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FISCAL IMPACT REPORT

ORIGINAL DATE 1-30-06

SPONSOR Arnold-Jones LAST UPDATED 1-30-06 HB 388

SHORT TITLE Public Inspection of Certain Tax Records SB _____

ANALYST Dearing

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation & Revenue Department (TRD)
Attorney General's Office (AGO)

SUMMARY

Enactment of House Bill 388 would make two changes to the provisions of Section 7-1-29 NMSA 1978, which authorizes the Taxation and Revenue Department to make refunds and credits of overpaid tax.

1. In cases where the Department applies a portion of a refund against an outstanding liability of the taxpayer, the Department would be required to provide notice of this action to the taxpayer. A taxpayer may be entitled to interest on the refund if it is not credited to the tax liability within the time periods set out in Section 7-1-68. This provision was approved by the Legislature and signed by the Governor as part of HB 64 of the 2003 Legislative Session. However, the same section of statute was amended by another provision in a separate statute that was signed after HB 64. Therefore, this provision was not incorporated into the statute.

2. Records of tax credits in excess of \$10 thousand would be kept by the Department and made available for inspection by the public.

FISCAL IMPLICATIONS

Enactment of this legislation would incur no significant impact on state revenues. There is no associated fiscal impact.

SIGNIFICANT ISSUES

HB 388 specifically includes within the right to inspect pursuant to the Inspection of Public Records Act records of tax “credits” made in excess of \$10,000, records which are maintained by the Taxation and Revenue Department, and requires the Department to keep such records for at least three years. Currently, only records of tax “refunds” made in excess of \$10,000 are specifically made subject to inspection.

While records of such tax “credits” may already be subject to inspection under the Inspection of Public Records Act, HB 388 leaves no room for interpretation that such records are in fact specifically included within the scope of the Inspection of Public Records Act.

ADMINISTRATIVE IMPLICATIONS

The Taxation and Revenue Department has already adopted, as a matter of policy, the requirement to make notice of offsets and the requirement to pay out interest until the date the tax liability is credited with the refund amount.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB 312

Relates to SB 318

HB 388 relates to SB 318 as this bill, if enacted, would amend the current method of calculating interest amounts paid on both under and over-payments of taxes by corporations and individuals.

TECHNICAL ISSUES

To completely reflect the content of the bill, the title could include reference to the requirement to make notice of offsets and to pay out interest until the date the tax liability is credited with the refund amount.

The proposed requirement raises a question about the application of a refund that the taxpayer requests be carried forward. Currently, the Department does not pay interest if the taxpayer requests to have the refund carried forward. The proposal could be made explicit as to whether this policy should be continued.

The proposed amendment that would authorize release of information on tax credits could be interpreted as conflicting with the confidentiality requirements in Section 7-1-8. To avoid possible conflicts, an amendment to Section 7-1-8 could be included that would authorize the release of the information as proposed in the current bill.

OTHER SUBSTANTIVE ISSUES

According to Taxation and Revenue department, authorizing the department to publish information on tax credits could provide additional information about the utilization of the credits. This information could in turn help the Legislature evaluate whether the tax credits are achieving their intended purposes.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There will remain some level of ambiguity as to whether tax “credits” made in excess of \$10,000 are specifically subject to the Inspection of Public Records Act.

PD/mt