

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/09

SPONSOR Wirth LAST UPDATED _____ HB _____

SHORT TITLE Education Trust Fund Investment Recapture SB 515

ANALYST Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	(Minor)		Nonrecurring	General 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		(Minimal)			Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Higher Education Department (HED)

SUMMARY

Synopsis of Bill

Senate Bill 515 proposes to amend Section 7-2-2 NMSA 1978, the Tax Administration Act. The bill adds to the definition of “base income” to exclude investment amounts transferred in calendar year 2009 to another qualified tuition program, as defined in Section 529 of the federal Internal Revenue Code.

This would allow investors in the state 529 plan to transfer investment monies to another 529 plan without the monies being subject to the recapture provisions of the state Income Tax Act and rolled into the investor's base income for income tax purposes.

Under current law, amounts deductible under Section 7-2-32 NMSA 1978 which are transferred to another qualified tuition program not authorized under the Education Trust Act are to be included in the individual's base income amount. This bill would change the statute to include only those amounts deductible under Section 7-2-32 which are transferred prior to January 1, 2009, or after December 31, 2009.

FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD), notes that there is insufficient information to derive a revenue impact, because the bill stipulates a change in the definition for base income only for tax year 2009, a small negative revenue effect would occur in FY2010 only.

SIGNIFICANT ISSUES

The Higher Education Department (HED) reports that state 529 plan is made up of The Education Plan (TEP), which is direct to the consumer and the Scholar'sEdge Plan (SEP), which is an advisor sold plan; the difference being that plans sold through Scholar'sEdge are invested based on a financial advisor's recommendation.

The following reflects the total amount in the state 529 plan by plan type and resident/non-resident status (accounts are the number of investment accounts not the number of unique owner/beneficiary relationships).

TEP (as of 12/31/2008):

- Total TEP accounts - 27,231; Total TEP assets - \$224,865,464
- TEP resident accounts - 9,099; TEP resident assets - \$85,148,266
- TEP out of state accounts - 18,234; TEP out of state assets - \$139,717,198

SE (as of 12/31/2008):

- Total SE accounts - 176,897; Total SE assets - \$1,159,620,261
- SE resident accounts - 10,481; SE resident assets - \$69,365,887
- SE out of state accounts - 166,416; SE out of state assets - \$1,090,254,374

Program total as of 12/31/2008: accounts - 204,128; total assets - \$1,384,485,725

ADMINISTRATIVE IMPLICATIONS

TRD reports that there would be only a minimal administrative impact to modify forms instructions and publications related to the personal income tax program at minimal costs. This will include changes to information technology (IT) systems - GenTax, PITNET, and the Fed/state internet filing applications and to develop audit and compliance procedures.

DL/svb