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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/09

SPONSOR Nunez LAST UPDATED \_\_\_\_\_ HJM 73

SHORT TITLE Interception of Money for Unpaid Fines & Fees SB \_\_\_\_\_

ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY09 | FY10    | FY11    | 3 Year<br>Total Cost | Recurring or<br>Non-Rec | Fund<br>Affected |
|--------------|------|---------|---------|----------------------|-------------------------|------------------|
| <b>Total</b> |      | (\$0.1) | (\$0.1) |                      | Recurring               | Various          |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

No responses received from the AG, TRD or DFA

### SUMMARY

#### Synopsis of Bill

House Joint Memorial 73 requests Congress to enact Federal legislation that adds unpaid local and state fines and fees to those delinquent obligations that can be intercepted through the United States Department of the Treasury Offset Program (TOP).

The Joint Memorial provides for the following:

- the legislature has found that it is necessary to consider and impose substantial budget reductions for the remainder of FY09 and FY10;
- when faced with the challenge of trying to assure the soundness of the State's budget without negatively affecting vital state programs, any alternative source of revenue is important;
- more than nine thousand individuals have outstanding fines and fees ordered by a court in New Mexico, which fines and fees total just under two million five hundred twenty-one thousand dollars (\$2,521,000);
- allowing the payment of court-ordered fines and fees to be ignored diminishes public respect for the courts and the rule of law;
- New Mexico has a tax refund intercept system on the state level, pursuant to Chapter 7, Article 2C NMSA 1978, that has collected nearly one hundred fifty thousand dollars (\$150,000) in unpaid fines and fees for the benefit of the judiciary in each of the past three fiscal years, after collecting unpaid amounts in delinquent taxes, child support and other obligations;

## **House Joint Memorial 73 -Page 2**

- under existing Federal legislation, the IRS already intercepts tax refunds for Federal and local taxes, child support and other delinquent obligations;
- both chambers of Congress are considering legislation that would create a tax intercept program in which unpaid state and local fines and fees would be intercepted from a taxpayer's refund through the IRS; and
- the proposals under consideration in Congress would add a tax refund intercept for unpaid fines and fees only after satisfaction of state and local obligations already in the Federal law, so that state and local programs would continue intercepting Federal refunds at their current levels.

The Joint Memorial further provides that copies of the memorial be transmitted to members of the New Mexico Congressional delegation.

### **FISCAL IMPLICATIONS**

The Joint Memorial asks Congress to enact Federal legislation that would add unpaid local and state fines and fees to those delinquent obligations that can be intercepted through TOP.

Under the federal Debt Collection Improvement Act (DCIA), an administrative offset such as TOP may be used to collect debts, including funds or property owed by a person, to a state (including any past-due support being enforced by the state).

### **SIGNIFICANT ISSUES**

TOP is a debt collection program administered by Financial Management Services (FMS), a bureau of the U.S. Department of the Treasury. This program allows state agencies to submit past-due, legally enforceable state income tax obligations to FMS for offset of the debtor's individual federal income tax refund.

Once TOP receives certification from the state of the past-due tax debt, the federal income tax refund may be taken to pay down the state debt. This process is referred to as offset. The IRS sends any remaining Federal refund amount to the taxpayer. FMS mails a notification to the taxpayer explaining why the Federal refund was reduced. The letter refers the taxpayer to the IRS and explains it could take several weeks before the Federal refund reaches the state agency. The IRS sends any remaining federal refund amount to the taxpayer.

### **PERFORMANCE IMPLICATIONS**

Although the Secretary of the Treasury has the discretion to collect debts owed to states by offset; it is not mandatory. A reciprocal agreement must be made with the state and the appropriate state official must request the offset.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

New Mexico will continue to collect unpaid fines and fees through its state tax refund intercept system.

**QUESTIONS**

Can an individual sign a waiver to prevent a state or federal offset from occurring due to economic or financial hardship?

AHO/svb