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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/07/09

SPONSOR HJC LAST UPDATED \_\_\_\_\_ HB 257/HJCS

SHORT TITLE Tax Administration Confidentiality SB \_\_\_\_\_

ANALYST Lucero

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General’s Office (AGO)  
 Taxation and Revenue Department (TRD)  
 Department of Information Technology (DoIT)  
 Regulation and Licensing Department (RLD)  
 Gaming Control Board  
 State Land Office

### SUMMARY

#### Synopsis of Bill

House Bill 257 amends, reorganizes and consolidates provisions of the Tax Administration Act (“TAA”) that govern the confidentiality of tax returns and taxpayer information obtained under most of the state’s tax programs, except property taxes.

**Section 1** adds definitions of tax “return” and “return information.”

**Section 2** repeals the paragraphs in section 7-1-8 that are now included in the TAA definitions (discussed above) or re-codified in Sections 3 through 12 of the bill (discussed below). Section 2 also adds general rules regarding the revelation of tax returns and return information (paragraphs A through D, page 21, line 20 through page 23, line 11). These rules provide important clarification to current law rules that are not well specified and are scattered through Section 7-1-8. Most importantly, tax returns and tax return information can only be used for official purposes (no “browsing” or other unofficial or unspecified uses are allowed), and cannot be re-revealed without specific statutory authorization.

**Sections 3-12** enactd new material as Sections 7-1-8.1 through 7-1-8.10 that re-codify into groups of similar entities the allowed exceptions currently found in Section 7-1-8 or other statutes. This re-codification will make it easier to understand the structure of these exceptions and to make any future changes to them. Note that one section of current law, 7-1-8(MM), concerning information that could be given to local bodies that license professions or occupations, is not included in Sections 7-1-8.1 through 7-1-8.10 because the Department has never had a request for information under this paragraph.

The amendments proposed by the bill make the TAA's confidentiality provisions easier to understand and apply than they are under current law.

**Section 13** makes conforming changes to Section 7-1-76, which imposes penalties for prohibited revelation of tax returns or tax return information. The penalty provisions are applied to any unauthorized uses of tax returns or tax return information, including use or revelation by an unauthorized recipient.

**Section 14** provides for an effective date of July 1, 2009.

### **FISCAL IMPLICATIONS**

The Taxation and Revenue Department (TRD) notes that there is no additional fiscal impact other than updating policy, rules, and administrative code, of which the department could absorb, related to this bill.

### **SIGNIFICANT ISSUES**

According to the Attorney General's Office (AGO) Section 6, p. 29, lines 1-4. The bill allows employees of TRD to reveal information to a district attorney, a state district court grand jury or federal grand jury for purposes of an investigation into alleged criminal violations of the tax laws. The provision omits the NM Attorney General from the list, which could hinder the ability of the AG to conduct a criminal investigation into violations of the tax laws should that become necessary.

The State Land Office relies heavily on information provided by TRD to ensure that oil, gas, and mineral production from state trust lands has been accurately reported and that royalties have been fully paid. Thus, it is important to ensure that this bill does not restrict or deter TRD in providing any information that might assist the State Land Office in that regard.

### **ADMINISTRATIVE IMPLICATIONS**

1. Two key definitions (return and return information) are added and general rules affecting all persons receiving returns or return information are added.
2. The subsections of §7-1-8 are grouped into ten new sections, §7-1-8.1 through §7-1-8.10, that cover similar entities. This reorganization simplifies the statute and will make any future changes easier to incorporate

### **TECHNICAL ISSUES**

While the bill preserves existing law with respect to TRD's ability to share information with the State Land Office (compare NMSA 1978, § 7-1-8(M) with Section 10 of the bill), the sharing of

information may be aided by clarifying in Section 5 of the bill that the State Land Office is in the same position as the federal Minerals Management Service in terms of the ability to obtain audit workpapers and proprietary information contained in audit workpapers if the information pertains to production on its land.

**AMENDMENTS**

Add the New Mexico Attorney General to the list of prosecutorial agencies entitled to receive information from TRD in connection with criminal investigations. See discussion above under Significant Issues.

The State Land Office suggests that Section 5 of the bill, Paragraph B (3) be amended to insert a subparagraph (2) as follows:

The commissioner of public lands, if production occurred on state land or land unitized with state land;

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