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

SPONSOR HTRC **ORIGINAL DATE** 02/03/21 **LAST UPDATED** 02/15/21 **HB** CS/98/HTRCS/aHFL#1

SHORT TITLE Omnibus Tax Bill **SB**

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	**FY22**	**FY23**	**FY24**	**FY25**		
	(Unknown, negative, possibly more than $1 million)				Recurring	General Fund – Bill Sections Sections 4 and 21
	Unknown, positive, likely less than $1 million				Recurring	General Fund – Bill Section 6
	(Unknown, negative, possibly more than $1 million)				Recurring	Local Governments – Bill Sections 4 and 21
	Prevents future revenue losses				Recurring	General Fund – Sections 25-28
	NFI	NFI	NFI	NFI	Recurring	General Fund – Sections 29-31 and 33

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	($2.5)	$0	($2.5)	Nonrecurring	Section 5: TRD ITD – avoid programming CIT late filing fee
	($110.0)	($110.0)	($220.0)	Recurring	Section 9: TRD RPD – publication of unclaimed property notices
	($47.0)	($47.0)	($94.0)	Recurring	Section 32: TRD RPD – allow TRD to mandate electronic payment
	$15.5	--	$15.5	Recurring	Total bill implementation TRD ITD

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HFl#1 Amendment

The House Floor #1 amendment to the House Taxation and Revenue Committee substitute for House Bill 98 adds a new section to the bill to amend the Renewable Energy Production Tax Credit to clarify the credit can be claimed for ten years and to clarify the credit is to offset changes in deferred tax liabilities. HFl#1 also amends the existing credit for compensating taxes paid in another state (Section 7-9-79 NMSA 1978) to include services. Under current law, the credit only pertains to property. This cleanup language aligns the compensating tax with the gross receipts tax.

Synopsis of Original Bill

The House Taxation and Revenue Committee substitute for House Bill 98 proposes several technical clean up throughout the New Mexico tax code, proposed on behalf of the Taxation and Revenue Department (TRD) and endorsed by the Revenue Stabilization and Tax Policy Committee. Below is a section by section summary provided by TRD.

Section 1 - Section 7-1-4.3 NMSA 1978, which requires Taxation and Revenue Department (TRD) to publish information to taxpayers, is amended to remove the reference to the "combined reporting system" (CRS), which is being redesigned and will no longer exist after July 1, 2021.

Section 2 - Section 7-1-6 NMSA 1978, which relates to TRD's timely deposit of receipts, is amended to give TRD the same grace period for timely deposit of Corporate Income Tax (CIT) revenue during peak filing season that TRD currently has for Personal Income Tax (PIT).

Section 3 - Section 7-1-17.1 NMSA 1978 is amended to clarify the current innocent spouse tax relief statute. This bill will require that TRD automatically grant innocent spouse relief in instances where the IRS has already granted a taxpayer innocent spouse relief for the same tax period. It also codifies and clarifies some provisions that are currently in regulation rather than statute. It also adds "injured spouse" to the law to allow a spouse who is married to a taxpayer who had a tax liability prior to their marriage to be able to receive a portion of the spouse's refund.

Section 4 - Section 7-1-36 NMSA 1978 is amended to prevent TRD from garnishing a delinquent taxpayer's wages when such wages are under 40 times the state minimum wage (up to $420/week or $21,840/year would be exempt from TRD levy) rather than 40 times to federal minimum wage under current law. This change will allow very low-income delinquent taxpayers to retain more of their earnings for basic necessities.

Section 5 - Section 7-1-69 NMSA 1978 is amended to remove a $5 minimum late filing penalty for CIT.

Section 6 - Section 7-2E-1.1 NMSA 1978 is amended to change requirements for the Rural Job Tax Credit. The amendments add a statute of limitations requiring the taxpayer to timely apply for the Rural Job Tax Credit by December 31 of the following calendar year of the 12-month qualifying period applied for. For example, if a taxpayer's qualifying period ends in calendar year 2020, the credit application would be due by December 31, 2021. The amendments also add a requirement for the taxpayer to truly increase jobs, closing a loophole by which some taxpayers may currently claim the credit due to moving employees from one job to another internally.

Section 7 - Section 7-8A-9 NMSA 1978 is amended to update the form of notice by which TRD advertises unclaimed property to permit reliance on modern methods of locating unclaimed property, namely websites.

Section 8 - This bill amends Section 7-9-3 NMSA 1978 to clarify the definition for "lease" or "leasing" and adds a definition for "licensing" or "license" in the Gross Receipts and Compensating Tax Act.

Sections 9 through 17 and 19 - This bill amends several existing GRT deductions to clarify that a taxpayer may provide TRD "alternative evidence" to claim those GRT deductions in lieu of providing TRD a non-taxable transaction certificate (NTTC).

Section 18 - This bill amends Section 7-9-56.3 NMSA 1978 to update references to the current United States Code (U.S.C).

Sections 20, 22 and 23 - The bill amends Sections 7-9-77.1, 7-9-93, and 7-9-96.2 NMSA 1978 to clarify that physician practice groups are eligible to claim the GRT provisions contained in those sections. These clarifications are in line with TRD's existing regulations and interpretation.

Section 21 - Section 7-9-92 NMSA 1978 is amended to specify that the existing GRT deduction for receipts from sale of food for home consumption is available for food sold "by" a retail food store, not food sold "at" a retail food store. This will ensure delivered groceries receive equitable tax treatment.

Section 24 - Section 7-9G-1 NMSA 1978 is amended to update references to the current United States Code (U.S.C).

Sections 25 through 28 - This bill amends Sections 7-29-2, 7-30-2, 7-31-2, and 7-32-2 NMSA, which contain the definitions for the oil and gas severance tax act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, and the Oil and Gas Ad Valorem Production Tax Act. For each act, the bill defines "volume" to ensure that oil producers report volumes in barrels, while natural gas tax remitters report volumes in a standard format of thousand cubic feet (MCF) for natural gas at a pressure base of 15.025 pounds per square inch.

Sections 29 through 31 and 33 - Sections 7-40-2, 7-40-3, and 7-40-7 NMSA are amended to clarify the Insurance Premium Tax, which was recently transitioned from the Office of Superintendent of Insurance (OSI) to TRD. These changes, along with the repeal of Section 52-6-13 NMSA 1978, clarify that TRD is the correct agency to collect the self-insured group tax and distribute it to the general fund.

Section 32 - Section 9-11-6.4 NMSA 1978 is amended to allow TRD to mandate electronic payment of certain taxes. TRD may currently mandate electronic filing of returns, but not electronic payment.

Effective Date. July 1, 2021 for Sections 1-5 and 9-34. January 1, 2022 for Sections 6-8. Sections 6 and 7 apply to taxable years beginning January 1, 2022. Section 8 applies to tax returns filed on or after the effective date January 1, 2022: (1) for rural job tax credit claims against a taxpayer's modified combined tax liability, for qualified jobs created in the calendar quarters beginning on or after July 1, 2022; and (2) for rural job tax credit claims against a taxpayer's personal income tax liability or corporate income tax liability, for qualified jobs created in taxable years beginning on or after January 1, 2022.

FISCAL IMPLICATIONS

TRD provided the following table that breaks out the department's cost estimates by relevant sections:

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2021	**FY2022**	**FY2023**	**FY2024**	**FY2025**		
--	$0	$0	$0	$0	R	Section 3: Innocent Spouse Relief
--	Unknown - negative	Unknown - negative	Unknown - negative	Unknown - negative	R	Section 4: General Fund – PIT and GRT Wage Levy
--	Unknown - negative	Unknown - negative	Unknown - negative	Unknown - negative	R	Section 4: Local Governments - GRT Wage Levy
--	Unknown - positive	Unknown - positive	Unknown - positive	Unknown - positive	R	Section 6: General Fund – PIT rural job tax credit
--	Unknown - negative	Unknown - negative	Unknown - negative	Unknown - negative	R	Section 21: General Fund – GRT on delivered groceries
--	Unknown - negative	Unknown - negative	Unknown - negative	Unknown - negative	R	Section 21: Local Governments – GRT on delivered groceries
--	$0 (see narrative)	$0 (see narrative)	$0 (see narrative)	$0 (see narrative)	R	Sections 25-28: General Fund – energy volumes
--	$0	$0	$0	$0	R	Sections 29-31 and 33: General Fund – Insurance Premium Tax

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Section 3: TRD assumes no fiscal impact for innocent spouse tax relief as tax liability would be collected from the responsible spouse or estate.

Section 4: By protecting additional wages of low income individuals from wage levy by TRD, this provision may slightly decrease state personal income tax (PIT) collections and state and local gross receipts tax (GRT) collections, but may also somewhat decrease reliance on social programs, for example programs designed to reduce hunger or housing insecurity. TRD states the department cannot estimate the overall effect of this provision, but expects it to be small.

Section 6: TRD estimates that creating a statute of limitations to claim the rural job tax credit will ensure that the amount of credit paid in each year is more consistent and predictable. Without this limitation there is the potential for taxpayers to apply for credits spanning back over the past 20 years. TRD states that clarifying definitions to ensure new jobs are actually created to receive the credit may also increase revenue slightly.

Section 21: TRD estimates there may be some negative impact to state and local GRT revenues by ensuring that receipts from delivered groceries are deductible from GRT. However, this amount is difficult to quantify, though LFC staff note the potential for the cost to exceed $1 million to state and local governments. During the Covid-19 pandemic, news reports suggest that some food retailers began to charge GRT on delivered groceries.

Notably, the clean-up language provided does not change the GRT liability of prepared food service delivery. TRD may need to clarify whether the GRT deduction would apply to third-party services that deliver groceries from retail food stores (e.g. Instacart). Presumably, the GRT would not apply to the sale of the groceries, but should apply to the service fee of the third-party delivery company.

Sections 25 -28: The proposal to define the basis for reporting volumes in various oil and gas tax acts will ensure the tax rate on these products is correctly set and that the general fund receives the correct amount of revenue. During calendar year 2018, misreported natural gas volumes resulted in incorrect natural gas prices per MCF, which led to the Natural Gas Processor's tax rate being set in FY20 at 0.0108 per million British thermal units (MMBTU) instead of the correct rate of 0.0121 per MMBTU. This resulted in a natural gas processors tax revenue loss to the general fund of approximately $1.8 million in FY20. Many of these issues have been resolved with existing taxpayers, and this bill's clarification should prevent similar revenue losses in the future.

Sections 29-31 and 33: These provisions ensure the 0.9 percent self-insured group tax will continue to be collected and distributed to the general fund; as such TRD assumes no fiscal impact from the status quo.

SIGNIFICANT ISSUES

Section 1: In the 2020 regular session, TRD received a nonrecurring appropriation to redesign the CRS, and upon completion of that project there will no longer be a CRS. The taxes that have previously been reported on a combined single tax return will be regrouped and separately reported. TRD will continue to disseminate a publication to taxpayers regularly as before, but the proposed amendment will ensure there is no ambiguity that TRD is complying fully with the taxpayer bill of rights.

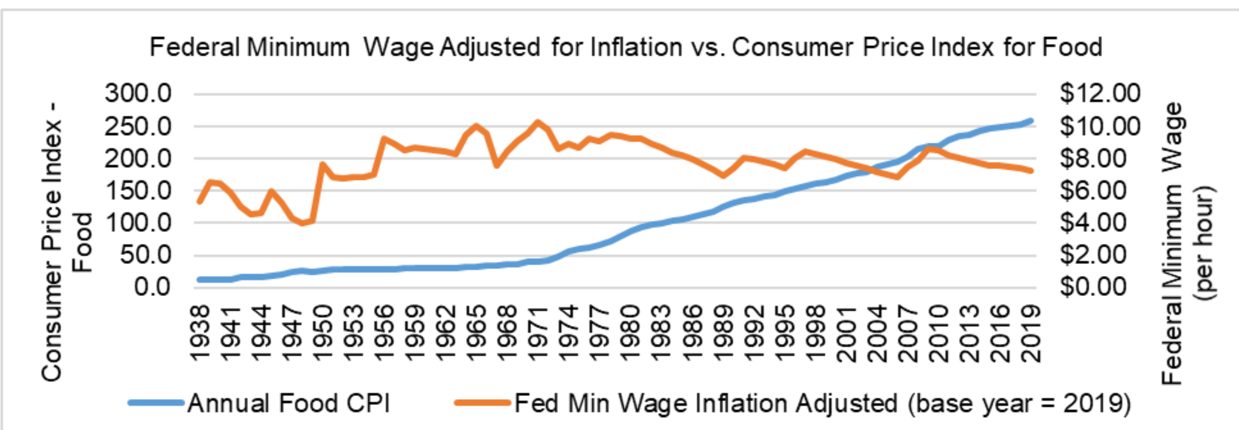
Section 2: This amendment would give TRD the same extended deadline to deposit CIT payments during peak filing season that TRD has for PIT deposits during that time to ensure TRD can comply with statute. Due dates for CIT and PIT now fall on the same days due to IRS changes, so TRD's peak seasonal workload is higher than before. Without this change, the Department will fail to meet the requirements of Section 7-1-6 NMSA 1978, which requires state agencies to deposit funds one business day after receipt, for Corporate Income Tax receipts during peak due dates.

Section 3: TRD regularly receives inquiries from spouses who are being adversely impacted by a tax liability of their current or former spouse. These situations can be financially devastating to the innocent spouse, who may have had no knowledge that their husband or wife accrued a tax liability. This proposal streamlines the innocent spouse relief process by automatically granting innocent spouse relief in New Mexico for the same periods for which the IRS has already granted relief (IRS relief applies to PIT but not GRT). The bill also provides a clear path for an injured spouse whose spouse had a tax debt prior to marriage to be able to receive a portion of their current refund when their spouse has delinquent taxes.

Under community property law, both spouses are "jointly and severally" liable for community debt, which means that each person can be individually liable for 100 percent of the debt. This proposal would allow one spouse to seek protection from collection activities when facts and circumstances show that it would be inequitable to enforce collections against them.

Section 4: In certain circumstances, TRD levies the wages of delinquent taxpayers to offset delinquent taxes. The amount TRD may statutorily levy ensures that lower earning taxpayers are able to keep more of their earnings to pay for necessities. The current amount of wages exempt from TRD levy is 40 times the federal hourly minimum wage per week ($290/week or $18,200/year is exempt) or 75 percent of take home pay, whichever is greater. Individuals with weekly take home pay less than 40 times the hourly minimum wage ($290 per week or $18,200 per year) currently retain all their earnings, while those earning more than that begin to have wages levied; but more than 25 percent of take home pay may not be levied.

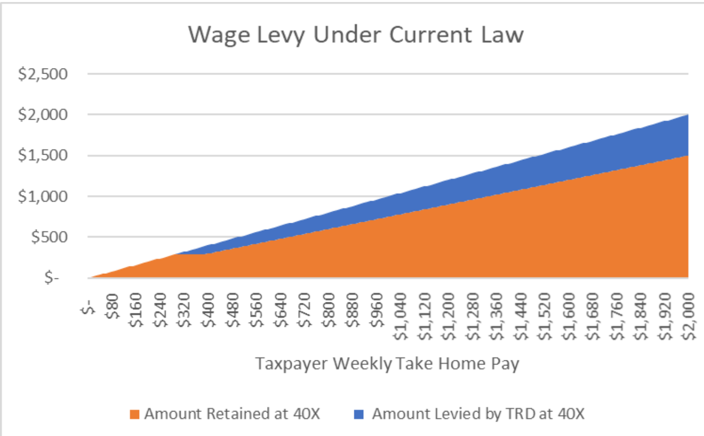
TRD notes that studies show that the bottom 20 percent of earners spend roughly 100 percent of their income. The federal minimum wage was last raised in July 2009, meaning that for 11 years, costs of living have risen but the amount protected from TRD wage levy has not. TRD provided the chart below illustrates the federal minimum wage, adjusted for inflation, against the Consumer Price Index (CPI) for food. It shows how the federal minimum wage has remained largely flat over the years while the CPIndex has increased steadily. To further support this point, $100 in 2019 dollars would purchase $297.60 worth of groceries in 1980. The CPI for food is a better measure than the general CPI when comparing against the federal minimum wage because the general CPI includes items such as housing and new vehicles which may skew the comparison.

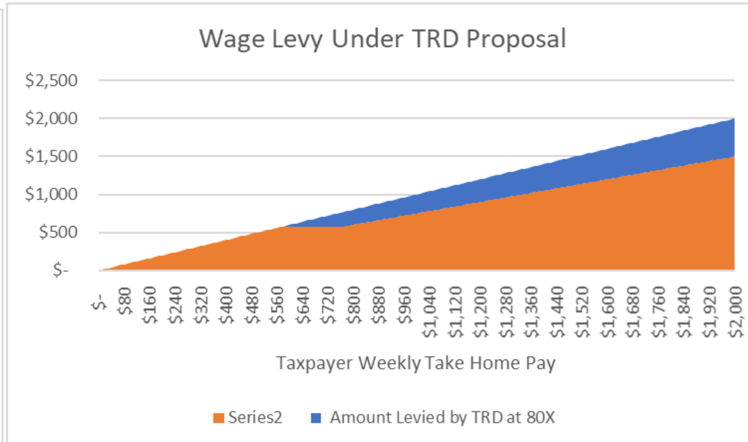


TRD states the proposed amendments would benefit individuals making between $15,600 to $40,560 per year who have State tax debts by preventing TRD from garnishing wages under 80 times (rather than 40 times) the federal minimum wage (up $580/week or $30,160/year would be exempt from levy). The charts below depict current and proposed law.

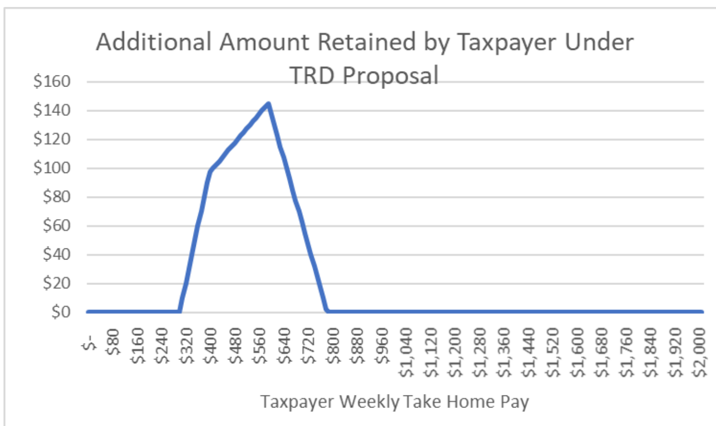
Wage garnishments are one of the final stages in the TRD delinquent tax collection process. TRD states they are most commonly used to collect personal income tax and gross receipts tax. TRD encourages delinquent taxpayers to enter payment plans to avoid wage levies and other more severe collection activities.

TRD provided the charts below to illustrate the amount that is levied by TRD vs. retained by the





taxpayer as weekly take home pay rises, first under current law, then under this bill's amendments, and finally the difference between the two that would be retained by the taxpayer.



Section 5: TRD management recently discovered that the $5 minimum penalty in statute is not currently being collected on CIT and has never been programmed into TRD's GenTax system. If a taxpayer files a CIT return late and incurs penalty, the penalty is unlikely to be less than the $5 minimum, making that minimum penalty irrelevant. Because the cost of programming the penalty would exceed the revenue to be generated by the penalty for several years, TRD proposes simply omitting the minimum penalty.

Sections 6: Under the Rural Job Tax Credit, taxpayers currently apply for up to four 12-month qualifying periods at one time and there is currently no statute of limitations on claiming this credit. This means the state's financial liability to pay the credit never entirely closes and the state has a potential for large unknown credit liabilities. A taxpayer may currently file for qualifying periods all the way back to 2000, when the credit was enacted. The statute of limitations in this bill will add stability to New Mexico revenue collections.

Section 7: TRD states this bill allows for a more efficient and cost-effective method for the department to connect abandoned property to its rightful owners. Current law requires TRD to publish a lengthy list of unclaimed property annually in every county including the name and address of each apparent owner of the property. This bill would shorten the published notices significantly by publishing information about where to search unclaimed property online.

Television and social media are now being adopted by most states as a means for reaching rightful property owners. After a local television news station featured unclaimed property in May 2019, TRD's unclaimed property unit received over 6,000 inquiries and sent out 4,200 new claims. By contrast, TRD's most recent newspaper advertisement listed over 38,000 individual names and addresses, and TRD sent out fewer than 1,400 claims based on only 1,600 inquiries. The cost of newspaper advertisement was $117.8 thousand. The three-minute local news segment yielded three times as many claims at no cost to the state. TRD will continue to conduct outreach on unclaimed property at special events, through social media, webinars, and press releases to further boost claims for unclaimed property without incurring significant cost.

TRD states there may also be a public safety argument in support of this amendment. Publishing the names and addresses of record of thousands of New Mexicans in newspapers statewide could compromise the location of victims of domestic violence and other forms of violence.

Section 8: The Gross Receipts and Compensating Tax Act has never had a statutory definition of "licensing" and the definition of "leasing" causes frequent and repetitive confusion and disputes between TRD and taxpayers. The result has been considerable litigation over use of those terms. The proposed amendment would define leasing and licensing for gross receipts tax purposes consistent with New Mexico court decisions ("common law"). TRD states this is a prime example of areas where New Mexico's tax code has earned the state a reputation for not being business friendly because businesses cannot adequately plan their tax treatment and/or a lack of transparency. Examples of areas where litigation can be expected to decrease include ride sharing services, real property sharing services, and self-storage (benefitting from the clarification of exclusive vs. non-exclusive use).

Sections 9-17 and 19: Section 7-9-43 NMSA 1978 already allows taxpayers to provide alternative evidence to NTTCs in order to claim various GRT deductions, but taxpayers experience significant confusion because the individual GRT deductions mention NTTCs but do not currently mention alternative evidence. TRD states this bill will provide clarification to both TRD and taxpayers regarding taxpayers' ability to provide alternative evidence for all GRT deductions referencing NTTCs. The department notes that providing this clarification will ensure consistent and fair treatment of all taxpayers.

Section 18: Section 7-9-56.3 NMSA 1978 is amended to update references to the current United States Code (U.S.C).

Sections 20, 22 and 23: With limited exceptions, most listed types of New Mexico health care practitioners work for a business entity owned by the health care practitioners, sometimes referred to as a "physician practice group." This ownership structure is often chosen because of the economies of scale arising out of a group practice's shared operational expenses. Business entity healthcare practices are not currently explicitly addressed in Sections 7-9-77.1, 7-9-93, and 7-9-96.2 NMSA 1978. However, TRD has adopted a rule (3.2.241.13) and issued a publication (Bulletin 200.30) clarifying that physician practice groups are eligible for the deductions. Despite TRD's rule and publication, TRD states there has been inconsistent treatment of taxpayers and unnecessary escalation of claims for this deduction by physician practice groups and that these amendments will settle this issue.

Section 21: By amending Section 7-9-92 NMSA 1978 to specify that the GRT deduction for food for home consumption applies to food sold "by" rather than "at" retail food store, this bill would ensure that delivered groceries receive the same tax deduction as groceries sold at grocery stores. TRD states there is no tax policy reason to treat delivered groceries any differently, and asserts this will add equity to the tax structure. This proposal also helps incentivize delivered groceries, which the department points out may be desirable during the Covid-19 pandemic and is becoming more mainstream generally.

Section 24: Section 7-9G-1 NMSA 1978 is amended to update references to the current U.S.C.

Sections 25-28: By adding a definition of volume for oil and natural gas reporting in various oil and gas taxes, this bill will ensure that oil and natural gas tax remitters report their production correctly in a standard format. It is imperative that producers report volumes correctly because prior year product volumes and values are used by TRD to set the next year's Natural Gas Processor's tax rate. The value of a product is equal to the product's volume multiplied by its price. Therefore, when volumes are reported incorrectly, the prices are incorrect as well. TRD currently has no way to require taxpayers to amend their return to fix reporting. During calendar year 2018, incorrect reporting of taxpayer natural gas volumes resulted in a tax rate being set too low the next year, costing the general fund about $1.8 million. The bill also cures the problem of the current data being inaccurate for forecasting and revenue tracking.

Sections 29-31 and 33: The 0.9 percent self-insured group insurance premium tax was apparently not considered in 2018 and 2019 legislation that transitioned the insurance premium tax from the Office of the Superintendent of Insurance to TRD as of January 1, 2020. Currently, TRD does not have the clear authority to collect this tax on self-insured groups. It appears that OSI does not have authority to collect this tax either. This bill ensures this 0.9 percent tax will be appropriately collected and distributed to the general fund by TRD.

Section 32: By allowing TRD to mandate electronic payment of various taxes, this bill would reduce TRD costs associated with manual processing of cash and paper checks including opening mail, sorting, batching, and vouchering. The bill would reduce the time required to deposit funds, especially during peak season. In addition, the bill would enable TRD to more accurately apply taxpayer payments, reducing the number of taxpayer inquiries and complaints. TRD states it would also reduce the number of payment exceptions and associated manual processing required to research and clear unmatched payments from suspense funds or to redirect payments to correct accounts, filing periods and liabilities. Overall, TRD notes the proposal will improve the accuracy and timeliness of the department's distributions to various state and local beneficiaries. Finally, TRD states the proposal should improve overall compliance and reduce mailing of assessment notices and statements of account resulting from misapplied or late payments.

In the past, TRD has mandated electronic filing for only a handful of tax programs where we are confident that taxpayers will not be burdened by e-filing and have sufficiently reliable access to electronic communications. TRD states it would follow this precedent, only mandating electronic payment from those similar tax programs. TRD typically allows waivers from its e-filing mandates for good cause, and would likewise allow waivers from electronic payment mandates.

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ADMINISTRATIVE IMPLICATIONS

Section 2: Giving TRD an extended deposit deadline for CIT during peak filing season will save a small amount of overtime expenses for TRD by allowing work to be scheduled more evenly.

Section 3: The bill's provisions related to innocent spouse relief will save staff time by allowing automatic approval of innocent spouse applications that already have IRS approval. Customer service will improve through TRD reviewing innocent spouse relief requests more quickly.

Section 5: Omitting the $5 minimum late filing penalty for CIT in Section 7-1-69 will save TRD about $2,500 of non-recurring costs to program the penalty into Gentax, the tax system of record.

Section 7: By reducing the length of the unclaimed property notices that TRD must publish, this proposal will save TRD's Revenue Processing Division an estimated $110,000 annually.

Section 9-17 and 19: By adding language that alternative evidence is acceptable to substantiate various GRT deductions to each individual deduction, TRD will experience some staff time savings answering questions of taxpayers and researching in the event of disputes between TRD and taxpayers around alternative evidence. Fewer protests may be filed as a result as well.

Section 32: Allowing TRD to mandate electronic payment will save TRD costs of postage, mail handling, and staffing and allow TRD to reassign resources to expedite other processing efforts.

Overall, TRD states implementation of the entire bill's changes for Gentax will require approximately 300 hours by ITD staff resources or approximately 2 months and $15,492 of staff workload costs.

DI/sb/al/rl