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F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 2-22-09
SPONSOR Barela **LAST UPDATED** **HB** 589

SHORT TITLE Tax and Revenue Tax Amnesty Program **SB**

ANALYST Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	$500.0	Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	$8,530.0	($6,660.0)	Non-Recurring	General Fund
	$3,650.0	($2,860.0)	Non-Recurring	Other Tax Act Funds and Local Governments

(Parenthesis ( ) Indicate Revenue Decreases)
Estimates provided by TRD

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$1,250.0		$1,250.0	Non-Recurring	TRD Information Technology
		$100.0		$100.0	Non-Recurring	TRD Records Processing
		$100.0		$100.0	Non-Recurring	TRD Audit & Compliance Division

(Parenthesis ( ) Indicate Expenditure Decreases)
Estimates provided by TRD

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 589 appropriates five hundred thousand dollars ($500,000) from the general fund to the Taxation and Revenue Department (TRD) for the purpose of conducting a tax amnesty program.

This bill also authorizes the Secretary of the Taxation and Revenue Department, with the concurrence of the Governor, to declare an amnesty period of no more than 90 days within fiscal year 2010. All revenue collected as a result of the tax amnesty shall be identified and reported to the first session of the fiftieth legislature. The Secretary is authorized to waive interest and penalty during this amnesty period on taxes that were due and not assessed prior to the day the amnesty period begins. The bill sets a limit that the total amount that may be waived for any one taxpayer is not to exceed twenty-five thousand dollars

The bill provides for a delayed repeal effective July 1, 2010.

FISCAL IMPLICATIONS

According to the February 2009 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is $575 million less than the FY09 appropriations before the 2009 solvency reductions. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

The appropriation of five hundred thousand dollars ($500,000) contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of 2010 shall revert to the general fund.

According to TRD:

> The revenue estimate accounts for several components: (1) increase in collections during the amnesty, (2) reduced revenues that would have been collected through regular collection efforts, as well as the penalty and interest associated with these revenues, (3) revenues due to new filers brought into the system through the amnesty, and (4) reduced revenues that stem from diversion of resources from collection activities. See Detailed Discussion on page 2.
>
> The estimated revenue impact of the proposed amnesty relied in part on data from, and assumptions regarding, the 1999 amnesty. Fifty percent of collections ($25.5 million) from the 1999 amnesty are assumed to result from un-assessed liabilities. 64% of collections occurred during the amnesty period; the remaining 36% occurred during the two-year installment payment period. Although the 1999 amnesty allowed for installment payment agreements, this is not a characteristic of the amnesty proposed by this bill. To estimate collections of un-assessed taxes that would result from the proposed amnesty, the full value of those collected

during FY99 as well as 20% of those collected during FY2000 and FY2001 are adjusted to FY2010 values by accounting for the growth in collections over time.

A portion of revenues collected in the 1999 amnesty program (an assumed 85%) would have been collected even in the absence of an amnesty. Due to improved collection efforts, a higher percentage (90%) is applied to the proposed amnesty. In addition, had these taxes been collected through regular collection efforts rather than in the 1999 amnesty, interest and penalty would have been collected. Data collected during the 1999 amnesty indicates that penalty and interest that was waived during the amnesty amounted to 56% of collections. However, the statutes now limit the amount of penalties that may accumulate and impose a lower interest rate than that which was imposed at the time of the 1999 amnesty. Additionally, the bill imposes a cap of $25,000 on the amount of penalty and interest that can be waived. An estimated 69% of collections include penalty and interest of less than $25,000 and are thus unaffected by the cap. For these collections we assume lost penalty and interest would equal 40% of collections in the FY2010. The remaining 31% of collections have penalty and interest in excess of $25,000, and thus are affected by the cap on penalty and interest. For these collections we assume lost penalty and interest would equal 15% of collections in FY2010. These two components of the revenue estimate, taking into account amounts that would have been collected in managed audits (with no interest or penalty), are distributed over several fiscal years; it is assumed that 40% would have occurred during FY2010, 25% in FY2011, 15% in FY2012, 10% in FY2013, and the remaining 10% in subsequent fiscal years.

Additional filers brought into the system by the amnesty would have a positive effect on revenues in FY2011 and subsequent years. The amnesty is assumed to bring new filers into the system such that revenues increase by 0.01% in FY2011 and subsequent fiscal years. Finally, the amnesty would divert resources away from regular collections activities (ACD estimates 10% of resources will be diverted), thereby reducing regular revenue collections by nearly $5.2 million in FY2010.

It is assumed that 70% of the revenue impact will affect the General Fund; the remaining 30% is assumed to impact other local and other funds. The following table details the magnitude and timing of the various components of the revenue estimate.

Detailed Estimated Revenue Impact*						
	FY09	**FY10**	**FY11**	**FY12**	**FY13**	**FY09-FY13**
Unassessed taxes collected		33,906				33,906
Revenues that would have been collected via regular collection efforts		(12,186)	(7,616)	(4,569)	(3,047)	(27,418)
Penalty & interest associated with regular collections		(5,417)	(3,386)	(2,031)	(1,354)	(12,188)
Revenues from new filers			824	876	930	2,631
Decreased collections due to diverted resources		(5,171)				(5,171)
Total		11,132	(10,177)	(5,725)	(3,470)	(8,240)

SIGNIFICANT ISSUES

There are few requirements to qualifying for the amnesty, thus anything previously due but not yet assessed will qualify. (No requirement to pay the liability due.) The use of the word “assessed” could cause an adverse consequence, since liabilities assessed after the statute of limitations are not truly assessed per Section 7-1-17 NMSA 1978, and all assessments under $25 are not assessed, but the liabilities are still due and collected. "Assessed" should be clarified. The bill is not clear how estimated penalty and interest will be affected.

Most of the taxpayers that this is trying to assist qualify for the managed audit program, which provides 180 days to supply the department information needed to establish liability and an additional 180 days to pay without penalty and interest. There is also a potential impact on audits in progress, and therefore a possible violation of the taxpayer bill of rights if the auditor is to get it assessed during the 90 day window. Finally, the last amnesty was administered 10 years ago. Taxpayers may get the message that they do not need to comply because they can just wait for the next tax amnesty.

ADMINISTRATIVE IMPLICATIONS

An amnesty program for all GenTax programs would have major impact and may require a contract with FAST Enterprises. In explaining the complexity to us, the FAST Project Manager said "Basically, you are taking the GenTax system which is based around specific, inherent methodologies of handling penalties, interest and assessments, and you are trying to tell it to circumvent and defeat all of those behaviors for a window of time." Our FAST project manager came up with a rough "order of magnitude" estimate that we would be looking at a project that would require 2-3 developers full-time for a period of 8-12 months. The low-end cost of a contract with FAST to cover this work is somewhere between $1 and $1.5 million. Costs may be higher, depending on the complexity of expanding the project to cover all of New Mexico's tax programs and the age of liabilities covered by the amnesty. Significant IT development and management staff time (350+hrs) would be required.

There will also be a high impact due to the need to develop a system to identify and track the money collected due to the tax amnesty. GenTax capabilities should be explored; software upgrades may be required. All monies and returns will need additional manual intervention to record money collected due to the amnesty program compared to other monies collected. The timing of the amnesty program will be important because there is often a time difference between the day the return is due and the date the liability is assessed. For example: it may present a significant issue for 2008 PIT tax returns (assessed in June of 2009) if the amnesty period is prior to the date the first assessments for 2008 tax returns are filed. All 2008 PIT-1 return liabilities will be included. A massive mail-out and public service announcements at a high cost to the Department will be needed to diminish the influx of calls that the amnesty announcements will generate. During the last amnesty, all Department resources were deployed to work the amnesty program, virtually stopping all other collection and tax processing activities. Again, the timing of the amnesty program will be critical to the success of the Department's daily operations.

In addition to the required changes to the GenTax system, there would be an extreme IT impact on the ONGARD system. The ONGARD Service Center would have major challenges to make to the ONGARD system accommodate the amnesty program for oil and gas severance taxes. Extremely complicated coding would be required to force the system to bypass the rules for computation of penalty and interest that were just enhanced two years ago when the TAA was changed to reflect a more contemporary approach to penalty and interest aligned with rules applied by the federal government. Because of the extreme nature of this change, at least one calendar year would be required to complete the project (estimate completion no sooner than

July 1, 2010). We would also need supplemental funding to add contract programmer, testers, and a project manager to assist with the project.

During the 1999 amnesty audits were assessed prior to audit completion and adjustments were later made to reflect the true assessment, which required a great deal of ACD time. Current staff reductions would prevent ACD from meeting the demands of a tax amnesty. The $25,000 cap is going to require additional tracking in the GenTax system and in the OGAS system. Currently, these systems are not set-up to do this and may require manual tracking.

RELATIONSHIP

Relates to SB108;

The General Appropriations Act contains an enhanced revenue collection initiative, the "fair share initiative" designed to collect additional unpaid tax revenue.

TECHNICAL ISSUES

It is not clear if the taxpayer only needs to establish the liability during the 90 days or if they must also make full payment of the liability within that period.

How penalty and interest will be handled, use of the word "assessed", and the effect on audits in progress. See Detailed Discussion on page 3.

DL/mt