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

ORIGINAL DATE 1/24/19
SPONSOR Brown **LAST UPDATED** **HB** 201

SHORT TITLE County Road Fund Tax Refund Donation **SB**

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	**FY20**	**FY21**	**FY22**	**FY23**		
$0.0	Indeterminate, likely more than ($10,000.0)	Indeterminate, likely more than ($10,000.0)	Indeterminate, likely more than ($10,000.0)	Indeterminate, likely more than ($10,000.0)	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

House Bill 201 creates an optional designation for personal income tax contributions to county road funds. This bill also creates a tax credit against income tax and corporate income tax for donations to a county road fund, which shall be referred to as "county road fund donation income tax credit". A taxpayer who donates to a county road fund can apply for the credit. The individual credit is not to exceed $1 million, and the credit is not refundable.

There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends. The bill is applicable to tax years beginning on or after January 1, 2019.

FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) examined GenTax taxpayer data for voluntary contributions. There is no fiscal impact to the General Fund for tax refunds that taxpayers donate to a designated fund.

The fiscal impact from the creation of a tax credit for donating to a county road fund is unclear. The TRD economist's estimates assume that the value of the credit under the bill is equal to the amount of the donation. The value of the credit is not expressly stated; rather, only the maximum value of an individual taxpayer's credit is specified. Additionally, the language does not allow a taxpayer to carry forward a positive balance arising from a donation. Thus, the fiscal impact will be limited to the net tax liability of the donating taxpayer.

To qualify for the credit a taxpayer makes a donation to a government fund; this is an act of altruism. Predicting such behavior is extremely difficult. Thus, the fiscal impact to the general fund will be negative, but TRD and LFC economists are unable to estimate the scale of the impact. However, given the value of a single credit may be up to $1 million, if even 10 corporate taxpayers claimed the full amount of the credit, the cost to the state would be $10 million.

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

The credit provided by this bill is a dollar-for-dollar reduction in state taxes owed in a tax year for the amount of donations contributed by that taxpayer to a county road fund. So this is effectively a subsidy, by the state government, of the county road fund, at the discretion of the taxpayer.

This bill allows for taxpayers to make a donation of all or part of their tax refund to any New Mexico county.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD recommends the following metrics to standardize the administration of tax credits: 1) credits should not be refundable, thereby limiting the State's investment to the economic value created by the taxpayer; 2) credit programs should sunset within five years so the efficacy of the incentive can be evaluated; 3) credits should have carry forward periods not exceeding three years to limit the fiscal expenditure and the term of the program; 4) programs requiring administration through multiple agencies other than TRD should employ E-Systems; 5) applications for tax credits shall be submitted electronically in a form prescribed by the Department; and 6) application for tax credits shall be made within one tax year of eligibility to limit the administrative and fiscal impacts of the expenditure.

TECHNICAL ISSUES

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date.

The bill does not specify that donations must be made to a county in New Mexico in order to receive the credit. Without that specification, taxpayers may be able to claim a credit against their New Mexico income tax liability for donations to county road funds in other states.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✘	Not heard by an interim committee.
Targeted		
Clearly stated purpose	?	Not stated, but presumably to increase county road funds.
Long-term goals	✘	None.
Measurable targets	✘	None.
Transparent	✓	TRD is required to report annually to LFC and the Revenue Stabilization and Tax Policy Committee
Accountable		
Public analysis	?	It is unclear whether TRD reporting on the number of taxpayers receiving the credit and the aggregate amount of the credits will be sufficient to determine effectiveness and efficiency of the tax expenditure.
Expiration date	✘	Does not contain a delayed repeal date.
Effective		
Fulfills stated purpose	?	Unclear whether providing the credit would increase county road funding.
Passes "but for" test	?	
Efficient	✘	Because this is a dollar-for-dollar credit for taxpayer donations to a county road fund, it is effectively a state subsidy for these donations. A more efficient method of increasing county road funds would be through making an appropriation, giving the legislature full authority on an annual basis of the amount of state funding to be distributed to county road funds.
Key: ✓ Met ✘ Not Met ? Unclear		

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