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FISCAL IMPACT REPORT

SPONSOR Aragon DATE TYPED 02-09-04 HB _____

SHORT TITLE Decouple Estate Tax from Federal Changes SB 441

ANALYST Taylor

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
7,500.0	17,500.0	20,000.0	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Duplicates HB 557

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department

SUMMARY

TRD reports that SB 441 would reinstate the New Mexico estate tax as it existed prior to 2001. A copy of their analysis is attached.

FISCAL IMPACT

TRD estimates that reinstating the tax as it was prior to 2001 will increase revenues by \$7.5 million in FY04 and \$17.5 million in FY05.

BT/yr

Attachment

2004 N.M. LEGISLATURE
N.M. Taxation and Revenue Department
Jan Goodwin, Cabinet Secretary

DATE: February 9 2004

BILL NUMBER: Senate Bill 441

SPONSOR: Senator Aragon

SHORT TITLE OR DESCRIPTION: De-couple from estate tax repeal

REVIEWED BY: Tax Research Bureau (Contact: tclifford@state.nm.us)

RELATED BILLS: House Bill 557 is a duplicate

DESCRIPTION:

Senate Bill 441 would reinstate the state's estate tax as it existed prior to federal law changes implemented in 2001¹. New Mexico's estate tax law is tied directly to provisions of the federal Internal Revenue Code ("IRC"). Thus, when the IRC was modified, the state's tax was directly affected. Major changes affecting state taxes include:

1. The state death tax credit against federal tax owed was phased out over a four-year period. No credit is available for deaths occurring after 2004. This provision has the effect of eliminating New Mexico's estate tax after 2004 because the state's tax was defined to be equal to the amount of the credit as specified in federal law.
2. The unified credit amount—which effectively defines a tax-free "floor" below which estates are not taxable—was increased from \$675 thousand to \$3.5 million over a period of several years.
3. A new deduction for state taxes paid was created. Instead of a credit, the amount of any state taxes can now be deducted from the taxable value of the estate for federal tax purposes.
4. The federal estate tax is repealed effective for deaths occurring in 2010. However, the tax is reinstated for deaths occurring in 2011 and after.

Senate Bill 441 would reinstate the state's estate tax by reference to the federal law provisions in effect as of December 31, 2000. These provisions included a unified credit amount of \$675 thousand, and a state credit (therefore tax rate) calculated as a percent of the taxable estate. The tax rate increased from 0.8% for taxable estates over \$40 thousand up to 16% for taxable estates over \$10,040,000.

EFFECTIVE DATE: 90 days after adjournment. Applicable to tax years beginning on or after January 1, 2004.

FISCAL IMPACT (Thousands of dollars):

Note: Parenthesis () indicate a revenue loss.

¹ The federal changes were incorporated in the "Economic Growth and Tax Relief Reconciliation Act of 2001," or EGTRRA.

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Recurring	Fund Affected
FY 2004	FY 2005			
7,500	17,500	20,000	Recurring	State General Fund

APPROPRIATION IMPACT: None

ADMINISTRATIVE IMPACT: The Department would face significant expense—in forms development and system re-programming and would require additional fte for revenue processing to implement the proposal. If the federal estate tax is in fact repealed, the administrative tasks become much more complex and costly.

TECHNICAL ISSUES: The applicability date of the proposal does not conform to definitions in the IRC. Estate tax provisions are imposed as of the date of death. Thus, the appropriate language for the effective date would be “Applicable to deaths occurring on or after January 1, 2004.” Use of the “tax year” terminology raises questions about the treatment of a death occurring prior to the effective date for which an estate tax return has not been filed.

The January 1, 2004 effective date implies a retroactive application of the statute. Retroactive effective dates have been challenged as a violation of the due process provisions of the U.S. Constitution. To avoid such a challenge, the provisions could be made effective on a prospective basis, for example “The provisions of this act apply to deaths occurring on or after July 1, 2004.”

OTHER IMPACTS AND ISSUES: According to an October 2002 survey by the Federation of Tax Administrators, 12 states had taken some action to offset all or part of the impacts of the estate tax changes adopted in EGTRRA. Under state laws in effect at that time, there would be 30 states that would have no state death tax in 2005 when the federal credit for state taxes is repealed.