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FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/11

SPONSOR Cervantes LAST UPDATED _____ HB 405

SHORT TITLE Availability of Certain Taxpayer Information SB _____

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	<\$10.0	<\$10.0	Recurring	JPA -- HSD to TRD operating

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		<\$5.0	<\$5.0	<\$10.0	Recurring	TRD oper- ating

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department/Film Division (EDD/Film Division)

Human Services, Income Support Division (HSD/ISD)

SUMMARY

Synopsis of Bill

House Bill 405 allows four new exceptions to confidentiality of tax returns. The bill permits Taxation and Revenue Department (TRD) staff to reveal to: (1) the secretary of human services (or a delegate) information from tax returns needed to prepare reports to the federal government concerning tax deductions or credits for or payments allowed to low-income working families; (2) the secretary of human services (or a delegate) names and addresses of low-income taxpayers for the purpose of outreach to those taxpayers to encourage these taxpayers to discuss with HSD staff whether these taxpayers might qualify for Supplemental Nutrition Assistance Program (formerly food stamps), General Assistance, Medicaid, etc.; (3) a water and sanitation district of the state information listing taxpayers reporting gross receipts within the boundary of the S & W conservation district; and (4) to the legislature concerning claims for certain business and eco-

conomic development tax credits for the purpose of assessing the effectiveness of these credits. TRD may reveal information concerning tax return information for the following listed economic development tax credits:

- Preservation of cultural properties (7-2-18.2);
- Qualified business facility rehabilitation credit; income tax credit (7-2-18.4);
- ID card reader credit (7-2-18.8, 7-2A-18);
- Job mentorship tax credit (7-2-18.11, 7-2A-17.1);
- Solar market development tax credit; residential and small business solar thermal and photovoltaic market development tax credit (7-2-18.14);
- Angel investment credit (7-2-18.17 -- repealed effective January 1, 2013.);
- Renewable energy production tax credit (7-2-18.18, 7-2A-19);
- Sustainable building tax credit (7-2-18.19, 7-2A-21);
- Agricultural water conservation expenses tax credit (7-2-18.20, 7-2A-22 -- repealed effective January 1, 2013);
- Blended biodiesel fuel credit (7-2-18.21, 7-2A-23);
- Rural health care practitioner tax credit (7-2-18.22);
- Geothermal ground-coupled heat pump tax credit (7-2-18.24, 7-2A-24);
- Advanced energy income tax credit (7-2-18.25);
- Agricultural biomass income tax credit (7-2-18.26)
- Corporate-supported child care credit (7-2A-14);
- Qualified business facility rehabilitation credit (7-2A-15);
- Film production tax credit (7-2F-1);
- High-wage jobs tax credit (7-9G-1);
- Advanced energy combined reporting tax credit (7-9G-2);
- Investment Credit (7-9A-1 through 7-9A-11);
- Laboratory Partnership with Small Business Tax Credit (7-9E-1 through 7-9E-11)
- Technology Jobs Tax Credit (7-9F-1 through 7-9F-12).

The following three economic development credits are not included in the list:

- Rural Job Tax Credit (7-2E-1.1);
- Biodiesel Blending Facility Tax Credit (7-9-79.2);
- Research and Development Small Business Tax Credit (7-9H-6).

Taxpayers that are allowed listed tax credits will authorize TRD to reveal information, determined by the department to be necessary for reporting and evaluation purposes, from information gathered from the taxpayer's application for the tax credit. Reports shall aggregate taxpayer information to retain confidentiality where possible.

TRD would be able to charge HSD for expenses incurred for custom programming to assemble the names and addresses report.

FISCAL IMPLICATIONS

TRD may charge HSD sufficient fees to cover expenses for custom programming to assemble the names and addresses report. If this cost is expected to be excessive, HSD need not execute the JPA. This JPA transfer is shown as averaging less than \$5.0 per year.

SIGNIFICANT ISSUES

1. Now that several soil and water districts have been granted the authority to impose gross receipts taxes, they should be permitted a list of taxpayers reporting gross receipts to the district, in the same fashion that cities and counties are given similar information.
2. The Department will have to propose and promulgate rules so that any information on economic development tax credits allowed to be released by the provisions of the bill will conform to the test -- “essential to assess the effectiveness of a tax credit.” TRD will rule the details of the implicit permission to use information allowed in the bill. TRD will aggregate reports so that individual taxpayers cannot be identified. The bill allows TRD to divulge information gathered from that taxpayer’s application for the tax credit. For most of the listed credits, the application contains little more information than the amount of the credit claim. The investment credit claim does require the claimant to specify the number of jobs created.
3. HSD indicates that federal reports prepared by Department staff do not use custom TRD information. Although the bill allows TRD to develop a “use of general funds for low-income working families” report or a report listing names and addresses of low-income persons, the bill does not require HSD to use that data or pay for data that it does not use. HSD reports some concern that TRD would overcharge HSD for these data. However, the bill allows TRD to divulge information. If HSD does not want the data, then TRD will not develop either report and will not charge HSD.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 166, SB 47, SB 39, SB 409 and SB 170 propose various reports and data projects seeking to quantify various tax expenditures and to study costs and benefits of tax credits and deductions. This bill does not require additional information to be obtained from taxpayers, but does contain an implicit release of information concerning economic development tax expenditures and provides for limited release of information to soil and water conservation districts and HSD.

TECHNICAL ISSUES

This bill requires taxpayers, as a condition of receiving a listed economic development tax credit to “authorize the department to reveal information as determined by the department to be necessary for reporting and evaluation purposes.” There is no explicit penalty that can be imposed in case a taxpayer claims a credit and refuses to authorize the Department to reveal information. The bill seems to prohibit the publication of the report if any claimant taxpayer refuses to authorize the breach of confidentiality. It might well to amend the statute that authorizes each of the listed tax credits to make explicit the requirement: “if you want to receive this credit, you must agree to authorize the Department to reveal the information to the Legislature, the Governor and the media and general public. This information should be redacted to the extent possible to prohibit identification of an individual taxpayer. In this form, the breach of confidentiality is little more than permitted in 7-1-8

OTHER SUBSTANTIVE ISSUES

Apparently, the release of information to HSD was already provided by Laws 2009, ch. 242, § 2, effective April 7, 2009. This law “added Subsection OO, which allowed the following information to be given to the secretary of human services or the secretary’s delegate provided that

whomever receives the confidential information shall be subject to the penalties of Section 7-1-76 NMSA 1978 for failure to maintain the required confidentiality: (1) information that is needed for reports required to be made to the federal government concerning the use of federal funds for low-income working families and (2) the names and addresses of low-income taxpayers for the limited purpose of outreach to taxpayers with dependent children; provided that the human services department pay the expenses incurred by the taxation and revenue department to derive the information requested by the human services department if the information requested is not readily available in reports for which the taxation and revenue department's information systems are programmed.”

Laws 2009, ch. 242, § 2, effective April 7, 2009, also retained the exception for redacted statistical information:

H. in a manner, for statistical purposes, that the information revealed is not identified as applicable to an individual taxpayer;

However, Laws 2009, ch. 243 extensively reorganized the former confidentiality section and the release of information to HSD and the redacted statistical information exception were eliminated. This bill reinstates some of the information included in Laws 2009, Ch. 242.

HSD/ISD is somewhat concerned that this bill might jeopardize an ongoing solicitation program:

Current statute at NMSA 1978, Sections 7-1-4.4 and 21-2-10 require both HSD and TRD to coordinate in order to provide notices to New Mexicans that are potentially eligible for the Supplemental Nutrition Assistance Program (SNAP formerly known as the food stamp program). Specifically, individuals identified by TRD whose income is less than 130% of the poverty threshold shall receive program information in their state tax refund or other taxpayer notice. Currently, HSD prints and delivers SNAP outreach inserts at no expense to the TRD. Additionally, great consideration has been taken to insure that the insert does not increase postage for TRD. TRD previously indicated that it would be too costly to program TRD's information system to select only those individuals within SNAP income guidelines so the notice is inserted in TRD mailings provided to all New Mexicans.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The provisions of this bill are quite modest. Expansion of GRT taxpayer reporting listings to soil and water conservation districts that impose GRT is technical and completely parallel to similar reports provided to cities and counties.

Permitting TRD to release information to HSD concerning the names and addresses of low-income citizen for the purpose of outreach may not be valued by HSD, depending on cost of the custom programming and simply reinstates a provision that was, perhaps, inadvertently eliminated in 2009.

Requiring TRD to develop a report for the listed 22 economic development tax credits is nominal only. TRD reported the aggregate cost of the listed tax expenditures last December and intends to report these cost data routinely in the future. TRD will not be able to report benefits attributable to the tax expenditures, such as direct, indirect and induced jobs created or saved because of the tax expenditures.