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

SPONSOR Wirth/Chandler **ORIGINAL DATE** 6/18/20 **LAST UPDATED** 6/19/20 **HB**

SHORT TITLE Tax Changes **SB** 1/aSCORC

ANALYST Iglesias/Torres

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22	FY23	FY24		
No Impact	$24,000	No Fiscal Impact			Nonrecurring	(Increased local distributions) Local Government
No Impact	($24,000)	No Fiscal Impact			Nonrecurring	(Increased local distributions) General Fund
($3,400)	Indeterminate but minimal	No Fiscal Impact			Nonrecurring	(Exempt CARES from GRT) Local Government
($4,200)	Indeterminate but minimal	No Fiscal Impact			Nonrecurring	(Exempt CARES from GRT) General Fund
Up to ($64,500)	Up to $64,500	No Fiscal Impact			Nonrecurring	(Waived Penalties and Interest) Local Government
Up to ($49,000)*	Up to $49,000*	No Fiscal Impact			Nonrecurring	(Waived Penalties and Interest) General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)
* See *Fiscal Implications*

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$16.0	$59.7		$75.7	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Senate Corporations and Transportations Committee Amendment

The Senate Corporations and Transportations Committee (SCORC) amendment to SB 1 exempts funds received by health care providers, other than hospitals licensed by the Department of Health, from payments received pursuant to the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act). See *Fiscal Implications* for more information.

Synopsis of Bill

Senate Bill 1 (SB 1) implements temporary provisions to waive penalties and interest for tax liabilities related to (1) personal and corporate income taxes due between April 15, 2020 and July 15, 2020, (2) withholding taxes due between March 25, 2020 and July 25, 2020, (3) oil and gas proceeds and pass-through entity withholding taxes due between April 15, 2020 and July 25, 2020, (4) gross receipts and compensating taxes due between April 25, 2020 and July 25, 2020, and (5) managed audits performed between September 3, 2019 and January 3, 2020. The waiving of penalties and interest appears intended to provide flexibility to taxpayers unable to make tax payments due to the outbreak of a novel coronavirus that causes COVID-19.
The bill also amends Section 7-1-6.64 NMSA 1978 to double the temporary monthly distribution in FY21 to municipalities from $1.25 million to $2.5 million and to counties from $750 thousand to $1.5 million; each to be distributed to local governments in proportion to the population for each government based on the most recent federal decennial census.

Finally, the bill changes corporate income tax (CIT) definitions of net operating losses to conform to the definitions found in the federal Tax Cuts and Jobs Act of 2017, preventing CIT changes instituted in the CARES Act.

SB 1 contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

Waiving Penalties and Interest for Delayed Tax Payments. The bill states no penalty or interest will be assessed for tax payments or managed audits due primarily in the second quarter of 2020 (see table below for specific dates), as long as the failure to pay was not an intentional attempt to evade the tax. The bill also requires those payments to be made in full within one year.

Tax Program	**Waiver for Taxes that Became Due Between:**	**Taxes Must be Paid in Full By:**
Personal Income Tax and Corporate Income Tax	April 15, 2020 and July 15, 2021	April 15, 2021
Withholding Tax	March 25, 2020 and July 25, 2020	April 25, 2021
Gross Receipts Tax	April 25, 2020 and July 25, 3030	April 25, 2021
Property Tax*	April 10, 2020	May 10, 2021
Managed Audits	For managed audits performed between September 3, 2019 and January 3, 2020	December 31, 2020

*The subject property must not have property taxes that became delinquent prior to May 10, 2020.

The bill expands the number of tax programs which were publicly delayed by the Governor in March. While the potential for a shift in tax filing was incorporated into the consensus revenue estimate, the forecasts did not make assumptions on potential revenue from penalties and interest on those missed payments.

This bill's delayed tax deadlines could incentivize taxpayers to shift tax payments further into the future, which could shift state revenues into the next fiscal year if tax payers delay filings past July. LFC economists and Taxation and Revenue Department (TRD) economists worked together to produce estimates for each tax program, listed in the following table.

Tax Program	Delayed Revenue Effects (in millions):	
	FY20	FY21
Personal Income Tax and Withholding Tax	Up to ($37.0)	Up to $37.0
Gross Receipts Tax	Possible ($12.0)	Possible $12.0
Managed Audits	Little to no revenue shifting is expected to occur since most will be accrued to FY20.	
Corporate Income Tax	Minimal shifting by non-major corporations. Indeterminate shifting given net operating losses, carry-forward of past liabilities, and other complicating factors.	
Total General Fund	**Up to ($49.0)**	**Up to $49.0**
Property Tax	Up to ($60.0)	Up to $60.0
Local GRT	Possible ($4.5)	Possible $4.5
Total Local Government's	**Up to ($64.5)**	**Up to $64.5**

LFC and TRD calculated the effects on personal income and withholding tax by identifying the proportion of taxpayers unlikely to file by the federal deadline in July. These taxpayers account for 22 percent of annual final and estimated income tax payments. General fund revenue will shift from FY20 to FY21 to the extent these taxpayers delay filing until after July.

The retroactive waiver for delayed gross receipts tax payments is expected to have no behavioral effect on revenues for March and April as those payments have already been made, and it is likely that most if not all May payments would also be paid before the passage of this bill. Yet, waiving penalties and interest may cause delayed payments of GRT in June and July. The waiver will shift FY20 expected tax revenue into FY21 depending on the number of tax payers who choose to delay payment their June payments. The estimates above reflect the revenue effects that could occur if 5 percent of the estimated June GRT revenue is delayed as a result of the bill.

Corporate Income Tax Definition Changes. Net operating loss definition changes included in this bill maintain state conformity with the Tax Cuts and Jobs Act of 2017 to avoid changes made in the CARES Act. Without this definitional change, CIT revenue could be negatively affected due to language changes in the CARES Act that would allow corporations to carryback losses earned in 2018, 2019, or 2020 up to five-years, allowing for modification of prior tax returns to offset taxable income from those tax years. The CARES Act changes also suspended the net operating losses limit of 80 percent of taxable income allowing corporations to deduct their losses to eliminate all of their taxable income in a given year, instead of having to carry forward any beyond 80 percent of taxable income. The bill prevents this from occurring, which could otherwise result in large refund claims from corporations and declines in corporate income tax revenue.

Exempting CARES Act Funding to Non-Hospital Health Care Providers. TRD announced application of GRT to CARES Act medical distributions, which this bill as amended seeks to reverse. According to the Centers for Disease Control datasets of health care providers and hospitals that received a payment related to the CARES Act as of June 18, 2020[1], an estimation of New Mexico's non-hospital payments are $107 million. Assuming an effective state tax rate of 3.9 percent given the largely municipal mix of provider locations, state GRT revenue loss would amount to $4.2 million. Similarly, local government revenue loss would total $3.4 million. TRD has reported preliminary estimates with costs to the state of $1.5 million to $3 million but an official analysis is needed.

Additional payments to local governments. Finally, the additional temporary distributions to local governments in FY21 will result in $24 million less revenue to the general fund and $24 million in additional revenue to local governments.

SIGNIFICANT ISSUES

On March 20, 2020, the governor and TRD secretary announced a 90 day extension for taxpayers to file and pay their personal income and corporate income, giving them until July 15, 2020 to file and pay any taxes due. The governor also provided an extension through July 25, 2020 for withholding tax that would ordinarily be due on the 25th of March, April, May, and June. Under current law, the TRD secretary is able to waive penalties for taxpayers taking advantage of the income tax extensions; however, interest would still accrue on any unpaid balances from April 15 forward. This bill would retroactively waive interest assessments on those late payments.

For those taxpayers unable to repay the missed tax payments by July, this bill also effectively gives taxpayers another year to make those payments before any penalties or interest would apply. However, taxes due after July would be subject to ordinary payment schedules.

This bill would also retroactively add other tax programs not included in the original extension, including property taxes and gross receipts taxes. Although the bill does not technically extend the payment deadline for these tax programs, it provides an effective extension through the waiver of penalties and interest for non-payment for one year.

In 2019, House Bill 6 implemented gross receipts tax on internet sales. The bill provided that online retailers would begin to pay the flat statewide rate of 5.125 percent on July 1, 2019, and begin paying state plus variable local option rates on July 1, 2021. Because local governments would not benefit from internet sales until July 1, 2021, House Bill 6 created a $24 million per year distribution to counties and municipalities for FY20 and FY21. Reflecting increased use of internet sales during the pandemic, this bill doubles the FY21 distribution to local governments from $24 million to $48 million.

OTHER SUBSTANTIVE ISSUES

The LFC tax policy principle of equity calls for fair and equal treatment of tax payers. This bill allows for delayed tax payments for individuals and corporations but does not provide a similar tax extension for pass-through entities.

[1] https://data.cdc.gov/Administrative/HHS-Provider-Relief-Fund/kh8y-3es6

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate.

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