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## FISCAL IMPACT REPORT

**SPONSOR** Alcon/Rodella/Johnson      **ORIGINAL DATE** 1/24/18  
**LAST UPDATED** \_\_\_\_\_ **HB** 149

**SHORT TITLE** Native American Income Tax Settlement Fund      **SB** \_\_\_\_\_

**ANALYST** Romero/Martinez

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

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	See Fiscal Impact

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Veterans' Services Department (VSD)

Taxation and Revenue Department (TRD) responded to HB148 during 2017 session and relevant information was included.

### SUMMARY

#### Synopsis of Bill

House Bill 149 seeks to amend current statute, (Section 7-2H-3 NMSA 1978) referred to as the Native American Veteran Tax Settlement Fund. The amendment seeks to remove the deadline for submitting applications for settlement. Originally, the deadline was December 31, 2012.

### FISCAL IMPLICATIONS

This bill does not contain an appropriation.

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.

### 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.

<b>Native American Veteran's Income Tax Settlement</b>						
<b>Year</b>	<b>Number of Claims</b>	<b>Withheld Amount</b>	<b>Interest</b>	<b>Total</b>	<b>Administrative Fee</b>	<b>Remaining</b>
2010						+\$1,000,000
2010	623	\$351,610	\$411,972	\$763,582	\$100,000	\$136,418
2011	45	\$41,914	\$26,968	\$68,882	\$43,408	\$24,128
2012						+\$250,000
2012	49	\$40,492	\$38,508	\$79,000	\$25,000	\$170,128
2013	63	\$82,679	\$64,370	\$147,049	\$21,752	\$1,327
2014						+\$50,000
2014	5	\$10,028	\$9,739	\$19,767	\$1,985	\$29,574
<b>Total</b>	<b>785</b>	<b>\$526,723</b>	<b>\$551,558</b>	<b>\$1,078,281</b>	<b>\$192,145</b>	

\*\*\*figures provided by TRD\*\*\*

TRD explained 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**

Under the previous statute, VSD was responsible for the certification of veteran status and then applications were forwarded to TRD for processing or denial of settlements.

As of December 31, 2017, VSD is holding 21 applications, and TRD estimates that they also have 20 pending applications.

## **TECHNICAL ISSUES**

In 2008, VSD, Indian Affairs Department (IAD) and Taxation and Revenue Department (TRD) did a feasibility study and the following came out of that study:

The agencies worked together to determine the following

1. Whether Native American Veterans who were domiciled on Tribal Lands had state income taxes withheld while on active duty.
2. How many were possibly impacted
3. What remedies were available to those veterans who might have been impacted.

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 enters into an agreement with DoD to withhold New Mexico State Income Taxes from Service Members 1977 • Total Number of Native American Military Service Members who served on Active Duty after 1977 – estimated at 7585 • 2007 7-2-5.11 goes into effect allowing for all Active Duty Service Members to get an exemption of military service pay.

## **OTHER SUBSTANTIVE ISSUES**

Other substantive Issues were provided by VSD:

In order to implement the program DVS, IAD and TRD did the following:

- 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
- Posted forms on TRD and DVS websites for veterans' use

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