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

SPONSOR Beffort **ORIGINAL DATE** 02/03/09 **LAST UPDATED** **HB**

SHORT TITLE Temporary Tax Amnesty Program **SB** 108

ANALYST Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	$500.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	$7,790.0	($7,120.0)	Nonrecurring	General Fund
	$3,340.0	($3,050.0)	Nonrecurring	Other TAA Funds and Local Governments

(Parenthesis ( ) Indicate Revenue Decreases)

*One time appropriation

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department

SUMMARY

Synopsis of Bill

Senate Bill 108 appropriates five hundred thousand dollars ($500,000) from the general fund to the Taxation and Revenue Department (TRD) for the purpose of conducting a tax amnesty program for taxes and tax acts administered under the Tax Administration Act.

This bill authorizes TRD, with the concurrence of the governor, to declare an amnesty period of no more than ninety days provided that that amnesty period shall occur within the fiscal year 2010. All revenue collected as a result of the tax amnesty shall be identified specifically and reported to the first session of the fiftieth legislature.

The bill also authorizes the secretary of TRD to waive, during the amnesty period, the interest and penalty provisions provided under Sections 7-1-67 and 7-1-69 NMSA 1978 on taxes that were due and not assessed prior to the day the amnesty period begins.

The provisions of this Act are repealed Effective July 1, 2010.

FISCAL IMPLICATIONS

According to the December 2008 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is $293 million, or 2.6 percent, less than the FY09 appropriation. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

The appropriation of five hundred thousand dollars ($500,000) contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of 2010 shall revert to the general fund.

The estimated revenue accounts for several components:

1. Increased collections during the amnesty,
2. Reduced revenues the would have been collected through regular collection efforts, as well as penalty and interest associated with these revenues,
3. Revenues due to new filers brought into the system through the amnesty, and
4. Reduced revenues that stem from diversion of resources from other collection activities.

TRD estimates that the information technology (IT) cost of implementing the amnesty program may be between $1 million and $1.5 million dependent how many TAA tax programs qualify and the age of liabilities covered by the amnesty. However, TRD did not provide data to quantify or support its estimate of $1 million to $1.5 million IT cost. Additionally, it should be noted that the cost could be offset by the additional revenue collected including prorating the cost between the general fund and local governments and other TAA beneficiaries.

SIGNIFICANT ISSUES

The last amnesty was administered 10 years ago. TRD relied in part on data from, and assumptions regarding, the 1999 amnesty. Fifty percent of collections ($25.5 million) from the 1999 amnesty are assumed to result from unassessed liabilities. 64 percent of collections occurred during the amnesty period; the remaining 36 percent occurred during the two-year installment payment period. Although the 1999 amnesty allowed for installment payment agreements, this is not a characteristic of the amnesty proposed in this bill. To estimate collections of unassessed taxes that would result from the proposed amnesty, the full value of those collected during FY99 as well as 20 percent of those collected during FY00 and FY01 are adjusted to FY10 values by factoring the growth in collections over time.

A portion of revenues collected in the 1999 amnesty program (an assumed 85 percent) would have been collected even in the absence of an amnesty. Due to improved collection efforts, a higher percentage (90 percent) is applied to the proposed amnesty. In addition, had these taxes been collected through regular collection efforts rather than in the 1999 amnesty, interest and principal would have been collected. Data collected during the 1999 amnesty indicates that principal and interest that was waived during the amnesty amounted to 56 percent of collections. Because the statutes now limit the amount of penalties that may accumulate and impose a lower interest rate than that which was imposed at the time of the 1999 amnesty, we assume that lost principle and interest would equal 40 percent of collections in the FY2010. These two components of the revenue estimate, taking into account amounts that would have been collected in managed audits (with no interest or penalty), are distributed over several fiscal years; it is assumed that 40 percent would have occurred during FY2010, 25 percent in FY2011, 15 percent in FY2012, 10 percent in FY2013, and the remaining 10 percent in subsequent fiscal years.

Additional filers brought into the system by the amnesty would have a positive effect on revenues in FY2011 and subsequent years. The amnesty is assumed to bring new filers into the system such that revenues increase by 0.01 percent in FY2011 and subsequent fiscal years.

Finally, the amnesty would divert resources away from regular collections activities (ACD estimates 10 percent of resources will be diverted), thereby reducing regular revenue collections by nearly $5.2 million in FY2010.

It is assumed that 70 percent of the revenue impact will affect the general fund; the remaining 30 percent is assumed to impact other local and other funds. The following table details the magnitude and timing of the various components of the revenue estimate.

TRD notes that the bill establishes few requirements for qualifying for the amnesty, thus it may be true that anything previously due but not yet assessed would qualify for amnesty. The use of the word “assessed” could cause a terrible consequence, since liabilities assessed after the statute of limitations are not truly assessed per Section 7-1-17 NMSA 1978, and all assessments under $25 are not assessed, but the liabilities are still due and collected.

ADMINISTRATIVE IMPLICATIONS

TRD reports that an amnesty program could have an impact to information technology (IT) systems, including GenTax. GenTax would have to be programmed to remove penalty and interest from case files that qualify under the amnesty.

There will also be a high impact due to the need to develop a system to identify and track the money collected due to the tax amnesty. GenTax capabilities should be explored; software upgrades may be required. All monies and returns will need additional manual intervention to record money collected due to the amnesty program compared to other monies collected. The timing of the amnesty program will be important because there is often a time difference between the day the return is due and the date the liability is assessed. For example: it may present a significant issue for 2008 PIT tax returns (assessed in June of 2009) if the amnesty period is prior to the date the first assessments for 2008 tax returns are filed. All 2008 PIT-1 return liabilities will be included. A massive mail-out and public service announcements at a high cost to the Department will be needed to diminish the influx of calls that the amnesty announcements will generate. During the last amnesty, all Department resources were deployed to work the amnesty program, virtually stopping all other collection and tax processing activities. Again, the timing of the amnesty program will be critical to the success of the Department's daily operations.

During the 1999 amnesty audits were assessed prior to audit completion and adjustments were later made to reflect the true assessment, which required a great deal of ACD time. Current staff reductions would prevent ACD from meeting the demands of a tax amnesty.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to the General Appropriations Act

TECHNICAL ISSUES

It is not clear if the taxpayer only needs to establish the past due amount (and possibly pay the liability in installments) during the 90 days or if they must also make full payment of the liability with that period.

The term "assessed" should be clarified to resolve the issues identified in the Significant Issues section. It also appears that underpayment of penalty and interest may not qualify for amnesty under this bill.

OTHER SUBSTANTIVE ISSUES

Frequent amnesty periods may indirectly communicate a message to taxpayers that they do not need to comply with the Tax Administration Act because, potentially, another amnesty period may be approved. It is not known how frequent is too frequent.

ALTERNATIVES

Most of the taxpayers that this bill is trying to assist could qualify for the existing managed audit program, which provides 180 days to supply TRD with the information needed to establish liability and an additional 180 days to pay without penalty and interest.

DL/svb