

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Stewart DATE TYPED 2/03/05 HB 568

SHORT TITLE Decouple Estate Tax from Federal Changes SB \_\_\_\_\_

ANALYST Taylor

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
\$12,000	\$24,000	\$20,000.0	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

Response Received From  
Taxation and Revenue Department (TRD)

### SUMMARY

TRD reports that HB 568 would reinstate the New Mexico estate tax as it existed prior to 2001. A copy of the TRD analysis is attached.

### FISCAL IMPACT

TRD estimates that reinstating the tax as it was prior to 2001 will increase revenues by \$12 million in FY05 and \$24 million in FY06, and \$20 million in subsequent years. They note that estimate is based on historical collections adjusted for large, one-time payments. They also report that historically this revenue has not demonstrated an increasing trend.

BT/lg:yr

See Attachment 1

**2005 N.M. LEGISLATURE**

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

**DATE:** February 1, 2005

**BILL NUMBER:** House Bill 568

**SPONSOR:** Representative Stewart

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

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

**RELATED BILLS:**

**DESCRIPTION:**

House Bill 568 would reinstate the state’s estate tax as it existed prior to federal law changes implemented in 2001<sup>1</sup>. New Mexico’s estate tax law is tied directly to provisions of the federal Internal Revenue Code (“IRC”). Thus, when the federal estate tax provisions in the IRC were modified, New Mexico’s estate tax was directly affected. Major federal changes affecting state taxes are described in the section “OTHER ISSUES.”

House Bill 568 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 – essentially an exclusion of a portion of the estate from taxation -- of \$950,000 for 2005 and \$1,000,000 for 2006 and thereafter; and a state credit (therefore tax rate) calculated as a percent of the taxable estate. The tax rate increases from 0.8% for taxable estates over \$40 thousand to 16% for taxable estates over \$10,040,000. In addition to reinstating the former tax, House Bill 568 would add an additional \$250 thousand to the exclusion from the taxable estate, resulting in a total exclusion of \$1.2 million for 2005 and \$1.25 million in all years thereafter.

**EFFECTIVE DATE:** 90 days after adjournment. Applicable to tax years beginning on or after January 1, 2005.

**FISCAL IMPACT (Thousands of dollars):** Note: Parentheses ( ) indicate a revenue loss.

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Recurring	Fund Affected
FY 2005	FY 2006			
12,000	24,000	20,000	Recurring	State General Fund

Fiscal impacts are based on actual collections over the last several years adjusted for statutory changes and to exclude large, one-time payments. Revenue from the estate tax historically tends to be quite volatile from year to year, and does not demonstrate an upward trend over time.

<sup>1</sup> The federal changes were incorporated in the “Economic Growth and Tax Relief Reconciliation Act of 2001,” or EGTRRA.

**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 January 1, 2005 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, 2005.”

**OTHER IMPACTS AND ISSUES:**

2001 Federal Estate Tax changes affecting state collections:

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.

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.