

**NOTE:** As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR: HTRC DATE TYPED: 2/28/03 HB 64/HTRCS

SHORT TITLE: Taxpayer Bill of Rights SB \_\_\_\_\_

ANALYST: Smith

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	NFI			

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

TRD

### SUMMARY

#### Synopsis of Bill

This bill establishes a "New Mexico Taxpayer Bill of Rights". With some notable exceptions, this bill restates existing taxpayer rights, remedies and procedures in somewhat less technical language than that of current statute. This bill seeks to remedy perceived unfair treatment of certain taxpayers by the Taxation and Revenue Department, and thus is similar in spirit to certain provisions of the IRS Restructure and Reform Act of 1998.

TRD has provided the following list of expanded rights:

- Taxpayers may recover litigation costs if they prevail against the Department. If the Department establishes that its position in the proceeding was based upon a reasonable application of the law to the facts of the case, then no attorney's fees are required.
- Interest will stop accruing on taxpayer liabilities under certain circumstances when audits take too long to be completed by the Department.

- Ex-parte rules and remedies are established, as well as clear limitations on hearing officer involvement in policy or enforcement activities.
- Innocent spouse/ex-spouse relief is provided for at the discretion of the Secretary.
- It expands the penalty provision such that no penalty will be assessed against a taxpayer if the failure to pay an amount of tax when due results from a mistake of law made in good faith and on reasonable grounds.
- The managed audit program is expanded beyond the gross receipts and compensating tax act to all tax programs subject to the Tax Administration Act.
- It clarifies that information about whether a taxpayer has filed a return is generally confidential.
- It allows taxpayers to request written rulings on the procedures to be followed in an administrative hearing.
- It allows the written rulings to be made public to begin building a body of general instructions on procedural and evidentiary matters.
- It requires that audits be completed within a certain period of time or interest is suspended until the audit is assessed, if the delay is caused by the department.
- It allows taxpayers to request a ruling at the same time they obtain a closing agreement.
- It prevents administrative hearing officers from participating in enforcement or the formulation of general tax policy.
- It prevents administrative hearing officers from engaging in ex-parte communications with either side in a protest hearing.
- It clarifies the minimum standard that a valid claim for refund will have to meet to be effective.
- It provides that when the department fails to act on a request for approval of a credit within six months, the credit will be deemed allowed so that the taxpayer can begin taking it. This provision does not prevent the Department from auditing the credit amount later.
- It clarifies the minimum standard that a valid claim for refund will have to meet to be effective.

## **ADMINISTRATIVE IMPLICATIONS**

TRD notes that while the proposal requiring reimbursement of costs and fees causes some concern, the Department can adopt new procedures and policies that will conform to the changed standard in the bill. Under the proposed section, the Department's position is deemed unreasonable--and reimbursement required--if the Department failed to follow its own published guidelines and/or if the assessment was not supported by "substantial evidence" at the time it was made. The Department believes this has rarely occurred

They also note that the provision concerning attorney's fees would have an uncertain impact. Although most hearings and lawsuits are decided substantially in the Department's favor, the "substantially prevail" test is not precise. Also, virtually all the instances where the Department goes against its own published rules are settled in the taxpayer's favor prior to hearing. In a case where the Department concedes even a portion of its initial case, the protester could apply for attorney's fees, which will be, in turn, subject to a separate protest hearing. The standard is

rebuttable by the Department, which can show rule or regulation in its favor. Only if the Department deliberately violates its own published guidelines will the plaintiffs be awarded attorney's fees.

**OTHER SUBSTANTIVE ISSUES**

TRD notes that this bill represents a somewhat unique collaborative effort between the sponsor, industry representatives and the Department. Representative Varela has sponsored similar bills in the past, and the new administration has been clear that it had similar intent. The bill addresses areas of historic controversy between the Department and taxpayers and their advocates, and takes significant strides in resolving those conflicts.

SS/yr