BILL ANALYSIS AND FISCAL IMPACT REPORT
Rick Homans, Secretary, Taxation and Revenue Department

November 22, 2009

Bill: 179343.1SA **Sponsor:** **Related Bills:**

Short Title: Tax Administration

Description: This bill makes a number of changes to the tax administration rules including the following:

Filing-related changes to the Tax Administration Act
The threshold of average monthly tax liability of $25,000 or more in the prior year to require a special payment method is reduced over three years to $10,000; the list of taxes covered by the special payment rules is expanded to include the Alternative Fuel Tax Act, the Cigarette Tax Act, the Tobacco Products Act, the Liquor Excise Tax Act and the Local Liquor Excise Tax Act; electronic or other special payment method would be required of third-party payers such as payroll service companies. The monthly filing threshold for CRS taxes is increased from its 1991 level of $200 to an inflation-adjusted level of $300. The Department is allowed to serve warrants of levy upon financial institutions electronically. The Secretary is given limited authority to delay accrual of interest for persons affected by disasters declared by the Governor or the President, or by military or terrorist actions. The interest and penalty provisions are amended to address a conflict in 2007 legislation, to simplify the interest calculations, and to clarify that penalty applies only to tax amounts. The minimum civil penalty for failure to pay taxes is increased from $5.00 to $25.00 and for willful intent to evade taxes from $25.00 to $50.00. Taxpayers would be allowed to recoup refunds and credits in special circumstances when the associated tax was paid by the wrong taxpayer. The proposal also makes other minor clarifications and cleanup changes to the Tax Administration Act.

Other Changes to the Tax Administration Act
The bill allows transfers of state or federal funds to the TAA suspense fund to be used to pay tax rebates and credits to low-income families with children (refunds of rebates and credits to low-income families with children qualify as part of the State's "maintenance of effort" to receive federal TANF matching funds, which could be used to pay the refunds). Disbursements for attorney fees and costs for all tax litigation (not just oil and gas) are allowed. The state treasurer's role in the county government road fund distribution is removed. The gross receipts tax rate used for food and medical hold harmless distributions is corrected (see Description – Detailed Discussion). The period for protest is extended from 30 to 90 days, taxpayers may be allowed more than one informal hearing and personal income taxpayers may be represented in a hearing by an enrolled agent. Administrative and litigation costs will be awarded to taxpayers that prevail in an administrative or court proceeding related to a credit. The threshold amount for Attorney General review of refunds and abatements is raised from $10,000 to $25,000. Refunds due under the Corporate Income and Franchise Tax Act are made subject to interception under the Tax Refund Intercept Program Act.

Changes to the Taxation and Revenue Department Act
The bill identifies the Tax Fraud Investigations Division as one of the divisions of the Taxation and Revenue Department. The proposal would also allow the Department to enter into agreements with the United States Department of the Treasury under which either party honors offsets and levies by the other party upon taxpayers. The Department is allowed to charge taxpayers for any fee imposed by the U.S. Treasury on an offset or levy they impose and to charge the U.S. Treasury a comparable fee for levies.

Effective Date: July 1, 2010, with a transition provision for protests.

Estimated Revenue Impact*							R or NR**	Fund(s) Affected
Provision	FY2010	FY2011	FY2012	FY2013	FY2014	FY 10-14		
Special Payment Rules	0	450	360	360	120	1,290	R	General Fund
	0	300	240	240	80	860	R	Local Govts
Late Pay Penalty	0	500	500	500	500	2,000	R	General Fund
GRT Rate for Food & Medical HH	0	5,700+	6,000+	6,400+	6,800+	24,900+	R	General Fund
Totals	**0**	**6,650**	**6,860**	**7,260**	**7,420**	**28,190**	R	General Fund
	0	**300**	**240**	**240**	**80**	**860**	R	Local Govts
		6,950	**7,100**	**7,500**	**7,500**	**29,050**		**Total**

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).
+ Assumes Albuquerque's gross receipts tax rate remains .375% below the rate in effect 1-1-2007.

Policy Issues: The bill would help taxpayers, reduce administrative costs, improve compliance and reduce lags in making revenue distributions to the General Fund, other State funds and local governments.

Administrative Impact: A number of changes to publications, forms, instructions and IT systems would be required. Taxpayer outreach efforts would also be required.

Description - Detailed Discussion:

The bill corrects an oversight in the 2007 change to the tax rate for food and medical hold harmless distributions to large municipalities and counties. The 2007 change froze the gross receipts tax rate for determining the hold harmless distribution to large local governments at the rate in effect on January 1, 2007. This change did not contemplate future rates for any county or municipality ever falling below their January 1, 2007, rate, but Albuquerque's rate will be lower by 0.375% beginning January 1, 2010. The original intention of the food and medical hold harmless distribution was to allow municipalities and counties to receive the same distributions as they would have before the food deduction under Section 7-9-92 NMSA 1978 and the medical deduction under Section 7-9-93 NMSA 1978 were enacted. Under existing law, as long as Albuquerque's current rate remains below their January 1, 2007, rate they will not only be held harmless for food and medical deductions, they will actually receive a higher distribution than if the food and medical deductions had never been enacted.