuals' income tax liability is generally lower in the benefits-taxing states, regardless of the source of their income. Graph 3 below compares the income level at which each state's initial income tax rate takes effect for a married couple. New Mexico, along with four other states that tax social security benefits, has the third highest income level (\$24,800 for tax year 2020) at which a couple's income may begin to be taxed. At the other end, while Pennsylvania does not tax social security benefits, its income tax is applicable to most non-zero income.

New Mexico's current PIT exemption for persons 65 and older or blind is targeted at those with lower AGI. This new proposed social security benefits PIT exemption would have no AGI restrictions, and an individual claiming exemption under this proposal will no longer be eligible to claim the current exemption for persons 65 and older or blind. Low-income taxpayers tend to have lower taxable social security benefits included in their federal AGI due to federal tax statutes. At the state level, these same taxpayers are eligible for other credits and rebates such as the low-income comprehensive tax rebate (LICTR), leaving them with little or no tax liability under current law.

With the adoption of this bill, New Mexico would join most of the states that do not tax social security benefits at all. Excluding types of retirement income from the taxable base is seen as eroding horizontal equity in state income taxes. By excluding income based on age or profession, taxpayers in similar economic circumstances are no longer treated equally, with older taxpayers receiving a benefit not available to younger taxpayers at the same level of income.

Taxing social security benefits raises issues of double taxation because employee payroll tax contributions to social security are not deductible from the employee's income when determining their tax liability in the year the contribution is made. So, employee contributions are taxed, and it is argued that taxing social security benefits when they are paid out will entail taxing the same contribution again. However, social security benefits are a result of not just employee contributions, but also employer contributions. Employer contributions are deductible for the employer in the year the contribution is made. So, employer contributions are not taxed. Because employees pay half of the payroll tax, and their payroll tax contributions were already included in taxable income for earlier years, at

most 50 percent of the benefits should be excluded from future taxation. Social security benefits withdrawals for most workers, however, exceed their lifetime contribution. Goss (1993) estimated that the payroll tax contributions of current and future workers would equal less than 15 percent of the present value of their lifetime benefits². Therefore, if the ratio of lifetime contributions to benefits is less than 15 percent, then up to 85 percent of benefit income can be taxed without risk of double taxation.

There are many other reasons why states may exempt some income for retirees, such as lessening the economic burdens for individuals on fixed incomes and trying to attract retirees to the state. Military retirees may be skilled workers who have retired from a first career in the military but seek a second career in civilian service. As Graphs 1 through 3 illustrate though, the consideration of exempting retirement income and eroding horizontal equity must be placed in context of the federal and state tax structure, in its entirety.

As far as attracting more retirees to the state is concerned, exempting some income for retirees from income taxation may not necessarily help in achieving that goal. For example, Texas does not tax any income, social security or otherwise, at all. Yet, the state features as one of the least tax friendly states for retirees in the country because of its high property and sales taxes³. Notably, New Mexico's property taxes are amongst the lowest in the nation. It is, therefore, necessary to take a holistic look at New Mexico's tax code, and attempts should be made to make the tax structure more simple, broad based, and equitable, without being punitive to any segment of the population.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met because 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. However, TRD may report on the costs of the social security exemption and the military retirement exemption in the annual edition of the TRD *Tax Expenditure Report*. These exemptions will be reported on the personal income tax-1 tax return.

ADMINISTRATIVE IMPLICATIONS

Implementing the legislation will have an extremely high impact on the Information Technology Division of TRD, according to the agency.

Implementing Sections 1-14, 18: Implementing the legislation will have an extremely high impact on the Information Technology Division (ITD) of TRD, approximately, \$9,467,494 (\$8,856,076 of contractual costs and \$611,418 of staff workload costs) and at least 12 months. Implementation requires two new account types in GenTax, the new Recordation Tax and the new Food Gross Receipts Tax. It also requires repealing the existing hold harmless distributions to municipalities and counties that offset the food and healthcare practitioner deductions from gross receipts. Additionally, two new exemptions from income tax are required to be implemented.

² Goss, Stephen C. 1993. "Current Approach and Basis for Considering a Change to 85-Percent Taxation of Monthly OASDI Benefits." Letter to Harry C. Ballantyne, Chief Actuary, Social Security Administration.

³ https://www.kiplinger.com/kiplinger-tools/retirement/t055-s001-state-by-state-guide-to-taxes-on-retirees/index.php?state_id=44#

The legislation includes implementing a new account type in GenTax for the new Recordation Tax. The following functionality is included for the new account type in GenTax: Standard functionality within registration, returns, payments, e-services, audit, collections, non-filer, correspondence, reports. Finalized forms must be available to begin work on the implementation. Due to the nature and complexity of the effort required to implement the Recordation Tax proposed change in the bill, a contract with the GenTax vendor, FAST Enterprises, LLC is required

There are two options for the new Recordation Tax Type:

Option 1: If the Taxation and Revenue Department will collect details on real property transactions as part of the Recordation Tax implementation, the impact is approximately 12 months and approximately \$4,372,071 (\$4,049,837 of contractual resources and \$332,562 of staff workload costs) the estimate for FAST to implement the changes is \$3,253,125 including gross receipts (at the current gross receipts tax rate of 8.4375 percent). This estimate also includes the following support from FAST: development, technical project management, technical, testing and training support. In addition to the contract with FAST, a full-time contract project manager and contract business analyst will be required at approximately \$428,545 including gross receipts. Due to the nature of such an implementation, IV&V services would also be required at a cost of approximately \$368,167 including gross receipts tax. Further, two state development resources and one state business analyst (FTEs) would be needed for the duration of the project at an estimated \$322,234 of staff workload costs.

Option 2: If the Taxation and Revenue Department **does not** collect the transaction information as part of the Recordation Tax implementation, the impact is approximately 9 months and the estimate for FAST to implement the changes is \$542,188 including gross receipts (at the current gross receipts tax rate of 8.4375 percent). After implementation is complete, one application developer, one business analyst and one database/system administrator FTE will be necessary for ongoing operations and support for approximately \$322,234.

The legislation also includes implementing a new account type in GenTax for the new Food Gross Receipts Tax and repealing the hold harmless distributions to municipalities and counties that offset the food and health care practitioner deductions from gross receipts. This would have a high impact on ITD, approximately 10 months and approximately \$5,074,767 (\$4,806,239 contractual resources including gross receipts at the current rate of 8.4375 percent, and \$268,528 staff workload costs).

The following functionality is included for the new account type in GenTax: standard functionality within registration, returns, payments, e-services, audit, collections, non-filer, correspondence, reports. Finalized forms must be available to begin work on the implementation. Due to the nature and complexity of the effort required to implement the Food Gross Receipts Tax proposed change in the legislation, a contract with the GenTax vendor, FAST Enterprises, LLC is required. This estimate also includes the following support from FAST: development, technical project management, technical, testing and training support.

In addition to the contract with FAST, a full-time contract project manager and contract business analyst will be required at approximately \$357,121 including gross receipts. Due to the nature of such an implementation, independent verification and validation (IV&V) services would also be required at a cost of approximately \$436,931 including gross receipts tax.

Further, two state development resources and one state business analyst (FTEs) would be needed for the duration of the project at an estimated \$268,528 of staff workload costs.

After implementation is complete, one application developer, one business analyst and one database/ system administrator FTE will be necessary for ongoing operations and support for approximately \$322,234.

Implementing Section 15 and 16 would have a moderate impact on ITD; 400 hours or approximately about 2 ½ months and \$20,656 of staff workload costs. This requires configuring an exemption from social security income and an exemption from military retirement income. Updates to reference table configuration, changes to GenTax income tax documents, Taxpayer Access Point income tax documents and changes to existing reports are required. State development resources can make the required changes as part of the annual tax year implementation.

This July 1, 2021, TRD implements the conversion for the Combined Reporting System (CRS) redesign project, as was authorized by the legislature. On July 1, 2021, TRD also implements the local option compensating tax, local option GRT on internet sales, a new version 12 of Gentax, and moves to destination-based sourcing of the GRT. Due to the effective date of July 1, 2021 for this bill and other proposed bills, any changes to rates, deductions and distributions adds to the complexity and risk TRD faces on July 1 to ensure complete readiness and testing of all processes. If several bills with similar effective dates become law there will be a greater impact to TRD and additional staff workload costs or contract resources may be needed to complete the changes specified by the effective date(s) of each bill. TRD recommends an effective date of date of January 1, 2022 or July 1, 2022 to ensure proper implementation of the legislation in TRD administration and system processes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB19 Real Estate Transfer Tax Act and with the social security exemption with income cap of \$120 thousand married joint;

Conflicts with HB49, SB162 and SB208, which provide a 100 percent exemption for social security income;

Conflicts with SB162, which provides an exemption for social security income up to \$30 thousand;

Conflicts with SB277 100 percent tax deduction for uniformed retirees;

Conflicts with SB259, which provides a four-year phased in exemption of military pension up to \$25 thousand.

TECHNICAL ISSUES

Sections 7 through 11 provide for a food tax that will be distributed to counties and municipalities in Section 14 and allows TRD to withhold a 3 percent administrative fee. If the bill passes, this administrative fee should be amended into 7-1-6.41 NMSA 1978.

TRD suggests an alternative, “It is suggested that this not be an entirely new tax act, but rather that the bill replace the 100 percent deduction for retail food receipts in 7-9-92 with a partial (for example 50 percent) deduction similar to 7-9-62 or 7-9-73.1. This would make compliance and administration significantly simpler and more familiar to taxpayers.”

The specification of the Section 2 recordation tax on real property sales uses the base of “prior year assessed value.” This phrase is undefined in statute. The phrase “assessed value” is used for various oil and gas taxes, but not for residential or nonresidential real property. The only credible definition of “assessed value” is in Article VIII, Section 1, of the Constitution of New Mexico. The relevant portion of this section is highlighted below.

Section 1. [Levy to be proportionate to value; uniform and equal taxes; percentage of value taxed; limitation on annual valuation increases.]

- A. Except as provided in Subsection B of this section, taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class. Different methods may be provided by law to determine value of different kinds of property, but the percentage of value against which tax rates are assessed shall not exceed thirty-three and one-third percent.

Using “prior year net taxable value” would likely be clearer than “prior year assessed value.” Regardless, the term should be clearly defined in the proposed recordation tax sections.

OTHER SUBSTANTIVE ISSUES

TRD notes the following:

The revenue impact for PIT is based on the current income tax rates in Section 7-2-7 NMSA 1978. Several bills in the 2021 legislative session are proposing changes to the tax rates especially for taxpayers with higher taxable income. If the current bill to exempt social security benefits income and the tax rate changes go into law, the revenue impacts for each respective bill would be significantly different and need to be reassessed.

The tax on indebtedness instruments would apply to real property owners who refinance their mortgages and other debt instruments without any transfer of property; it is not clear if that is the intent of the legislation.

Data from Freddie Mac on mortgage refinancing :

ANNUAL REFINANCE STATISTICS								
		Percentage of Refinances Resulting in:				Descriptive Statistics on Loan Terms and Property Valuation		
Region	Year	5% Higher Loan Amount ¹	No Change In Loan Amount	Lower Loan Amount	Memo: Payoff Amount Less Than Scheduled Amortization ²	Median Ratio of New to Old Rate ³	Median Age of Refinanced Loan (years)	Median Appreciation of Refinanced Property
West								
	2015	36%	61%	3%	11%	0.81	5.1	12%
	2016	43%	54%	3%	9%	0.84	4.0	17%
	2017	60%	38%	2%	7%	0.91	5.4	23%
	2018	76%	22%	2%	4%	1.07	5.2	30%
	2019	49%	48%	3%	4%	0.87	2.2	15%
	2020	33%	65%	2%	7%	0.74	2.9	16%

LG/sb/al/rl