F I S C A L   I M P A C T   R E P O R T

SPONSOR Wirth
ORIGINAL DATE 1/23/06
LAST UPDATED 1/25/06
HB 21/aHBIC

SHORT TITLE Real Property Conveyance Tax Credit Transfers
SB

ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
(50.0)	(125.0)	(200.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files
Taxation and Revenue Department (TRD)
Energy Minerals and Natural Resources Department (EMNRD)

Responses Received From
Energy Minerals and Natural Resources Department (EMNRD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee amended House Bill 21 by restoring the 20 year carry forward provision for the credit against the personal income tax liability. This provision was not restored for the corporate income tax. The original bill had moved this provision to a different part of the bill (Section 1-F, page 4 and Section 2-F, page 6) and so this amendment has no additional fiscal impact.

Synopsis of Original Bill

House Bill 21 amends an existing credit against personal and corporate income tax liability for the conveyance of land or interest in land. The bill adds a requirement that the Taxation and Revenue Department (TRD) qualify the conveyance and issue a document indicating the amount of the credit and identifying the conveyance. This document can be sold, exchanged or otherwise transferred to another taxpayer as long as TRD is notified of the transfer of ownership.

Under current law, the credit is based on 50 percent of the appraised value of the land and it can be carried forward for twenty years. The conveyance of land under the law is for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation as an unconditional donation in perpetuity by the landowner or taxpayer to a public or private conservation agency eligible to hold the land and interests therein for conservation or preservation purposes. The credit can be no greater than $100,000 and a taxpayer can claim only one credit per tax year.

FISCAL IMPLICATIONS

In 2004, the Energy, Minerals and Natural Resources Department (EMNRD) certified six land donations with a total credit of $501,050 or an average of $83,508 per credit.

Present law land conservation credits were enacted during the 2003 legislative session and appeared on tax forms for the first time in 2005 – for claims against tax year 2004. Claims totaling $250,000 filed by seven taxpayers have been processed to date. An additional $150,000 in credits has been applied for. Since the program is still relatively new, it is difficult to predict how much it will grow in the future. The $60,000 recurring fiscal impact figure shown above assume that annual claims will expand to $600,000 in the near future. The proposal to allow transfers and subsequent claims is estimated to increase total credit claims by 33 percent, or $200,000 annually. Assuming the effects build gradually over time, the tax year 2006 effect is estimated at $100 thousand, 50 percent of which accrues during FY 2006.

SIGNIFICANT ISSUES

The idea of transferable credits is an innovation that is expected to encourage a particular behavior, in this case the donation of land, when it would otherwise not be advantageous. One example of how this might work is where someone may not be able to afford to keep a parcel of land but would like to see it go to a conservation or preservation purpose. If he or she has a low income, the existing credit does not help because it can only be used to offset tax liability and it could take several years to receive the full credit. With this amendment, he or she could transfer the land and receive a document certifying the value of the credit. That credit could be sold to another taxpayer with sufficient tax liability that it is advantageous.

EMNRD indicates that making the credit transferable will likely increase the number of land conservation donations. EMNRD certified donations consisting of 5,801 acres valued at over $4 million in the 2004 tax year.

TRD:

Transfer versus refunds of tax credits:

Provisions allowing the transfer of tax credits create the opportunity for a "secondary market" in tax credits in which the taxpayer who originally engages in the activity the credit is designed to subsidize sells the right to claim the credit to another taxpayer. New Mexico currently has very few tax credits with this provision. Experience from other states with transferable credits indicates that there are substantial transactions costs involved in linking up taxpayers who can use the credits with those who have earned them. In addition, lack of information on the seller's part about the potential value of the credits to the buyer has limited the value for which credits are transferred. As a result, tax credits trade for a price that on average recaptures as little as half of the original value for the seller. This implies that half of the state's foregone tax revenue is essentially wasted. For every $1 in tax credits allowed by the state, only $0.50 goes to the taxpayer engaging in the targeted activity. This is a relatively poor use of state revenues. As an alternative, the credits could be made refundable, in which case the original taxpayer could claim the full value even if they do not have sufficient tax liability to be offset against the credit. In this manner, the state revenue foregone is the same, but all of the benefit derives to the taxpayer engaged in the targeted activity. Examples of refundable credits under present law include the Film Production Tax Credit, the New Mexico Filmmaker Tax Credit and the High-Wage Jobs Tax Credit.

Examples of credits with neither transferability nor refundability provision include the manufacturer's Investment Credit, the Laboratory Partnership with Small Business Tax Credit, the Technology Jobs Tax Credit, the Research and Development Small Business Tax Credit, the Affordable Housing Tax Credit as well as several other credits applicable against each of the Personal Income Tax, the Corporate Income Tax and the Gross Receipts and Compensating Tax.

PERFORMANCE IMPLICATIONS

EMNRD indicates that, given the past experience of other states, such as Colorado, that made the tax credit transferable, the number of applications for the tax credit will increase significantly.

ADMINISTRATIVE ISSUES

Provisions of the proposed measure would impose relatively minor administrative impacts on the Taxation and Revenue Department and could be accomplished with resources currently available to the department.

TECHNICAL ISSUES

One feature of the bill is that it authorizes TRD to validate the appraisal of the property for the purposes of the tax credit. It is unclear whether the Energy Minerals and Natural Resources Department (EMNRD) is also supposed to validate the appraisal according to the current language.

TRD:

The intent of the proposal appears to be that after transfer, the new credit claimants would be able to carry the credits forward for only the number of remaining in which the first claiming would have been able to do so. It might be useful modify the proposal to clarify this issue.

The 20-year carry-forward of unused credits permitted under present law establishes a highly burdensome record-keeping requirement for both the department and for taxpayers. This burden is exacerbated by the proposal to allow transfers of the credits. A shorter period, or conversion to a refundable credit, would have lower compliance and administrative costs.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Donations of land will not increase as much as they would with the credit transferability.

NF/nt