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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/08

SPONSOR SIAC LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Native American Veteran Tax Refunds SB CS 574/aSIAC

ANALYST Earnest

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	See narrative	See narrative		

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to Senate Bill 126.

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Veterans' Services Department  
Indian Affairs Department

Responses Not Received From  
Taxation and Revenue Department

### SUMMARY

#### Synopsis of SIAC Amendment

The Senate Indian Affairs Committee amendment strikes the appropriation from the bill.

Synopsis of Original Bill

Senate Bill 574 states that:

- Native Americans have a long history of serving in the U.S. armed forces and have made great sacrifices in serving their country through active duty in the military.
- Native American veterans domiciled on tribal lands during their periods of active duty military service may have been exempt from paying personal income taxes and had personal income taxes improperly withheld from their military income and were unaware of it until recently
- Native American veterans now are barred by the state statute of limitations from claiming refunds of state personal income taxes that may have been improperly withheld from their military income, and even if not barred by the statute of limitations, the passage of time extending to decades will make it difficult for many Native American veterans to meet strict standards of proof that they are entitled to a refund of improperly withheld state personal income taxes.
- It is incumbent upon the state to ensure that it was not unjustly enriched by the improper withholding of state personal income taxes from Native American veterans, and the state should implement a feasible means of refunding to Native American veterans any state personal income taxes that were improperly withheld from military pay.

The bill creates the Native American veterans' income tax settlement fund, which is to be administered by the Veterans' Services Department. Money in the fund shall be invested by the SIC in the same manner that land grant permanent. Money in the fund is appropriated to VSD to make settlement payments to Native American veterans who had state income taxes improperly withheld from military pay.

To determine which veterans had income taxes improperly withheld, the Secretary of VSD, in cooperation with TRD shall conduct a study. The Secretary shall promulgate rules to compensate these Native American veterans, and the secretary shall report to the Legislature by October 1 of each year. The bill appropriates \$100 thousand to carry out the provisions of the bill.

**FISCAL IMPLICATIONS**

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

Based on the TRD analysis of Senate Bill 126, about \$140 thousand would be needed for the refunds of personal income tax withholdings. However, this bill does not make an appropriation to the new fund from which claims are to be paid.

**SIGNIFICANT ISSUES**

TRD estimated that about 100 taxpayers would be notified that they are entitled to refunds (see analysis for SB 126). The estimate was based on the percentage of the New Mexico population who are Native Americans (9.7%), the percentage of the population that serves in the military (0.46%), and the percentage of taxpayers who have overpaid taxes and do not claim a refund (assumed at 10%). The average New Mexico personal income tax refund was approximately

\$460 in tax years 2005 & 2006. The estimate shown above assumes taxpayers claim an average of three years in refunds, hence the total impact is \$138,000 (\$460 x 100 x 3) rounded to \$140,000 and distributed evenly in FY 2009 and FY 2010.

SIC has raised the following concern about investing funds like the land grant permanent fund. Specifically:

Currently the Land Grant Fund is a widely diverse fund, invested in many different asset allocations with varying levels of risk, commitment and liquidity issues. For example, the LGPF is invested in private equity funds, which require significant amounts of time commitment prior to return of capital. In the case of Venture Funds, partnerships can last for the period of up to 15 years until full exit and complete return of capital. Hedge Funds, Real Estate and Structured Debt vehicles – all investments in the Land Grant Fund - also have similar “lock up” terms which limit potential liquidity should capital need to be extracted from an investment in an expedited manner. For this reason, the legislation might do better to grant the State Investment Officer some flexibility in how the assets are managed, possibly by stating the investments should be managed “in a manner similar to the LGPF”.

Currently the SIC is awaiting an Attorney General’s ruling on this very issue regarding language in statute passed in 2007 stipulating SIC management of the Department of Labor’s Unemployment Trust Fund in a manner identical to the LGPF.

SIC suggests the following change on Page 4, lines 6 through 9:

“Money in the fund shall be invested by the state investment officer in any type of investment permitted for the land grant permanent funds pursuant to Chapter 6, Article 8 NMSA 1978.”

### **ADMINISTRATIVE IMPLICATIONS**

The bill carries a significant administrative impact on VSD and TRD to the conduct the study.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 574 relates to SB 126, “Tax & Rev Overpayment Notification & Claims.” SB 126 would amend the New Mexico Tax Administrative Act, NMSA § 7-1-1, *et. seq.*, and would extend time for refund claims with respect to certain military income of Native Americans. SB 126 does request any appropriation money.

BE/mt