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FISCAL IMPACT REPORT

SPONSOR Tripp DATE TYPED 2/16/05 HB 985

SHORT TITLE Tax & Revenue Debt Collections SB _____

ANALYST Rosen

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 985 allows TRD, by competitive bid, to select attorneys or collection agencies to assist in collection of obligations due to the state, provided the obligation is at least one hundred twenty days past due. This bill provides for compensation to attorneys and collections agencies in this regard equal to thirty percent of the obligation collected. Notwithstanding any contract for collection of an obligation, TRD shall retain authority to settle obligations or accept payments on obligations.

Significant Issues

It is not clear why TRD should be constrained to pay a particular percentage of the collected obligation as compensation to attorneys or collection agencies. If TRD is able to contract for debt collection on more favorable terms it should not be constrained by stature.

PERFORMANCE IMPLICATIONS

Indeterminate

FISCAL IMPLICATIONS

TRD reports fiscal impacts resulting from the bill will likely be insignificant.

ADMINISTRATIVE IMPLICATIONS

TRD reports the bill will impose no significant administrative impacts on the Department.

TECHNICAL ISSUES

According to TRD, there are several technical issues to consider:

- 1) Under current law, attorneys and collection agencies cannot receive a percentage of the tax delinquency collected as compensation, because taxes, penalty and interest are due to the state. If the collection agency receives a percentage of the amount collected, then a portion of the tax, penalty, and interest is not being paid to the state. See, for example, § 7-1-67(A): “If a tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state . . . ” (emphasis added). The bill’s compensation provision would violate this requirement.
- 2) If the collection agency receives a percentage of the amount collected, the department is compromising a tax liability. Under the Tax Administration Act, the department cannot compromise a tax liability unless the secretary has a good faith doubt as to the taxpayer’s liability. See, § 7-1-20, “At any time after the assessment of any tax, if the secretary in good faith is in doubt of the liability for the payment thereof, the secretary may, with written approval of the attorney general, compromise the asserted liability for taxes by entering into a written agreement that adequately protects the interest of the state.” Under the bill, there is no requirement of good faith doubt as to the liability.
- 3) The bill states that the department “retains the authority to settle an obligation” (page 2, lines 4-7). This makes no sense, because the department has no existing statutory authority to “settle an obligation”. As stated above, the department can only compromise a liability if the secretary has a good faith doubt as to the taxpayer’s liability. The department has no authority to compromise a tax liability based on any other factor, such as a taxpayer’s inability to pay, or a taxpayer’s offer to pay a lesser amount in satisfaction of the total amount due.
- 4) For the reasons above, any compensation to the collection agencies must come from other sources, such as appropriation from the legislature. In fact, payment to an outside collection agency based on a set percentage of past due taxes collected may be illegal.
- 5) Setting a percentage of payment collected as the fee in advance circumvents the procurement process, as bidders would not have to compete with regard to rates for the state business.
- 6) Lastly, 7-1-8, 'Confidentiality of returns and other information,' would need to be amended to authorize the Department to provide taxpayer information to an attorney or collection agency.