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FISCAL IMPACT REPORT

SPONSOR Alcon/Wooley/Johnson **ORIGINAL DATE** 2/2/2017
LAST UPDATED 2/14/2017 **HB** 148/aHSIVC

SHORT TITLE Native American Income Tax Settlement Fund **SB** _____

ANALYST Rogers/Romero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	Minimal	\$0.0	Minimal	Nonrecurring	TRD Operating

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Veterans' Services Department (VSD)

SUMMARY

Synopsis of State Government, Indian and Veterans' Affairs Committee Amendment

This amendment strikes the appropriation section of the bill and makes the appropriate change to the title.

Synopsis of Bill

House Bill 148 amends Section 7-2H-3 NMSA 1978 to remove the time limit for filing a claim. The previous time limit set in the section was December 31, 2012. The bill also includes an appropriation of \$400 thousand from the general fund to the Native American veterans' income tax settlement fund to be refunded to Native American veterans for any state personal income taxes that were withheld from military income while they were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty. The bill allows for 5 percent each for TRD and VSD for administration costs.

FISCAL IMPLICATIONS

Currently the Native American veterans' income tax settlement fund has an approximate \$25.5 thousand balance. VSD is holding on to 18 applications and the remaining amount in the fund will quickly be expended.

The appropriation of \$400 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining in the Native American veterans' income tax settlement fund at the end of FY18 shall not revert to the general fund. Appropriation of these funds could create an expectation of sustained funding in future years. TRD and VSD are eligible to receive up to 5 percent of the fund for administrative costs; administrative funds remaining at the end of the year shall revert to the Native American veterans' income tax settlement fund.

SIGNIFICANT ISSUES

VSD explains in 2008, SB 574 was passed requiring VSD and TRD to conduct a study on the issue of Native American Veterans and whether they had state income taxes withheld while they were on active military duty. The study was completed over a span of five months and the final formal report was presented to the Legislative Indian Affairs Interim Committee. The study found that many Native American veterans did have state taxes withheld while they were on active duty. During the period of May 2008 through September 2008, VSD and TRD met with over 15 Native American groups to gather information; the information was incorporated into the final report.

The study showed federal law did not permit the withholding of state income taxes from military service members until 1976 (Tax Reform Act 1976, PL 94-465). New Mexico entered into an agreement with the Department of Defense to withhold New Mexico state income taxes from service members in 1977. The study found the total number of Native American military service members who served on Active Duty after 1977 was estimated at 7,585. In 2007, Section 7-2-5.11 NMSA 1978 went into effect, allowing for all Active Duty Service Members to get an exemption of military service pay.

VSD also stated in order to implement the program, VSD and TRD consulted with tribal leadership, issued and implemented regulations on December 1, 2009, created an agreement with the Department of Defense Finance and Accounting Services (DFAS), established a TRD account from which to issue settlement payments, created and implemented outreach plans, created forms to process and approve of claims, and posted forms on TRD and VSD websites for veterans' use.

In 2009, the Laws of 2009, Chapter 289 (SB 541) was signed, sponsored by Sen. John Pinto, appropriating \$1 million. Subsequent funding was provided in 2011 totaling \$250 thousand as was an additional \$50 thousand in 2014.

VSD and TRD provided the chart below, detailing claim history:

Native American Veteran's Income Tax Settlement (NAVITS) Fund (in thousands)						
Year	Number of Claims	Withheld Amount	Interest	Total	Administrative Fee	Remaining
2010						\$1,000
2010	623	\$351.6	\$412	\$764	\$100	\$136
2011	45	\$42	\$27	\$69	\$43	\$24
2012						\$250
2012	49	\$40	\$39	\$79	\$25	\$170
2013	63	\$83	\$64	\$147	\$22	\$1
2014						\$50
2014	5	\$10	\$10	\$20	\$2	\$30
Total	785	\$ 526.7	\$ 551.6	\$ 1,078.3	\$ 192.1	

TRD explains the original appropriation of \$1.25 million was depleted during the period FY10-FY13. The legislation was written to ensure tax equity: Native American citizens who may have been exempt from personal income tax were afforded a path to redress their concern. However, current case law indicates that income earned off of Indian lands – even if the citizen is domiciled on Native lands – are subject to taxation. Consequently, this reparation is unnecessary. Additionally, Section 7-2-5.11 NMSA 1978 exempts armed forces salaries for active duty service from state income taxation. This statute was enacted in 2007 and overlapped the original effective dates of the proposed legislation.

PERFORMANCE IMPLICATIONS

VSD reports the agency is currently short staffed, with most employees now serving in multiple capacities. The administrative funds would need to cover a part time FTE to assist with processing applications.

TR/jle/al/IR/jle