

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: HB 657a

49th Legislature, 1st Session, 2009

Short Title: Substitute Teaching Tax Deduction

Sponsor(s): Representative Mary Helen Garcia

Analyst: James Ball

Date: March 12, 2009

AS AMENDED

The House Education Committee amendments clarify that the term “eligible taxpayer” means a taxpayer who has worked in New Mexico as a full-time licensed teacher and who has retired from a licensed position.

Original Bill Summary:

HB 657 enacts a new section of the *Income Tax Act* to allow an individual who has retired from a position as a full-time teacher after at least 20 years of service and who is authorized by the Public Education Department (PED) to provide services as a substitute teacher, to claim a deduction not to exceed \$50,000 from annual taxable net income beginning on or after January 1, 2009, for compensation received as a for serving as a substitute teacher. A husband and wife who file separate return for a taxable year in which they could have filed a joint return may each claim only one-half of the deduction provided in the bill.

Fiscal Impact:

According to PED, there are currently 92 individuals with more than 20 years of teaching experience who hold a substitute teacher license, although the department is unable to determine how many of these individuals are retired. Citing PED, the analysis by the Taxation and Revenue Department (TRD) suggests that, on average, an experienced teacher working as a substitute might earn approximately \$95 per day and work 80 days per year, which yields an average substitute salary for this group of teachers of \$7,600.

In calculating the impact on state revenues, TRD assumed that 80 percent of these individuals might actually work as substitute teachers. Applying a marginal tax rate of 4.0 percent, TRD estimates an annual decline in revenues of approximately \$22,000, as follows:

- 80 percent of 92 teachers = 73.6 teachers
- \$7,600 per teacher x 4.0 percent marginal tax rate = \$304.00
- 73.6 teachers x \$304.00 = \$22,374.00.

The compensation for experienced, retired teachers serving as substitutes varies widely around the state as illustrated by the salaries for full-day service posted on the websites of the following districts:

- Albuquerque Public Schools: \$84.00
- Las Cruces Public Schools: \$77.00 (if more than 10 consecutive days)

- Farmington Municipal Schools: \$112.00
- Santa Fe Public Schools: \$85.00.

Fiscal Issues:

The advantage to a qualifying substitute teacher who also qualifies for the Educational Retirement Board Return-to-Work program could actually be threefold, as the individual would be eligible for:

- salary earned from working as a substitute teacher;
- retirement benefits; and
- tax exemption equal to the amount of the salary earned, up to \$50,000.

Original Issues:

HB 657 raises some questions:

- Does the bill apply to teachers whose 20 years of service were solely in public or charter schools, or will service in higher education, private schools, or even home schools, also be counted?
- Will years of teaching in another state count toward the 20 year teaching requirement?

Technical Issues:

According to the analysis of HB 657 by the Office of Education Accountability at the Department of Finance and Administration, the term “deduction” on page 1, line 18 should be “exemption.” A deduction is usually applied to legitimate business or education expenses that can be deducted from a tax burden. An exemption refers to releasing something from some liability or requirement to which others are subject, in this case income up to \$50,000 per year as a substitute teacher.

OEA also states that by establishing this unique category of individuals as being exempt from some state taxation, HB 657 could conflict with a 1969 New Mexico Court of Appeals decision which found that, “Tax burden should fall with uniformity and equality upon the class of person sought to be taxed.”

Background:

The Legislature adopted the Return-to-Work program for education employees in 2001. Current statute provides that a retired teacher may return to employment in a school district without suspending retirement benefits if the member has not been employed as an employee or independent contractor by an administrative unit of the Educational Retirement Board for at least 12 consecutive months from the date of retirement to the commencement of employment or reemployment. If the retired member returns to employment without first completing 12 consecutive months of retirement, the retired member must be removed from retirement.

Related Bills:

None as of 03-12-2009.