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## FISCAL IMPACT REPORT

ORIGINAL DATE 1-30-2006

SPONSOR Smith LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Mailing of Tax Dept. Assessments and Notices SB 321

ANALYST Dearing

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI*		
	Please See Narrative*		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 321 creates a new section of the Tax Administration Act which requires the Taxation and Revenue Department to mail assessments of taxes, interest, penalties and other payments to the last known address of the person owing those liabilities.

Similarly, the act amends Section 7-1-26 § a.) NMSA 1978 such that the department is required to respond to taxpayer refund claims of gross receipts tax, compensation tax, personal income tax or corporate income tax, via mail, establishing both that the refund claim was received and the completeness of the claim, as well as providing the ability for the taxpayer or Taxation and Revenue Department to designate the claim as “protective.”

In general, these changes are proposed to tax administration statutes:

1. A new section of statute would require the Taxation and Revenue Department to mail assessments of taxes to the last known mailing address of the person owing the taxes.
2. The Department would be required to notify taxpayers when it has received a claim for refund of certain taxes. The notification would inform the taxpayer whether the Department

considers the claim to be complete. The Department and the taxpayer could agree to designate the claim as a “protective claim.” A protective claim asserts that the entitlement to a refund will be established by a pending court decision.

3. Rules governing refund claims would be modified. Under present law, TRD may not act on a refund claim after 210 days unless the taxpayer has filed a protest. Under the proposal, TRD could still act on the claim after 210 days, but no interest would be paid. TRD could not act on a claim after one year. In the case of a protective claim, if the Department has not acted within 120 days from the final decision on the case on which the claim is contingent, the remaining claim is denied.

The effective date of the provisions of this act is July 1, 2006

### **FISCAL IMPLICATIONS**

\*The proposals would have no significant impacts on state and local revenues. Several of the provisions are already being implemented as a matter of Department policy.

### **SIGNIFICANT ISSUES**

Several other technical changes are made to sections 7-1-26 and 7-1-68 governing interest on under- and over-payments of tax.

Within Section 7-1-26 § b.) (1) NMSA 1978, the enactment removes language which currently specifies the pursuit of only one of the available remedies within Section 7-1-26 § c.) NMSA.

Within Section 7-1-26 § b.) (3) NMSA 1978, the enactment amends and creates language to change the treatment of time-lines surrounding timeliness of taxpayer claims, and subsequent Department activities such that the Taxation and Revenue Department may act on claims through and including any time within the calendar year following that year of the date of the refund claim, but not past Dec. 31<sup>st</sup> in the calendar year following the year in which the refund claim was received.

Within Section 7-1-26 § b.) (4) NMSA 1978, the enactment establishes for protective claims a 120 day maximum, from either the date of the final decision in the lead case, from which appeal may not be taken; or the last day on which appeal may be taken yet is not, whereby at this time, those claims denied will remain so.

Subsections 7-1-26 § k. (1) & (2) NMSA 1978 are created to define “lead-case” and “protective claim,” and subsection 7-1-26 § l.) (1) NMSA 1978 is created to stipulate that disposition of a protective claim shall be postponed until a final decision is reached in the lead case.

7-1-68 § e.) (9) & (10) NMSA 1978 are created to stipulate that no interest shall be allowed or paid with respect to an amount credited or refunded if; in section (9), the credit or refund is in settlement of a protective claim, as defined in Section 7-1-26 § k. (1) & (2) NMSA 1978, provided that the interest paid with respect to the period from the date of the final unappealable decision in the lead case until a date preceding by not more than thirty days the date the credit or refund is paid on the protective claim; or section (10), the Taxation and Revenue Department acts to grant the credit or refund pursuant to Section 7-1-26 § b. (3) NMSA 1978

Additionally, there are several linguistic changes proposed throughout the aforementioned statutes.

The effective date of the provisions of this act is July 1, 2006

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates HB 383

**TECHNICAL ISSUES**

Section 3 of the bill contains amendments to Section 7-1-68 NMSA 1978. As the bill is currently drafted, it makes those amendments to a version of Section 7-1-68 that does not reflect amendments to that section approved in 2003. To avoid confusion, this section should be rewritten to amend the current language in that section. No substantive changes in the proposal are needed to achieve this.

Section 1, page 1, lines 22 through 24 should read: “The department shall mail notices of assessment of taxes, interest and penalties and notices of other payments due to the department to the last known mailing.”

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Applicable sections of the New Mexico Statutes Annotated would remain intact, as currently written.

PD/nt