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FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/07

SPONSOR Cervantes LAST UPDATED _____ HB 772

SHORT TITLE Obstruction of Tax Related Investigations SB _____

ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 772 would provide new sections of statute providing criminal penalties for engaging in actions that obstruct tax-related investigations.

The measure defines obstruction of a tax-related investigation as:

- a) Providing false information to, or withholding information from, individuals authorized to investigate violations of the Tax Administration Act (TAA) when the information is material to investigation or enforcement;
- b) Altering, destroying or concealing documents or records required by the TAA, in cases where this type of behavior is intended to mislead investigations, or
- c) Preventing, obstructing, misleading, delaying or attempting to prevent, obstruct, mislead or delay communication of information or records relating to a state-related investigation.

The proposal would make conviction for obstruction of a tax-related investigation a misdemeanor, subject to imprisonment of less than one year.

House Bill 772 would also provide a tolling of the statute of limitations for the civil assessment of tax for the period during which a proceeding and related appeals regarding a motion to quash an administrative or grand jury subpoena issued in a tax investigation are pending.

Additionally, HB 772 would amend section 30-1-9 to provide a similar tolling of the criminal statute of limitations for the period during which a proceeding and related appeals regarding a motion to quash an administrative or grand jury subpoena in a tax investigation are pending.

FISCAL IMPLICATIONS

None identified.

SIGNIFICANT ISSUES

The state of New Mexico does not have a general obstruction of justice statute. The state has two specific obstruction statutes: Section 30-44-6 deals with obstruction of an investigation of a Medicaid fraud investigation and Section 30-6-4 deals with obstruction of a child abuse or neglect investigation. This proposed new statute deals with obstruction of an investigation under the Tax Administration Act. The language is based on the obstruction of investigation of a Medicaid fraud investigation – Section 30-44-6 NMSA 1978, and has some added language from the federal obstruction statutes.

The statute of limitations tolling provisions would prevent a taxpayer from tying up a case with a motion to quash a subpoena and eventually “run out the clock” on the investigation.

Laws 2005, Chapter 108 (House Bill 411), created the Tax Fraud Investigations Division at TRD and provided similar statute of limitations tolling provisions in the Tax Administrative Act (Section 7-1-4 E) for administrative subpoenas. However, that legislation did not provide for the same tolling provisions for situations involving motions to quash grand jury subpoenas.

ADMINISTRATIVE IMPLICATIONS

Provisions of the proposed measure would impose minor administrative impacts TRD, and improve administration of the Tax Administration Act.

BE/nt