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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/21

SPONSOR Martínez LAST UPDATED \_\_\_\_\_ HB 115

SHORT TITLE Tax Return Preparer Definition SB \_\_\_\_\_

ANALYST Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24	FY25		
	\$100.0	\$65.0	\$65.0	\$65.0	Recurring	Permit Fees: unknown; probably General Fund
	\$10.0	\$10.0	\$10.0	\$10.0	Recurring	Civil Penalties: General Fund

Parenthesis ( ) indicate revenue decreases

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		***	***	***	Recurring	

Parenthesis ( ) indicate expenditure decreases

\*\*\* TRD will incur IT costs to develop an electronic permitting system. Civil penalties for violations will be manually administered by audit staff. TRD will report on these costs.

### SOURCES OF INFORMATION

LFC Files

#### Responses Not Received From

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

House Bill 115 amends the definition of “tax return preparer” to exclude CPA firms but requires TRD to permit persons who prepare and file tax returns for a fee, to charge a fee for that permit, imposes a civil penalty of \$50 for any return prepared by a tax return preparer who fails to provide a federal EIN or Social Security number. Civil penalties cannot exceed \$25 thousand per preparer. Further TRD is empowered to bring suit in court to enjoin a tax return preparer from preparing tax returns. The bill lists a number of causes, any of which could be cited and enjoined.

The new permitting process includes a requirement beginning January 1, 2023 for the candidate complete and annual filing season program administered by the IRS. The fee for this permit is not to exceed \$100 for the initial permit and \$50 for a renewal permit. TRD is allowed to impose a civil penalty of \$100 per day that an unpermitted person has provided tax return services.

The effective date of this bill is January 1, 2022.

## **FISCAL IMPLICATIONS**

The total level of civil penalties is difficult to estimate. The possible levels of penalty will largely serve to prevent the prohibited activities rather than collect the fines. A nominal amount is shown in the revenue table.

The 2018 Statistics of Income, available from the IRS details the following:

In 2018,	929,110	federal tax returns were filed by New Mexico residents.
Of these	825,310	were electronically filed
	53,900	were computer prepared paper returns
	418,210	were returns with paid preparer's signature

Various H & R Block offices around the state are reported to have about ½ of the tax return preparation business in the state. However, the permit fees are issued to the owner of the business and permitting each of the employees of the firm is not required.

The 2017 Economic Census reported 706 firms, 792 establishments employing 4,710 workers. Some of these firms are presumably CPA firms that are not subject to the permitting requirement. According to the New Mexico Business Journals<sup>1</sup>, in 2018, the top five accounting firms in New Mexico had over 1,800 CPAs and a total of 4,900 total employees. The 2017 Economic Census data, therefore, is not appropriate.

Enrolled Agents (EA) are highly qualified practitioners. The New Mexico Enrolled Agents Association maintains a membership listing. There are 7 EAs in the Albuquerque area, 7 in the Santa Fe area, 6 in Farmington, 1 in Las Cruces and 1 in Gallup. Although the website does not indicate the total membership, assume 200 EAs statewide. Further assume, since EAs are highly trained and are required to pass a three-part treasury examination on the subjects of personal income tax, corporate and business taxes, ethics and estate taxes, that there are many other, less educated and experienced tax practitioners. If there are 1,000 preparers, the initial permit fee would be \$100 thousand. In subsequent years, assume 90 percent of the 1,000 renew and 100 new practitioners are permitted.

Civil penalties are required by the Constitution to be remitted to the general fund. The permit fees are not appropriated to the department in the bill, so they will probably be remitted to the general fund in the same way that administrative fees imposed on local government GRT optional distributions are remitted to the general fund.

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<sup>1</sup> <https://www.bizjournals.com/albuquerque/subscriber-only/2018/02/16/nm-accounting-firms.html>

## **SIGNIFICANT ISSUES**

The IRS has been the enforcement entity for ensuring competent and ethical actions on the part of accounting and tax preparation professionals. As the IRS budgets have declined and criminals have turned to state fraud, there is a need for the state to begin enforcing professional standards, not only for income taxes and corporate income taxes, but for Gross Receipts Tax and other state taxes.

A major purpose of this bill seems to be to allow TRD some control over both deliberate and unintentional and unprofessional actions on the part of the tax preparation community outside of the CPA community.

## **PERFORMANCE IMPLICATIONS**

The LFC tax policy of accountability is met with the bill's requirement for TRD to publish a list of injunction action and to report on a website a listing of the name and principal business address of each tax return preparer permitted.

## **ADMINISTRATIVE IMPLICATIONS**

TRD will incur costs both to establish the electronic permitting process and to impose civil penalties for violations covered by the provisions of this bill.

## **TECHNICAL ISSUES**

The bill implies that the permit application fee is \$100, and a renewal is \$50. However, the bill is silent on whether this permit is annual or biannual or some other period.

The bill is equally silent on whether TRD may retain the permit fees. By the constitution, all civil penalties and fines must be deposited into the common school fund, which is now the general fund. However, permit fees are not fines and these funds should be transferred to the general fund as miscellaneous revenues.

LG/rl