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

ORIGINAL DATE 3/6/15
SPONSOR SJC **LAST UPDATED** **HB**

SHORT TITLE Temporary Tax Amnesty Program **SB** CS/681/SJC

ANALYST Malone

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	$500.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	$13,000.0	$12,000.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$84.0	$0.0	$84.0	Nonrecurring	TRD ITD
		$100.0	$0.0	$100.0	Nonrecurring	TRD RPD
		$500.0	$0.0	$500.0	Nonrecurring	TRD ACD

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Finance and Administration (DFA)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SJC Substitute Bill

The Senate Judiciary Committee substitute for Senate Bill 681 appropriates $500 thousand from the general fund to the Taxation and Revenue Department (TRD) for the purpose of conducting a tax amnesty program. The bill authorizes the secretary of TRD, with the concurrence of the governor, to declare an amnesty period of up to 90 days for assessed interest or penalties. The amnesty program must conform with the provisions of Section 7-1-11.1 NMSA 1978, and all revenue collected shall be identified and reported to the first session of the 53rd legislature.

Under the bill, managed audits could be entered into regardless of certain factors the department must currently consider before entering into a managed audit agreement, such as taxpayer's compliance history, the resources the taxpayer can commit to the managed audit, or the extent of taxpayer's records.

FISCAL IMPLICATIONS

The $500 thousand dollar appropriation contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY16 shall revert to the general fund.

TRD anticipates the program to cost $684 thousand in FY16.

TRD notes that managed audits, not available prior to 2010, already address much of the issue this bill targets and continue to bring in revenue over the next several years. The department projects collections between $20 million and $25 million over the next two years.

SIGNIFICANT ISSUES

A tax amnesty program provides a limited time opportunity for certain taxpayers to engage in a managed audit and pay a certain amount of taxes in exchange for forgiveness of tax liability such as interest or penalties from earlier tax periods and without fear of criminal prosecution.

This bill does not appear necessary as Section 7-1-11.1 NMSA 1978 already allows for a taxpayer to voluntarily enter into a managed audit with the department, a program that was not implemented before 2010. Pursuant to Section 7-1-69 NMSA 1978, the department does not impose a penalty on taxpayers in a managed audit. The only benefit to a taxpayer under this bill is the additional waiver of interest. Additionally, enacting a tax amnesty program within 5 years of the last one offered may reduce future taxpayer compliance if taxpayer's believe an amnesty program will be offered every five years.

The tax amnesty program will last 90 days and is only allowed during FY16. The last time TRD conducted a tax amnesty program was 2010 and it generated about $47 million. Almost half of the collections were from 8 large taxpayers and therefore are not expected to occur again. In 2010 all existing audit and compliance efforts stopped and efforts were focused on the amnesty program. Collections were attributed to amnesty but collections due to other regular audit and compliance efforts were reduced as a result. Before 2010 a tax amnesty program was offered in 1999. Going forward it is anticipated that between $20 and $25 million will be collected over two years as a result of managed audits.

DFA observes that the program could result in an increase in revenues from taxpayer payments, most notably the Weight Distance Tax. This increase would be both from increased payments on existing managed audits (short run) and from new taxpayers initiating managed audits (long run). In subsequent years, these revenues may be reduced given this acceleration of payments from current filers coming forward, reconciling and ending debts during the amnesty period. In return for collecting delinquent taxes or taxes otherwise unlikely to be filed and collected, the state forgoes collection of interest or penalties on those taxes.

The $500 thousand appropriation would accommodate increased budget needs for staffing capabilities and technical assistance with GenTax associated with the influx of taxpayers coming forward to enter managed audits.

ADMINISTRATIVE AND COMPLIANCE IMPACT

TRD notes that the amnesty program would have a high impact on the Revenue Processing Division, Information Technology Division, and Audit and Compliance Division. The department anticipates:

1. RPD will require 4 FTE to administer the amnesty program, provided that the Department has an established, robust inbound call center. The FTE would assist with information dissemination about the amnesty program and who may qualify, answering taxpayer inquiries, and assist with account resolution for the managed audits.
2. High impact on ITD (1200 hours). It will be handled through the existing managed audit process. TRD will need new case documents, indicators, reports, letters and TAP changes to implement this amnesty program. New auditors and collectors will need to be hired in order to not impact existing efforts.
3. High Impact on ACD. The previous amnesty program was in effect from June 2010 – October 2010 for the taxpayer to apply. Assessments started on June 20, 2010 and TRD assessed cases into March 2012. To fully address the prior tax amnesty program, all business processes for the division ceased for a period of about a year and all resources were consumed to work this program (Field Auditors, Managed Auditors, Schedule C Auditors, and Tax Examiners). The division also had approximately 19 interns that were hired to help perform administrative duties.

Importantly, TRD notes that ACD is already dealing with budgetary restraints and a hiring freeze with forced vacancy of 17 percent. Consequently, the department does not feel the $500 thousand appropriation will allow ACD to hire the necessary FTE to administer the amnesty program.

TECHNICAL ISSUES

TRD notes there is one significant legal issue with this bill in which the proposed language could give rise to an unintended result. Subsection C (p. 2, ll. 13-16), indicates both that: (1) in order to participate in amnesty the taxpayer must meet the requirements for a managed audit; and (2) the taxpayer shall not be assessed taxes for which the managed audit is requested. TRD reads this provision to mean that the taxpayer will voluntarily agree to pay the amount of taxes determined due as the result of the managed audit, so that the Department does not need to issue the assessment typically called for with respect to managed audits (see NMSA 1978, § 7-1-

11.1(F)). In exchange, penalty and interest are abated. As written, however, the language of the proposed bill suggests that no tax, penalty or interest would be due under the amnesty. TRD recommends clarifying the language to prescribe voluntary payment of the taxes determined due under the amnesty.

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