

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee Amendment changes the time limit for initiating prosecution of criminal violations of the revenue laws of the state from the current three years to five years.

Synopsis of Original Bill

House Judiciary Committee Substitute for House Bill 360 expands the duties and powers of the Taxation and Revenue Department to investigate possible criminal violations of the revenue laws including fraud or other crimes that may affect the taxes due the state, changes penalties for fraud and creates the Tax Fraud Division in the Taxation and Revenue Department.

Specific provisions in the Committee Substitute include:

- The statute of limitations for criminal prosecution of violations of New Mexico's tax statutes would be suspended for the period of time during which a subpoena or summons is being challenged by a taxpayer in court.
- The confidentiality statutes are amended to permit the Department to share information with the courts in cases of tax fraud or other crime involving state tax liabilities.
- A new fourth degree felony offense is created for a person who "willfully procures, willfully counsels or willfully advises in the preparation or presentation of a return, affidavit, claim or other document ..." that is knowingly fraudulent or knowingly false as to any material matter, whether or not such falsity or fraud is with knowledge or consent of the individual or person authorized or required to present the return..."
- A new set of penalties is created for willful failure to collect and pay over taxes. The penalty amount and degree of the offense is a function of the amount of tax due, with a second degree felony provided for tax due amounts over \$20 thousand.
- The Department would be authorized to employ law enforcement officers to investigate criminal tax fraud cases. These officers would be required to receive appropriate law enforcement training.
- The time limit for initiating prosecution of criminal violations of the revenue laws of the state would be extended from three years to 6 years.

FISCAL IMPLICATIONS

House Judiciary Committee Substitute for House Bill 360 creates a new Tax Fraud Division in the Taxation and Revenue Department but provides no funding for the unit. Currently the Taxation and Revenue Department has non-recurring funding for FY04 to fund the Tax Fraud Unit; however, this funding ends June 30, 2004. The Taxation and Revenue Department has testified they will need 13.0 FTE and \$1 million to maintain the Tax Fraud Unit. The General Appropriations Act passed by the House and currently in Senate Finance Committee contains \$1 million and 13.0 FTE for the Taxation and Revenue Department, Tax Administration Program budget to fund the Tax Fraud unit.

The Taxation and Revenue Department believes that a positive impact on state revenues would result due to successful prosecution of tax fraud cases. It is believed that more publicized prosecutions tend to heighten public perception of tax compliance and enforcement, thereby enhancing voluntary compliance. It is impossible to estimate this revenue impact.

ADMINISTRATIVE IMPLICATIONS

The Taxation and Revenue Department believes the proposed statute would provide an important enforcement tool to prosecute cases of criminal tax fraud in the state. Successful prosecution requires highly specialized knowledge, investigative techniques and experience. The creation of the new division will give the state more ability to successfully prosecute these types of crimes.

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