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FISCAL IMPACT REPORT

SPONSOR Campos, J. **ORIGINAL DATE** 02/08/10 **LAST UPDATED** _____ **HJR** 14
SHORT TITLE Forgive Certain Tax Liabilities, CA **SB** _____
ANALYST Clifford

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	(Indeterminate)	(Indeterminate)	Recurring	All Funds

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Joint Resolution 14 proposes a constitutional amendment permitting the legislature to authorize the Taxation and Revenue Department to enter into agreements with taxpayers to accept less than full payment of a tax liability. The implementing statute would provide standards of equity, guidelines and procedures, periodic independent review and an appeals process.

FISCAL IMPLICATIONS

TRD notes that the resolution has the potential to reduce all revenues collected by the Department.

SIGNIFICANT ISSUES

TRD:

This resolution would set a dangerous precedence by allowing New Mexico's constitution to be changed as uncertainly as permitted by the resolution's broad and general language. The amendment to Article 4, Section 32 of the state constitution would

be in contravention of the purpose of this provision. As stated in AG Op. 70-88: “This constitutional provision is undoubtedly intended to prevent public officials from releasing debts justly owed to a public body and to discourage collusion between public officials and private citizens.” The provision protects the public fisc from improper and unwanted pressure on public officials by private citizens to forgive amounts due under law from the private citizens.

TECHNICAL ISSUES

TRD:

The purpose of the resolution is unclear since the Department Secretary currently has the authority to compromise taxes, upon approval by the Attorney General, using closing agreements under NMSA 1978, § 7-1-20 when the Secretary is in good faith doubt of the liability of a taxpayer for the payment of any tax under the Tax Administration Act. If a taxpayer is financially unable to pay, installment agreements are available under Section 7-1-21. Finally, the department is precluded from actively seeking to collect taxes after ten years and cannot assess in most cases after 3 years from the date that the tax was originally due. Therefore, taxpayers are not subject to unreasonable demands for payment of taxes under current law.

ADMINISTRATIVE ISSUES:

TRD:

Without clear intent or specific legislation it is impossible to estimate the administrative impact on TRD, but it would likely be high and include significant opportunity costs. Guidelines would need to be developed to administer the new legislation, including appropriate checks and balances to prevent employee fraud. Established guidelines could be changed over time, resulting in inconsistencies in the granting of compromises and ongoing administrative changes. Department personnel may be required to spend an exorbitant amount of time dealing with requests and appeals resulting in a reduction in revenue, since time normally spent on collections would need to be diverted to processing compromise requests, and a need for more full-time employees.

TC/svb

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc