

**BILL ANALYSIS AND FISCAL IMPACT REPORT**  
**Taxation and Revenue Department**

**February 7, 2025**

**Bill:** HB-199

**Sponsor:** Representative Derrick J. Lente

**Short Title:** Tax Return Info for LFC Evaluation

**Description:** This bill adds a new Section 7-1-8.12 NMSA 1978 to the Tax Administration Act to require an employee of the Taxation and Revenue Department (Tax & Rev) to reveal return information, except that which is prohibited by law, to staff of the Legislative Finance Committee (LFC) upon request by the director. Tax & Rev and LFC would enter into a memorandum of understanding (MOU) for security regarding confidentiality. The bill provides certain tax programs where return information will be aggregated.

**Effective Date:** July 1, 2025

**Taxation and Revenue Department Analyst:** Lucinda Sydow

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		
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\* In thousands of dollars. Parentheses ( ) indicate a revenue loss. \*\* Recurring (R) or Non-Recurring (NR).

**Methodology for Estimated Revenue Impact:** None.

**Policy Issues:** There is an expectation by taxpayers that information they provide on tax returns to comply with federal and state tax laws is confidential. Both the federal government, under the Internal Revenue Service (IRS), and the State of New Mexico, through Tax & Rev, protect that confidentiality in federal and state laws.<sup>1</sup> To maintain the trust of the public within a tax system of voluntary compliance, Tax & Rev must consider very carefully any expansions to the access of tax return data, be clear on the intent in requiring that access, and work with its partners at the IRS to ensure the State is not penalized for disclosure that is not supported by the IRS. This careful consideration of sharing data is heightened with the increased level of risk from ever evolving fraudsters seeking to exploit personal data.

There is great analytical value to having direct access to state tax data. Professional state economists who work outside of Tax & Rev would deepen their ability to evaluate tax policies and forecast revenues through access to this data. Currently, LFC economists have access through Tax & Rev economists to aggregated data. This data format limits the research that can be initiated, and economists from other State agencies rely on Tax & Rev economists to complete certain research using disaggregated data.

The access to tax data for its value to research is not unique to New Mexico. The IRS has grappled with allowing public use files (PUF) at the national level due to the enormous potential for economic and tax research. These PUFs contain samples of individual income tax returns with key information removed from the files. The IRS adheres to strict protection of the data because the risks to identifying an individual taxpayer continue to intensify. The large amount of available data from various sources to combine with PUF data and the immense capabilities of modern computer processing to make inferences

<sup>1</sup> The primary federal statute is: 26 U.S. Code § 6103 – Confidentiality and disclosure of returns and return information. The primary state statute is: 7-1-8. NMSA 1978 Confidentiality of returns and other information.

on data raise the potential for identifying individual taxpayers, even where confidential and personal information has been redacted.<sup>2</sup>

The IRS places strict restrictions on State agencies that receive Federal Tax Information (FTI), including Tax & Rev. A more in-depth discussion of IRS policies and laws is provided in detail at the end of this FIR. As a general rule, IRC Section 6103(d) does not permit access to FTI by agencies not involved with tax administration.<sup>3</sup> Beyond tax administration, the bounds remain narrow and require that certain data is shared for, among other things, the specific carrying out of legal proceedings and duties of other state agencies to confirm federal requirements for eligibility (i.e. federal eligibility by income). These specific exceptions to the release of data are detailed in IRC Section 6103.

While providing that “the department shall provide return information, except that to which is prohibited by law,” and allowing for “redacting any prohibited information,” the nature of tax data and how it is stored would still make meeting federal disclosure laws challenging if this bill is passed. New Mexico tax data in the GenTax system is comingled with federal tax data and cannot be separated in an automated fashion.<sup>4</sup> The comingling of data occurs at many stages where tax examiners, compliance staff, and auditors make modifications to a tax return based on having access to FTI. The entire data set must then be protected as FTI for Tax & Rev to remain compliant with the IRC. Tax & Rev does not possess the resources required to redesign the GenTax system to avoid comingling of data, or to manually separate data upon request. Tax & Rev therefore faces two obstacles if this bill is enacted – meeting the use principles and security requirements set by the IRS and efficiently working with the data to extend access outside of the department.

There are other options available under current law to solve the problems addressed by this bill. Under current law, Tax & Rev can work with outside entities to review data on site if they follow the mandatory IRS trainings for viewing FTI and the state secures an additional sharing agreement with the IRS. This strategy mitigates many of the risks that occur once data leaves the confines of the secure system of record. Given that New Mexico is not a state that has in statute policies to ensure the consistent security of data across all agencies or departments, we limit the target from outside entities to do harm. The department can also work to develop more extensive public report files that include additional variables and a broader scope of reporting.

The amount of time to fulfill reports upon request may require a significant amount of staff time and resources. Each request will be unique to the tax program, data variables required, time periods and require extensive review time for quality assurance and compliance under 7-1-8 NMSA 1978. Contractual resources may be required to create reports on request.

Section 7-1-76 NMSA would subject LFC staff and anyone with whom they inappropriately disclose confidential tax information to a penalty of up to \$1,000 and a misdemeanor. Under HB198 introduced in this legislative session, the penalties for violating 7-1-76 are proposed to rise to \$5,000 and to a felony. Individuals who violate the confidentiality of federal tax data may also be subject to a felony and fines under the US Code.

On page 7, lines 17 through 19 require LFC staff to destroy confidential return information received pursuant to the new section within one year of receipt. This language could be strengthened by requiring destruction to occur as soon as possible but no more than one year after receipt, and by requiring the LFC Director to provide the Secretary of the department with a certification of destruction within 10 days of destruction occurring.

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<sup>2</sup> “Safely Expanding Research Access To Administrative Tax Data: Creating a Synthetic Public Use File And Validation Server”, Tax Policy Center, Urban Institute & Brookings Institution, 2018.

<sup>3</sup> IRS 1075, Section 5.3 Access to FTI via State Tax Files or Through Other Agencies

<sup>4</sup> IRS 1075, Section 5.2 Commingling of FTI

**Technical Issues:** [Section 3] Subsection B, on page 6, line 15 references data aggregation for certain tax programs “to three taxpayers.” For clarity, Tax & Rev suggests removing “to three taxpayers” and replacing it with “of at least three taxpayers.”

Subsection B, on Page 6, and subsection E, on page 7: The two subsections appear to have a conflict of language between subsection (B), “redacting any prohibited information” and subsection (C), “clearly marked notification of confidential return information.” Confidential return information could fall into the category of prohibited information. Clarity in the language of the bill will help shape the intent of the bill and how Tax & Rev must prepare the requested data.

Subsection G on page 7, lines 17-19, conflicts with Section 7-1-8 B(4) NMSA 1978. Tax & Rev suggests that subsection G be reworded to reference 7-1-8 B(4) NMSA 1978, on line 18 after the word “destroyed” the remainder of the sentence that ends on line 19 be struck and replaced with “in accordance with 7-1-8 B(4) NMSA 1978.”

To protect the integrity of the confidential taxpayer information and consistent with other data sharing statutes, Tax & Rev suggests adding a new section on page 7, after subsection G to requiring that a “state professional economist” complete training on protecting confidential information, the same as a department employee is required to do, prior to receiving information would be prudent. Language from Section 7-1-8.9 B NMSA 1978 states “The department may require that a municipal or county official or employee satisfactorily complete appropriate training on protecting confidential information prior to receiving the information pursuant to... this section.”

Consistent with other data sharing statutes, Tax & Rev suggests adding a new subsection on page 7, after subsection G to state: “The director and staff of the legislative finance committee receiving the information as provided in this section shall be subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978.”

Tax & Rev suggests amending the bill to ensure that any information disclosed by Tax & Rev through the provisions of this bill that would not be subject to release pursuant to the Inspection of Public Records Act (IPRA) once it is in the possession of the LFC.

**Other Issues:** None.

**Administrative & Compliance Impact:** To meet the potential data reconfigurations and processing of data requests, one additional FTE is required. Their qualifications would need to encompass data management, security and communications. Mid-level data analyst classification salaries were used in the estimate of the recurring budget impact.

Tax & Rev’s Information Technology Division (ITD) will incur one-time costs of approximately 680 hours or about four and a half months for an estimated staff workload cost of \$45,315. These costs encompass establishing conditions of the MOU to set up a secure electronic data exchange between Tax & Rev and the LFC. To respond to annual requests for new or refreshed data, ITD estimates recurring costs of \$31,900 for approximately 480 hours or 3 months.

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY2025	FY2026	FY2027	3 Year Total Cost		
--	\$98.4	\$98.4	\$198.8	R	Tax & Rev FTE
--	\$45.3	--	\$45.3	NR	Tax & Rev – ITD Staff workload

--		\$31.9	\$31.9	R	Tax & Rev – ITD Staff workload (recurring)
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\* In thousands of dollars. Parentheses ( ) indicate a cost saving. \*\* Recurring (R) or Non-Recurring (NR).

**Policy Issues – Detailed Discussion:** Tax & Rev is charged with the administration of numerous tax acts requiring taxpayers to submit tax return data that identifies the entity paying the tax and other sensitive information. Tax & Rev protects taxpayer confidentiality under defined state statutes and adheres to the federal laws surrounding FTI. This bill seeks to expand beyond the traditional bounds of sharing data with other state agencies and local governments for the purposes of program administration and ensuring compliance. Tax & Rev’s traditional bounds of sharing data align with the Federal Government’s guidelines and regulations surrounding the sharing of Federal tax return information.<sup>5</sup> These bounds are narrow in focus and at their core provide that return information is only shared with state agencies responsible for joint tax administration. As the department designated by the state to administer all laws and functions related to taxation and revenue, Tax & Rev under IRC 6103(d) has an agreement with the IRS to be the designated state agency responsible for tax administration and to receive and safeguard federal tax information.

Under Section IRC 6103(p), any designated state agency must demonstrate the storage and security of return or return information. This includes training and access restrictions to staff whose duties require access to return data to complete their jobs. To ensure compliance, state agencies are audited triennially by the IRS Office of Safeguards and must demonstrate all procedures and safeguards.

Other state agencies outside of the tax administration agency can pursue an agreement with the IRS to receive data. To be considered, agencies would need to demonstrate the security requirements of maintaining and protecting the data. They would be subject to the audits and oversight of their data safeguard securing structure by the IRS. With the broad scope of data accessibility provided in this bill, this may be a more secure direction to meet federal disclosure laws – but would subject LFC to triennial IRS audit.

Tax & Rev understands the need for “editable electronic format” to be able to process the data immediately in statistical software. This places Tax & Rev though at greater risk. Assuming all FTI and information identifying a taxpayer is manually removed, the data still contains sensitive tax reporting information. While a secure method of transferring the data from Tax & Rev to an outside entity can be established, once the data leaves the confines of GenTax in an “editable” form, Tax & Rev cannot assure the integrity or the protection of that data. Tax & Rev risks losing the trust of taxpayers should data be mishandled, not to mention the potential legal ramifications.

<sup>5</sup> See IRS Publication 1075 - Tax Information Security Guidelines for Federal, State and Local Agencies and Internal Revenue Code, 26 U.S. Code § 6103 – Confidentiality and disclosure of returns and return information