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FISCAL IMPACT REPORT

ORIGINAL DATE 2/04/09
 SPONSOR Taylor LAST UPDATED 2/27/09 HB 490/aHAFC
 SHORT TITLE Taxation and Revenue Department Agreements with I.R.S. SB _____
 ANALYST Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	\$0.1	Recurring	TRD Operating Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$0.1	\$0.1	Recurring	TRD Operating Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1			Nonrecurring	TRD Operating Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HAFC Amendment

House Appropriations and Finance Committee (HAFC) amendment to House Bill 490 changes the “Internal Revenue Service” to “US Department of the Treasury” throughout the bill and strikes the word “electronic” in reference to “levies” to resolve technical items identified by the Attorney General’s Office.

The amendment also provides that if TRD is required to pay a fee to US Department of the Treasury for an offset against a taxpayer’s federal income tax refund, TRD may impose and collect an equal fee from the taxpayer. Revenue received from the taxpayer fee is appropriated to the TRD.

Synopsis of Original Bill

House Bill 490 amends NMSA Section 9-11-4, Taxation and Revenue Department Act. The bill identifies the Tax Fraud Investigations Division as one of the divisions of the Taxation and Revenue Department.

The bill also amends NMSA Section 9-11-6.1 of the Taxation and Revenue Department Act (NMSA Sections 9-11-1 et seq, relating to the authority of the Secretary of that Department to set fees for providing services to the public) to allow the Secretary to enter into agreements with the Internal Revenue Service under which either party honors electronic levies made by the other party upon taxpayers. If an agreement requires the Department to pay a fee to the Internal Revenue Service for applying a levy of the Department against a taxpayer's federal refund amount, the Department may impose and collect an equal fee upon the taxpayer, the proceeds of which are appropriated to the Department to reimburse it for the fee paid to the internal revenue service. The bill allows the Department to set a fee for applying a federal levy against a taxpayer's New Mexico refund amount, and any such fee received is appropriated to the Department for use in tax administration.

FISCAL IMPLICATIONS

Taxation and Revenue Department (TRD) estimates that amount of fees collected from the IRS would be minimal.

Continuing Appropriations Language

This bill provides for continuing appropriations from the fees collected from the IRS. The LFC has concerns with including continuing appropriation language in the statutory provisions, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

The State Income Tax Levy Program requires acceptance of electronic levies against State refunds from IRS. The bill authorizes TRD to charge the IRS a fee for their levies, with proceeds appropriated to the department for tax administration. The bill also authorizes TRD to enter into an agreement with IRS to accept levies against federal refunds. An agreement would

differ from the current federal refund offset program (Treasury Offset Program) with the Financial Management Service of the U.S. Treasury, which is a strictly federal program that does not involve levies. The IRS would be allowed to charge TRD a fee to impose levies on federal refunds. The bill authorizes TRD to collect the fee from levied taxpayers, and appropriates that fee to the department to pay the IRS.

According to the Attorney General's Office (AGO), the bill appears to allow New Mexico to participate in the federal "State Income Tax Levy Program", although it does not specifically mention that program. That program allows the I.R.S. and a state to agree to allow a state income tax refund to be applied to a federal tax liability. See Internal Revenue Manual, Section 5.19.9.2, Internal Revenue Code, 26 U.S.C.6331; 26 U.S.C. 6330. According to that manual, New Mexico is not one of the participating states. I.R.S. Manual 5.19.9.2 subparagraph 11.

Likewise, the federal government may collect debts owed to a state by using an "administrative offset" (collecting the debt from funds owed by the federal government to a taxpayer) if a reciprocal agreement exists between the Secretary of the Treasury and the state. 31 U.S.C. 3716(h)(1). The bill also appears to allow the Secretary of the Taxation and Revenue Department (TRD) to enter into that type of agreement.

New Mexico state law currently only allows the exchange of information pursuant to the terms of a reciprocal agreement with the federal government. NMSA Section 7-1-8B.

The bill refers to "electronic levies" but does not define that term. Under the State Income Tax Levy Program, the I.R.S. transmits an electronic file of qualifying debts to each participating state. I.R.S. Manual 5.19.9.2 subparagraph 2. However, this is not an "electronic levy". The bill could be referring to the "administrative offset" described above. States participating in the program after January 2003 transmit payments collected on behalf of the I.R.S. to the federal government electronically. I.R.S. Manual 5.19.9.2 subparagraph 7. However, those methods are not "electronic levies".

Further, the term "electronic levy" was not found in a search of New Mexico state law.

The I.R.S. does have a procedure whereby it electronically transmits "levies", or seizures of property which may be owed to a taxpayer by the United States Government (retirement benefits, contractor or vendor payments, employee salary etc.) through the "Federal Payment Levy Program" to the Department of the Treasury after procedural requirements are met and taxes are owed and unpaid. See I.R.S. Publication 594, "The IRS Collection Process", but this procedure does not seem applicable.

The bill also allows for the imposition of a fee on a taxpayer if the federal government charges that fee to the state for collecting a state debt. Although 31 U.S.C. 3716(C)(4) allows the Secretary of the Treasury to collect a fee from federal agencies when it collects a debt owed those agencies by administrative offset, it is unknown whether a similar fee is imposed on state governments. Likewise, the bill allows the state to collect a fee from a taxpayer's refund amount when the state collects a federal debt. The I.R.S. appears to allow this offset. See I.R.S. Manual 5.19.9.2 subparagraph 7.

TECHNICAL ISSUES

As noted above by the AGO

OTHER SUBSTANTIVE ISSUES

The Tax Fraud Investigations is a critical division of the department. Previously, the division was included in the section of the statute that lists departmental divisions. However, that section was subsequently amended without listing the division. This bill corrects the statute back to its original state.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Secretary of the TRD will not be authorized to enter into agreements with the federal government as described above.

AMENDMENTS

The bill could be amended to specifically allow the state to participate in the State Income Tax Levy Program, and to enter into other agreements allowing the federal government to collect debts owed to the state. The bill could be amended to define the term “electronic levies”.

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