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FISCAL IMPACT REPORT

ORIGINAL DATE 3/2/17
SPONSOR Scott **LAST UPDATED** _____ **HB** 436

SHORT TITLE Tax Evasion Penalties and Investigations **SB** _____

ANALYST Romero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
\$0.0	Indeterminate*	Indeterminate*	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases) *see Fiscal Implications below

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

This bill amends several provisions of the Tax Administration Act and the Taxation and Revenue Department (TRD) authorization statutes to modernize penalty and investigative authority with respect to tax fraud and other criminal acts under laws that TRD administers.

Specifically, this bill repeals Section 7-1-72 NMSA 1978, which makes it a felony (with a range of fines and prison terms), for attempted tax evasion. The bill replaces Section 7-1-72 with new language imposing graduated penalties for attempts to evade or defeat tax depending on the amount of tax at issue. If the amount of tax owed or at issue is over \$500 but not more than \$2,500, it is a fourth degree felony. If the amount of tax owed or at issue is over \$2,500 but not more than \$20,000, it is a third degree felony. And if the amount of tax owed or at issue over \$20,000, it is a second degree felony. As under current law, the bill requires the offender to pay the costs of prosecution.

Section 7-1-73 NMSA 1978 is similarly amended to increase any amount of tax fraud on an amount of tax owed or at issue over \$500 but not more than \$2,500 to a fourth degree felony, as well as making clear some of the language related to third degree felony being tax owed or at issue over \$2,500 but not more than \$20,000, and a second degree felony being tax owed or at

issue over \$20,000. Language is also added to Section 7-1-73 NMSA 1978 to provide that a person or tax return preparer who commits tax fraud will be guilty of the level of felony based on the aggregated amounts of tax owed and the value of any fraudulent refund claims filed.

Section 7-1-74 NMSA 1978 is amended to detail what obstruction of a tax-related investigation consists of, which includes knowingly providing false information or withholding information, knowingly altering, destroying, mutilating or concealing a document or record required to be retained, and knowingly preventing, obstructing, delaying the communication of information or records related to a state tax-related investigation. Additional language also provides that any person who commits obstruction of a tax-related investigation is guilty of a fourth degree felony.

The bill also amends Section 9-11-14 NMSA 1978 to provide who may be employed as a tax fraud enforcement officer, which includes persons who are not yet certified peace officers provided that the person successfully completes basic law enforcement training prior to being issued tax fraud investigations peace officer credentials, New Mexico certified peace officers who are in good standing and current with biennium requirements before issuance of tax fraud investigations division peace officer credentials, and certified peace officers from other states who both qualify to attend and successfully complete the New Mexico certification by waiver program before issuance of tax fraud investigations peace officer credentials. Clarification of all the duties for which these officers are employed, and provide that commissioned tax fraud enforcement officers have authority to make arrests with a court-approved warrant or if a crime within their scope of authority is committed in their presence is also added to the Section.

FISCAL IMPLICATIONS

This bill has a positive impact on the general fund but cannot be estimated by TRD. This bill would also have a positive impact from increased compliance.

An analysis of three investigations of tax return preparers who prepared false refunds to inflate the amount of refunds their clients received revealed that 325 or 37.8% of the fraudulent tax returns claimed false refunds of less than \$500. The average of the 37.8% tax returns (123) claiming inflated refunds is \$256. The tax return preparers were not charged with these amounts since these are misdemeanors.

The following details each investigation analyzed:

Investigation A

Total fraudulent refunds claimed (171 returns) - \$147,913
Fraudulent refunds under \$500 (58 returns) - \$16,895

Investigation B

Total fraudulent refunds claimed (61 returns) - \$13,171
Fraudulent refunds under \$500 (52 returns) - \$10,311

Investigation C

Total fraudulent refunds claimed (93 returns) - \$92,132
Fraudulent refunds under \$500 (13 returns) - \$4,381

SIGNIFICANT ISSUES

This proposal amends the penalties related to tax fraud and evasion, institutes a new penalty for obstructing a tax fraud investigation, and expands the authority, and the Secretary's ability to hire tax fraud investigators.

Currently the tax fraud statute reads that whoever commits tax fraud when the amount of the tax owed is \$250 or less is guilty of a petty misdemeanor and when the amount of the tax owed is \$250 but not more than \$500 is guilty of a misdemeanor. TFID encounters challenges when attempting to charge tax fraud as state refund claims are usually of smaller dollar amounts, often less than \$500, especially in the cases of refund mills. TFID and the prosecuting district attorney's office will not use its resources to investigate or prosecute petty misdemeanors and/or misdemeanors. Indeed, there are specific instances in which the district attorney's office would not prosecute, even when some returns exceeded the \$500 felony threshold, because of the high percentage of returns below the \$500 threshold.

Currently this statute reads that whoever commits tax fraud when the amount of the tax owed is over \$500 but not more than \$2,500 is guilty of a fourth degree felony. TFID has also encountered challenges when attempting to charge tax fraud because of the "tax owed" language. It is common for TRD to stop questionable "refund claims" from being issued; however, that does not change the fact that a fraudulent return was submitted to the department and an attempt to claim a refund was made. It has been viewed by a prosecuting district attorney's office that no refund was actually issued, therefore, there is no "tax owed" so it is problematic whether or not tax fraud has been committed per the statute's current sentencing guidelines.

This proposal would create three classifications of felony crimes and eliminate the misdemeanor and petty misdemeanor sections. Instead there would be fourth degree felony (tax or claim for refund \$2,500 or less); third degree felony (tax or claim for refund over \$2,500 but not over \$20,000); and second degree felony (tax or claim for refund over \$20,000) which is not unlike the forgery classifications in Section 30-16-10 NMSA 1978. This proposal would also change the statute sentencing language from "whoever commits tax fraud when the amount of the tax owed is" to "whoever commits tax fraud with respect to any return of income tax or claim for refund when the amount is" two thousand five hundred dollars (\$2,500) or less is guilty of a fourth degree felony, etc.

In addition, it is suggested that the tax be aggregated for those instances when a tax return preparer who commits tax fraud as a continuing scheme is guilty of the total dollar amount of the damage to the State of New Mexico (aggregation of refund claims) and shall follow the tax fraud sentencing guidelines above. The reasoning behind these changes is to elevate the punishment for those found guilty of stealing from the state coffers.

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