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## FISCAL IMPACT REPORT

**SPONSOR** Whitaker      **DATE TYPED** 2-18-2005      **HB** 807aHTRC

**SHORT TITLE** Tax Administration Reforms      **SB** \_\_\_\_\_

**ANALYST** Taylor

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	\$1,125.0	Similar	Recurring	General Fund
	\$375.0			Local Governments

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files  
Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of HTRC amendments

The first House Taxation and Revenue Committee (HTRC) amendment deletes a restriction to a section of the bill dealing with the taxation and revenue department authority to act on refund claims 280 days after a claim was filed or mailed. The struck language had the effect of limiting the department from acting on refund claims to cases where the person had failed to either file a written protest or commence civil action in Santa Fe district court.

The second amendment deals with interest on tax deficiencies. The struck language had the effect of waiving interest due on taxes owed resulting from a managed audit, if payment was made within 30 days. Instead, the inserted language provides that no interest is due if the payment is made within 180 days of when the department has mailed or made the assessment.

#### Fiscal Impacts of HTRC amendments

The Taxation and Revenue Department's analysis suggest that the amendment does not alter the estimated fiscal impact.

Synopsis of original bill

House Bill 807 makes the following changes to the Tax Administration Act:

- TRD is given the power to inform the licensing body for attorneys that an attorney has failed to file or pay taxes and request the licensing body to initiate disciplinary proceedings.
- The confidentiality of tax returns and other information provisions are amended to provide exceptions for the following entities or purposes:
  - for jurisdictions pursuant to an international fuel tax agreement, provided that the information is used for tax purposes only;
  - any written ruling on questions of evidence or procedure made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 (tax administrative hearings) provided that the name and identification number of the taxpayer requesting the ruling shall not be disclosed.
  - to the secretary of labor for use in enforcement of unemployment insurance collections; the labor department and its employees are subject to confidentiality provisions of the Tax Administration Act.
  - information that the taxation and revenue department is authorized by the Tax Administration Act to release to professional licensing bodies, pursuant to Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978. (Chapter 36 relates to licensing attorneys; chapter 61 relates to licensing various health sector professions)
- TRD is provided the authority to require electronic delivery of any electronic delivery of any return or payment by regulation, ruling, order or instruction.
- The method of payment of certain taxes due provision is amended to add taxes and fees due under various tax acts affecting cigarettes and other tobacco products, gasoline and other fuels, liquor taxes, workers' compensation, gaming and telecommunications access. These provisions currently apply to major taxes including withholding taxes, gross receipts and compensating taxes, and various taxes related to the oil and gas industry.
- Administrative hearings procedures are amended to allow taxpayers the option of having the Rules of Civil Procedure for the District Court apply in hearings before the hearing officer.
- The Claims for Refund provision is amended to require TRD to promptly notify the person filing a claim for a refund of gross receipts tax, compensating tax, personal income tax (excluding the current tax year) or corporate income tax (excluding the current tax year) that it has received the claim and indicating whether it considers the claim to be complete. The person filing the claim may agree to designate the claim as protective claim. A definition for protective claim is added: "protective claim means a claim for a refund filed by a person asserting that the person's entitlement to a refund will be established by a final decision of a New Mexico court or competent jurisdiction on a claim for a refund or portents previously filed by that persons or another". It provides that disposition of protective claims be postponed until a decision is made on any lead case (previously filed claims or protests)
- Authority to Make Refunds or Credit provisions is amended. Currently TRD is provided the discretion to offset refunds against other tax liability. New language would require TRD to notify the taxpayer that the refund is being used in this manner; it would also entitle the taxpayer to interest until the tax liability is credited.
- Provisions regarding collection of tax debts are amended so that the department or attorney general may pursue agreements in the appropriate courts of other states on final

judgments, orders or decrees for taxes. Currently, this provision applies only to final judgments. These provisions are also amended to allow enforcement of final judgments, orders or decrees by agents retained by the department or attorney general.

- Penalty provisions are amended as follows:
  - The minimum penalty for failing to file or pay taxes is increased from \$5 to \$25.
  - The minimum for cases of will intent to evade taxes is increased from \$25 to \$150.
  - The minimum for a bad check is increased from \$10 to \$25.
  - A Penalty for tax preparers who fail to comply with (to be prepared) income tax regulations is established at \$5 per return.

## **FISCAL IMPLICATIONS**

TRD estimates that the increased penalty provisions of the bill would increase general fund revenues by \$1.5 million.

## **ADMINISTRATIVE IMPLICATIONS**

TRD reports no administrative implications for this bill.

## **OTHER SUBSTANTIVE ISSUES**

TRD's analysis included the following substantive concerns:

House Bill 807 contains a number of provisions designed to improve compliance and administration of the tax laws. Motivation for some of the specific provisions is described below.

Provisions allowing TRD to share information with licensing bodies should encourage compliance. The provisions allowing license suspension only apply to failure to pay settled tax liabilities over \$1,000.

Expanding electronic filing to additional tax programs is important in enabling TRD to improve the timeliness and accuracy of revenue processing.

Lowering the threshold for monthly payments will allow a number of small businesses to file less often.

Increasing minimum assessment amounts will streamline the assessment function.

Allowing taxpayers to elect the rules of civil procedure gives them additional options and more certain and well-defined rules under which to proceed.

TRD would be required to notify taxpayers promptly that their claim for refund has been received and, if appropriate, designate the claim a "protective claim." A protective claim asserts that the entitlement to a refund will be established by a pending court decision.

Increasing minimum penalties will encourage compliance.