

Taxation and Revenue Department Agency Bills for 2021 Regular Session

Presented to the
Revenue Stabilization and Tax Policy Committee

December 15, 2020

Stephanie Schardin Clarke, Cabinet Secretary

TRD Agency Proposal 218333.4SA

Bill Section	Proposal Title	Summary	Fiscal Implications	Consequences of Not Enacting	Existing Sections Amended	Effective/ Applicability Date
1	Remove Reference to Combined Reporting System	Remove reference to "combined reporting system" in taxpayer bill of rights because TRD is redesigning that and there will no longer be a CRS	NA	Confusion after CRS is redesigned on 7/1/21	7-1-4.3	7/1/2021
2	CIT Deposit Deadlines	Current law allows TRD to have 10 business days instead of 1 business day to deposit money received from PIT returns during annual peak filing season. This would allow that same exception for CIT	NA	Without the CIT grace period, TRD will continue to be at risk of external and internal audit findings for late deposits. RPD may experience more overtime in pay periods around tax filing date to ensure payments are deposited by next day.	7-1-6	7/1/2021
3	Innocent Spouse Relief	Clarify eligibility for innocent spouse relief from TRD on a spouse's tax debt. It also provides that if the IRS has provided innocent spouse relief for a certain tax period, New Mexico will automatically follow suit, which will streamline TRD's review and approval process	Minimal negative impact on state and local collections	Continued confusion and delay due to lack of piggybacking on IRS approved tax periods for innocent spouse relief	7-1-17.1	7/1/2021
4	Limit TRD Wage Garnishment Amounts	Reduce TRD's ability to garnish wages from lower-income taxpayers to ensure low income earners are better able to pay for basic necessities. For the lowest earning taxpayers, the amount the taxpayer may retain from TRD wage levy would increase from 40 times the federal minimum wage (\$290/week) to 80 times the federal minimum wage (\$580/week)	Minimal negative impact on state and local collections. In FY19, TRD garnished a total of \$5.6m PIT and \$8.0m CRS, but we don't know how much of that was wages, and how much was wages for people making between \$290-580 per week	Lower income delinquent taxpayers will continue to be in severe financial strain, especially during economic downturn	7-1-36	7/1/2021

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5	Remove \$5 minimum CIT late filing penalty	Removes the \$5 minimum late filing penalty for CIT. TRD management and estimates that programming the penalty into Gentax will cost more than the expected revenue that will be collected. CIT late filing penalties above the \$5 minimum will continue to be collected	Because this fee has never been collected, there is no general fund revenue impact associated with this proposal. Will save TRD the about \$2,500 non-recurring expense to program the penalty into the Gentax CIT module.	TRD will program the \$5 minimum CIT penalty into Gentax and CIT taxpayers will begin being charged a new minimum penalty they have not previously been assessed	7-1-69	7/1/2021
6	Limit PIT Uncompensated or Unreimbursed Medical Care Credit to New Mexico Residents	Restricts the uncompensated/unreimbursed medical care expenses PIT credit to NM residents, excluding non-residents who file a NM PIT return	Will increase general fund revenue by about \$1 million per year based on average claims by non-resident filers in last three years	NM PIT filers with little or no NM tax liability who are not NM residents may continue to claim this \$2,800 refundable tax credit. Some individuals file a NM return and allocate no income or only losses to NM. Taxpayer must have \$28,000 or more unreimbursed medical expenses to qualify for the credit	7-2-18.13	Applicable tax year 2022 and after
7	Limit Special Needs Adoption Credit to New Mexico Residents	Restricts the special needs child adoption PIT credit to NM residents, excluding non-residents who file a NM PIT return	Will increase general fund revenue by about \$45,000 per year based on average claims by non-resident filers in last three years	NM PIT filers with little or no NM tax liability who are not NM residents may continue to claim this \$1,000 per child refundable tax credit. Some individuals file a NM return and allocate no income or only losses to NM	7-2-18.16	Applicable tax year 2022 and after
8	Rural Job Tax Credit Changes	Adds a statute of limitations to claim the rural job tax credit and revises definitions to ensure a business must create a new job to claim the credit. Also updates outdated references to federal code	May increase general fund revenue slightly by closing hiring loophole	Loophole that circumvents job creation targeting will remain open, and state general fund may receive credit claims for undefined period of time	7-2E-1.1	Applicable to modified combined returns filed on or after 7/1/22 and PIT returns filed on or after 1/1/2022

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9	Unclaimed Property Notice Requirements	Allows TRD to shorten the form of notice to advertise unclaimed property annually in each county. Rather than listing each unclaimed property and its owner of record in detail, TRD would publish a notice directing readers to websites for full details.	Operating budget savings of about \$110,000 per year for TRD's Revenue Processing Division	TRD will continue to expend over \$120,000 per year advertising unclaimed property (instead of \$10,000), which is not the most effective way to match unclaimed property with its owners.	7-8A-9	7/1/2021
10	Clarify Leasing and Licensing in Gross Receipts and Compensating Tax Act Definitions	This proposal defines licenses and leases in conformance with existing case law	NA	Continued confusion, disputes and escalation between TRD and taxpayers leading to audit assessments, protests, and litigation that are costly for both TRD and taxpayers	7-9-3	7/1/2021
11 through 19 and 21	Stipulate Alternative Evidence for GRT Deductions	Specifies that taxpayers may use alternative evidence to substantiate eligibility for various GRT deductions in times when an NTTC cannot be obtained	NA	Continued confusion and escalation between TRD and taxpayers as to whether alternative evidence may be submitted to claim various GRT deduction. To know this, taxpayers must currently be aware of the alternative evidence section in 7-9-43.	Amends 7-9-46, 7-9-47, 7-9-48, 7-9-49, 7-9-50, 7-9-51, 7-9-52, 7-9-52.1, 7-9-54.1, and 7-9-60	7/1/2021
20	GRT Deduction for Trade-Support in Border Zone	Updates outdated references to federal code	NA	Incorrect reference to federal code	7-9-56.3	7/1/2021
22	Clarify GRT Food Deduction to Ensure Delivered Groceries are Deductible	Stipulates food must be sold "by" rather than "at" a retail grocer to ensure delivered groceries remain eligible for the deduction. Also updates outdated federal reference	Unknown but small potential impact to state general fund and local governments. TRD issued guidance and believes most grocers are likely claiming the deduction for delivered groceries.	Taxpayers may continue to be charged GRT on delivered groceries by some grocers, creating inconsistent tax policy, frustration and a disincentive to have groceries delivered during the COVID-19 pandemic	7-9-92	7/1/2021

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23	Clarify Medical Deduction for Practice Group Owned Health Providers	Clarifies that the health practitioner deduction from GRT is allowable for physician practice groups	NA - this clarifies law to ensure conformance with current practice	Although TRD rule, ruling and publications make clear that practice group owned health providers are allowed to claim the medical deduction from GRT, there could continue to be sporadic confusion and inconsistent processing within TRD	7-9-93	7/1/2021
24	High Wage Jobs Tax Credit	Updates outdated references to federal code	NA	Incorrect reference to federal code	7-9G-1	7/1/2021
25 through 28	Oil and natural gas reporting volume definitions	Under current law, taxpayers report mineral production, but statute does not specify which reporting unit to use, which has caused volumes to be incorrectly or inconsistently reported in the recent past. When volumes are misreported, prices are incorrectly calculated. And if prices are incorrectly calculated, the following year's tax rate is incorrectly set.	NA. Ensures correct tax rates are set each year to preserve the correct amount of general fund revenue	Severance tax and oil and gas processors' tax reporting may continue to contain errors with little recourse from TRD to enforce correct reporting. Taxpayer misreporting may impact tax rate setting in following year, affecting revenue collection. TRD severance tax data will continue to be less useful and accurate for purposes of audit, analysis, and forecasting	7-29-2, 7-30-2, 7-31-2, and 7-32-2	7/1/2021

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29 through 31 and 33	Finalize Insurance Premium Tax Transition to TRD	The Insurance Premium Tax recently transitioned from OSI to TRD. Provides additional clean up to finalize the transition. The 0.9% tax on group self insured plans is repealed in the Insurance Code and added to the TAA so that TRD has clear authority to collect and distribute it to the general fund	NA - OSI previously distributed group self insured tax to the general fund and this will ensure TRD may continue to do so	Neither TRD or OSI will have clear authority to collect 0.9% tax on group self insured	7-40-2, 7-40-3, 7-40-7, repeal 52-6-13	7/1/2021
32	Allow TRD to Require Electronic Payment	Current law allows TRD to require electronic filing of tax returns, but not electronic payment of taxes owed. This would allow TRD to require electronic filing and payment. TRD is conservative in its mandating of electronic processing to avoid harming taxpayers for whom e-filing may be a burden. TRD would likely mandate e-payment for those tax programs already mandated for e-filing, which include larger CRS returns, Insurance Premium Tax, Healthcare Quality Surcharge, Weight Distance Tax (except smallest fleets), and Cigarette Tax	NA	TRD will continue the inefficient processes of depositing mailed checks and entering manual exceptions. Efficiencies in processing time will not be achieved.	9-11-6.4	7/1/2021

TRD Agency Proposal 218672.1SA

Bill Section	Proposal Title	Summary	Fiscal Implications	Consequences of Not Enacting	Existing Sections Amended	Effective/ Applicability Date
1	Define Tax Credit Application Process	This would clarify requirements for a tax credit application to be complete, which starts a statute of limitations for TRD's review of the application. The bill also would define a process to request information to perfect an incomplete credit application. This would improve TRD's administration of credits and reduce taxpayer confusion and frustration. Because the bill would also ensure the statute of limitations starts running upon TRD receiving a complete application, TRD's review time could be reduced TRD's from 180 to 120 days. The bill would also clarify a taxpayer's remedies when TRD denies a tax credit application. TRD's position has been that a taxpayer may pay and file for a refund when they are denied the claim of a tax credit, but that if a taxpayer is denied a tax credit application they cannot pay and file a refund claim but instead must file a protest of the application denial. Given the statute of limitations on refunds, this may leave taxpayers with little remedy if a credit application is denied by TRD.	NA	Although TRD is supposed to have 180 days to review a credit application, without this bill much of the review period will continue to be exhausted as TRD attempts to gather all necessary information from a taxpayer who submits an incomplete application. Secondly, taxpayers will continue to lack a remedy to file a refund claim if TRD denies a tax credit application.	7-1-29.2	7/1/2021
2	Prohibit Electronic Sales Suppression for Tax Evasion	This bill would modernize New Mexico's tax evasion statute to encompass newer electronic tools criminals use to evade taxes	Minimal possibility for increase in state and local revenues through tax evasion deterrence and prosecution	Purchase, installation of use of automated sales suppression devices or software may not be punished as criminal tax evasion without explicitly including that in the statute. Use of these devices will continue to be subject to a civil penalty, and will be invested for criminal prosecution under different thresholds	7-1-73	7/1/2021

Bill Section	Proposal Title	Summary	Fiscal Implications	Consequences of Not Enacting	Existing Sections Amended	Effective/ Applicability Date
3 and 4	Protest Venue for State Assessed Property Valuations	Currently, when the TRD State Assessed Bureau values property, unresolved protests may go to both the county assessor and the AHO. This bill amends 7-38-21 to clarify that protests of county assessed property go to county protest boards. It adds a new 7-38-21.1 providing that protests of state assessed property go to AHO	NA	Continued ambiguity around how to protest state assessed valuations if taxpayer and PTD cannot resolve the protest informally.	7-38-21 and add a new section 7-38-21.1	7/1/2021
5	State Assessed Property Tax Omitted Assets Protests	Omitted assets are assets not appearing on the property tax rolls because the owner did not report the assets. This bill would clarify that if TRD PTD valued omitted assets, the taxpayer has the same protest rights as the taxpayer has on reported property through PTD, AHO, or suing for refund in district court.	NA	Continued ambiguity around how to protest PTD valuation of state assessed omitted assets (protest through PTD or county valuation protest boards)	7-38-22	7/1/2021
6 and 7	State Assessed Property Tax Appeals to Court of Appeals	Currently, if PTD wishes to appeal an adverse AHO Decision & Order on state assessed property valuation, PTD must petition district court for a writ of certiorari, which is not guaranteed. This bill amends 7-38-28 to apply only to county assessed appeals, and adds a new section allowing PTD may appeal AHO Decisions & Orders to the Court of Appeals. This is the same appeal right TRD has under Tax Administration Act tax programs	NA	TRD's right to appeal an adverse AHO D&O will continue to not be guaranteed, depending on district court granting writ of certiorari.	7-38-28 and add a new section	7/1/2021



Thank you!

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