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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/09
 LAST UPDATED 03/13/09 HB 657/aHEC

SPONSOR Garcia, MH

SHORT TITLE Substitute Teaching Tax Deduction SB _____

ANALYST Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	(\$22.0)	(\$22.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Department of Finance and Administration (DFA)
 Public Education Department (PED)

SUMMARY

Synopsis of HEC Amendment

House Education Committee (HEC) amendment to House Bill 657 clarifies that an eligible taxpayer means a teacher who worked “in New Mexico” as a full-time “licensed” teacher.

Synopsis of Original Bill

House Bill 657 proposes a new section of the Income Tax Act to provide a tax deduction for taxpayers who worked as a full-time teacher for at least twenty years, who are retired from a position as a full-time teacher, and who are certified by the Public Education Department to provide service as a substitute teacher.

The deduction can be in an amount not to exceed \$50,000 of income paid during the taxable year by a public school in New Mexico.

The provisions of the Act are applicable to the taxable year beginning on or after January 1, 2009.

FISCAL IMPLICATIONS

According to the Public Education Department (PED), there are currently 92 individuals who have more than twenty years of teaching experience who hold a substitute teacher license. For the purpose of this revenue estimate, these individuals are assumed to be retired. PED estimates that on average an experienced retired teacher working as a substitute would earn \$95 per day and work 80 days per year. This yields an average substitute teaching salary of \$7,600. Assuming 80% of these individuals actually work as a substitute teacher and applying an assumed marginal tax rate of 4%, the estimated annual decline in revenues is approximately \$22 thousand.

In the 2008-2009, New Mexico school districts have budgeted approximately \$24 million in substitute teacher line items.

SIGNIFICANT ISSUES

Currently, a teacher can retire after 25 years of service. This bill may encourage teachers to retire early since they are eligible for this deduction after only 20 years of service.

The intent of the bill appears to provide an incentive to experienced teachers to serve as substitute teachers by allowing them to claim a deduction not to exceed \$50K from net income. A secondary intention of this bill may be to increase the supply of substitutes. It establishes a particular category of individuals who would be exempted from state taxation.

According to PED, as worthy a goal that increasing the number of substitute teachers may be, the bill is problematic on two levels:

The threshold for eligibility for the deduction is extremely high, i.e. 20 years of service in the teaching profession, the potential addition to the pool of substitutes who qualify is likely quite small and restricted to individuals who have retired from the profession. In general, substitute teachers are certified by the state as spelled out in statute (22-10A-15 NMSA 1978, Substitute teacher certificate):

The department shall provide by rule for the qualifications for a substitute teacher certificate. Substitute teacher certificates shall be issued by the department.

The rule that addresses certification of substitute teachers is found at 6.63.10 NMAC.

The bill requires the individual seeking to claim the specified deduction to have served as a teacher in New Mexico for 20 years and retired from the field. By default, a qualifying individual would still hold a valid teaching license. Because they held a valid license the requirement they hold a state-issued substitute teacher's certificate as spelled under Paragraph C is superfluous because within rule 6.63.10.12 NMAC, EXCEPTIONS, licensed teachers are exempted from the certification requirement.

According to statute, (22-11-23, NMSA 1978, Retirement Eligibility), to be eligible for a state public education retirement, an individual needs to meet either of the following condition:

- (a) The sum of the member's age and years of earned service-credit equals seventy-five; or
- (b) Upon completion of five years of earned service-credit and upon becoming sixty-five years.

According to the National Teachers' Association:

New Mexico has no requirements for substitute teachers, and the lack of substitutes makes it doubtful that any will be adopted in the near future. Funds for making it more attractive are not available in most districts. There are shortages almost everywhere, largely because of the pay. The Attorney General ruled that substitute teachers must be licensed, and legislation has been passed authorizing the state DOE to do so. The school districts are required to approve a list of substitutes who can then be licensed for up to three years if they are at least 18 years old.

Second, because the individual who would likely qualify for the proposed deduction would be a retired teacher they would be drawing an Educational Board pension. By taking a job as a substitute they could collect up to \$50,000 per year tax free. By establishing this unique category of individuals as being exempt from state taxation, HB 657 appears to conflict with the following legal decision, New Mexico Elec Serv Co, v. Jones, 80 N.M. 791, 461 P.2d 924 (Ct. App. 1969), which established the following precedent: "Tax burden should fall with uniformity and equality upon the class of person sought to be taxed."

ADMINISTRATIVE IMPLICATIONS

According to Taxation and Revenue Department (TRD) there is a minimal administrative impact to modify forms, instructions, and publications related to the personal income tax program. This will include changes to information technology systems - GenTax, PIT-NET, and the Fed/state internet filing applications and to develop audit and compliance procedures.

TECHNICAL ISSUES

Under Paragraph A, on lines 18 and 19, the term "deduction" is used when the appropriate term is probably "exemption." A deduction is usually applied to legitimate business or education expenses that can be deducted from a tax burden. On the other hand, exemption refers to releasing something from some liability or requirement to which others are subject, in this case income up to \$50K per year as a substitute teacher.

Also, under Paragraph A on lines 20 and 21, reference is made to "income paid during the taxable year by a public school in New Mexico...." The source of a teacher's pay check is typically the school district not an individual school unless the individual is employed at a charter school. The wording here needs to be clarified.