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FISCAL IMPACT REPORT

SPONSOR: Godbey DATE TYPED: 03/04/01 HB 462
 SHORT TITLE: Criminal Violations of Tax Laws SB _____
 ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD)
 Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

The Criminal Violations of Tax Laws bill proposes to “grade” offenses according to the dollar amount involved as follows:

	Current Provision	Proposed
Attempts to evade or defeat tax (7-1-72 NMSA 1978)	Fine of \$1,000 to \$10,000 Imprisonment for 1 year to five years.	
Amount evaded is \$100 or less		Petty misdemeanor per 31-19-1
Amount evaded \$100 to \$250		Misdemeanor per 31-19-1
Amount evaded \$250 to \$2,500		4 th felony per 31-18-15
Amount evaded \$2,500 to \$20,000		3 rd felony per 31-18-15
Amount evaded greater than \$20,000		2 nd felony per 31-18-15
Revealing Information concerning taxpayers (7-1-76 NMSA 1978)	Misdemeanor: fine not more than \$1,000; imprisonment not longer than 1 year; cannot be employed by state for five years.	Misdemeanor per 31-19-1; cannot be employed by state for five years
Burden of proof in tax evasion cases	Burden of proof on Department	Clarify “civil proceed-

	or state	ing”; burden of proof clarified to be “preponderance of the evidence; burden of proof remains on Department or state
Time limitations for commencing prosecution (30-1-8 NMSA 1978)	Misdemeanor – 2 years; petty misdemeanor – one year.	Misdemeanor or petty misdemeanor offense in violation of the tax laws --three years.
Assault and battery of a department employee	Fine \$100 to \$500; imprisonment 3 days to 6 months.	Repealed in favor of general law prohibiting assault and battery.

Current Penalties for Various Crimes		
	Fine	Imprisonment
Section 31-19-1 NMSA 1978		
Petty misdemeanor	Less than \$500	Less than six months in county jail
Misdemeanor	Less than \$1,000	Less than 1 year in county jail
Section 31-18-15 NMSA 1978		
4 th felony	Less than \$5,000	18 months
3 rd felony	Less than \$5,000	3 years
2 nd felony	Less than \$10,000	9 years

FISCAL IMPLICATIONS

TRD reports no fiscal impact. The rational fines under this bill are not significantly different than the range previously allowed a judge on conviction.

ADMINISTRATIVE IMPLICATIONS

It will cost the judicial system \$400 for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws or amendments to existing laws have the potential to increase caseloads and/or judge time spent on cases in the courts, thus requiring additional resources to handle the increase.

OTHER SUBSTANTIVE ISSUES

The Public Defender notes that the graduated sentences for the offenders who “cheat” with progressively larger sums does not target the act as much as it targets the amount. In other words, a person in a lower tax bracket may have as much culpability, as much deliberate intent, as the person in the higher tax bracket, but only be subject to a petty misdemeanor, while the more affluent citizen who evades paying a proportionately identical amount will face a second degree felony. Unlike the existing statute, the legislation connects the punishment to the amount rather than the crime and therefore may be unconstitutional in that it proscribes significantly different penalty for an identical act.

FAR/lrs:ar