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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/13

SPONSOR Ingle LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Tax Distribution & Transfer Corrections SB 518

ANALYST Smith

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
	Negative and Material					General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 518 (SB 518) amends the Tax Administration Act to revise procedures for correcting distributions and transfers of revenue to local governments. The bill grants the Secretary of the Taxation and Revenue Department (TRD) authority to determine what remedy is appropriate to address an erroneous distribution that may occur in communities with limited fiscal resources. Importantly, the bill grants the Secretary (with Board of Finance approval) the power to make grants to local governments to offset a negative distribution from the Appropriation Contingency (subset of the General) Fund.

The bill also requires notification of affected political subdivision if the Secretary determines that an erroneous distribution will result in an increase or decrease in a subsequent distribution.

SB 518 defines the following terms:

- (1) "discretionary expenditures" means all political subdivision expenditures, excluding:
  - (a) authorized intercept transfers pursuant to the State Aid Intercept Act or by the amount of the state distribution intercept authorized pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement with the New Mexico finance authority;

- (b) publicly approved bond or loan repayment obligations of the political subdivision; and
  - (c) approved and budgeted expenditures and contractual obligations related to public health and safety; and
- (2) "erroneous distribution" means a prior distribution to a political subdivision that is subsequently determined to be incorrect as a result of an action or determination by the department that was factually inaccurate or otherwise in error due to the actions or inactions in the administration of the secretary's duties."

## **FISCAL IMPLICATIONS**

Notice that this FIR disagrees with the analysis provided by the TRD. The ability for the executive to make grants from the General Fund has a negative fiscal impact by definition.

Since there is no mention of interest or term on these loans, the General Fund would lose the float on any loans that the secretary makes.

## **SIGNIFICANT ISSUES**

The bill gives the executive enormous discretion in the making of grants. It does not specify any limits such as a cap on the amount forgiven.

The TRD notes that the administration of gross receipts taxes routinely requires that refunds, reallocations and other adjustments must be performed in the month distribution of net receipts under Section 7-1-6.15 NMSA 1978. In some cases these distributions can cause serious fiscal challenges to the political subdivision beneficiaries of the distributions, including threatening a political subdivision's ability to meet debt obligations and fiscal operations requirements. The legislation seeks to provide clear guidance to the secretary as to how those issues should be administered and managed. It creates a mechanism where, if proven to be required by circumstances, and as determined by the Board of Finance as appropriate, there may be resolution of the situation through funding from the Appropriations Contingency Fund (Section 6-4-2.3 NMSA 1978).

Generally, this bill gives the Secretary the discretion to choose from several appropriate resolutions to occurrences of abnormal distributions across all tax programs that distribute to local governments, and to adjust future distributions by variable amounts. GenTax programming needs to record either a draw from the Contingency Fund, reductions of one or more future distributions, or suspend (or reverse) taxpayer transactions already input to the system that have an adverse impact on local government distributions.

A "negative" distribution could be caused by an audit, an amended return, or insufficient receipts to cover intercept agreements. If one of these circumstances stems from a filing period prior to one year prior to the calendar year, then the local government is held harmless for repayment (or from repayment of the portion relating that period).

## **TECHNICAL ISSUES**

It is unclear why loans must be made from the Appropriation Contingency Fund.

The TRD notes that:

- Section D (page5) indicates if the reduction is less than \$1,000 or less than ten percent of the last twelve months, then there’s no need to draw from the contingency fund. It may be clearer on line 16 to use the term “reduction” instead of “net negative” unless this section only relates to cases of negative distributions. Each reference to the average of the last twelve months should state “last positive twelve months”
- Last line on page 7 (first line on page 8) verbiage is “related to the taxpayer’s reported liability”. This term should also be used on page 8, line 10-11. When suspending the impact of the taxpayer’s transaction within GenTax, there may be impacts on other jurisdictions. A manual process could easily become unwieldy and produce errors. Page 8, line 10-11 seems to indicate we could only draw from the Contingency Fund if the taxpayer received a refund. This should apply equally to reallocations

This bill does not contain a sunset date. The LFC recommends adding a sunset date.

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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