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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/21/09  
 SPONSOR Smith LAST UPDATED 2/2/09 HB \_\_\_\_\_  
 SHORT TITLE Corporate Income Tax Reporting Dates SB 80/aSFC/aHTRC  
 ANALYST Francis

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
\$65,000.0	(\$3,000.0)	\$2,000.0	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Companion to HB9, SB79  
 Closely matches part of HB8

### SOURCES OF INFORMATION

LFC Files  
 Taxation and Revenue Department (TRD)

Response Received from  
 Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amended Senate Bill 80 as amended. The HTRC amendments strikes the SFC amendment and adds a new section that allows a taxpayer to make only half of the first quarterly payment for tax year 2009 and the other half will be due along with the second quarterly payment. So for taxpayers whose tax year starts in January, they must pay between 1/8<sup>th</sup> of the estimated tax liability to 1/4<sup>th</sup> on April 15<sup>th</sup>. The balance of the first quarterly payment will be made along with the second quarterly payment on June 15<sup>th</sup>.

The HTRC amendment makes it identical in spirit to that portion of House bill 8 that relates to corporate income tax estimated payments. There is a slight difference in the language that clarifies that a taxpayer that makes more than a 1/8<sup>th</sup> payment in the first payment only needs to pay the balance of a full quarter in the second payment.

Synopsis of SFC Amendment

The Senate Finance Committee amended SB80 by allowing a one-eighth payment in tax year 2009 for the first quarterly payment in lieu of a full quarter. The one-eighth payment is still due on the 15<sup>th</sup> of the fourth month which is April 15<sup>th</sup> for most taxpayers.

Synopsis of Original Bill

Senate Bill 80, a LFC sponsored bill, restores a quarterly payment date to require four quarterly payments of estimated corporate income tax as is the case for the personal income tax. There is an emergency clause so the change will become effective upon passage.

**FISCAL IMPLICATIONS**

The fiscal impact of restoring the quarterly payment is estimated to be 25 percent of 80 percent of the 2009 CIT liabilities (before credits). Under current law, a quarterly payment will not be due from calendar year corporations until June 15, 2009, and this bill would make the first payment due April 15, 2009. The HTRC amendment means that the first payment must be at least a 1/8<sup>th</sup> payment and the rest of the payment can be made with the second quarterly payment and the positive fiscal impact will occur in FY09.

Some taxpayers may already be making the first payment in April pursuant to the pre-2003 law, representing a risk to the fiscal impact projection. TRD reports that current first quarter estimated payments are quite small and are mostly franchise tax payments rather than estimated liability payments.

**SIGNIFICANT ISSUES**

The December 2007 consensus revenue estimates supported \$6 billion of appropriations in FY09 without drawing from reserves. There was authority to transfer from other general fund reserves in the event of a shortfall of revenues in FY08 but not for FY09. As the economy has deteriorated and oil and natural gas revenues have fallen significantly, the December 2008 revenue estimate now projects a deficit for FY09 of \$454 million. Since half of the fiscal year has passed, it is necessary that the legislature and the governor move quickly to address this shortfall. LFC has proposed a three-pronged approach that uses other state funds and reserves, a one-time fix to corporate income tax estimated payments, and appropriations reductions that will address the fiscal solvency while maintaining a responsible reserve level of 10 percent at the end of FY09. If all four pieces of legislation that comprise the LFC plan are enacted, the reserve level will be over 10 percent at the end of FY09. Maintaining a high reserve level in the current fiscal year is critical as the economy has not shown any signs of improving and downside risks to the revenues overwhelm upside risks.

TRD presented this proposal to the Revenue Stabilization and Tax Policy (RSTP) interim committee along with other measures referring to income tax withholding. RSTP is sponsoring a bill, HB 8, which contains this provision as well as other provisions regarding withholding of taxes.

In 2003, the manner in which estimated payments for corporate income tax was amended and, according to the FIR from HB762, there was no fiscal impact reported because *it was assumed that the bill would be fixed with a technical amendment*. TRD's FIR also brought this up at the

time but the final version did not include the amendment and so one due date for quarterly payments was omitted. The enacted legislation only provided for three due dates for the quarterly payments rather than four. This bill adds back in a payment date of the 15<sup>th</sup> day of a corporation's fourth month (April 15 for calendar year corporations) to accommodate all four quarterly estimated payments referred to in the law.

Most affected parties have likely been informed that this bill is being considered and LFC staff has discussed the matter with members of the business community. Richard Anklam, executive director of the New Mexico Tax Research Institute, reported to LFC staff that the subject came up during a board meeting and there was general agreement that the proposal is correcting a technical error and will not place a burden on corporate taxpayers. There may, however, be some taxpayers that planned on deferring the quarterly payment and so would have to adjust their cash-flow planning to accommodate the April payment. If an accommodation requires access to short-term capital markets, this may pose problems for some taxpayers. The amendment by SFC significantly reduces this impact.

### **ADMINISTRATIVE IMPLICATIONS**

If the bill does not pass early in the session, it may be difficult to inform all of the taxpayers of the change in time for the first payment in April. TRD reported to the Revenue Stabilization and Tax Policy interim committee in December when the committee agreed to support a similar bill that corporate taxpayers would be notified that the new payment date was being considered. TRD made the same commitment to the LFC during its consideration of the proposal on January 14.

TRD has already issued a notice that this change has been proposed and that corporate income taxpayers should monitor the legislative session for updates and enactments.

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

There are three companion bills that are part of a three-pronged solvency solution proposed by LFC. The plan is comprised of four bills:

- HAFC substitute for House bill 10 that reduces GAA 2008 appropriations by varying amounts for all state agencies

***The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:***

1. ***Adequacy:*** revenue should be adequate to fund government services.
2. ***Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
3. ***Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
4. ***Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
5. ***Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

***More information about the LFC tax policy principles will soon be available on the LFC website at [www.nmlegis.gov/lcs/lfc](http://www.nmlegis.gov/lcs/lfc).***

- This bill that restores the first quarterly estimated corporate income tax payment, correcting an oversight in a 2003 bill modifying the estimated payment calculation and which accelerates collections that would otherwise be part of the final payment
- SFC substitute for Senate bill 79 which transfers money from various state funds to the general fund, amends the distribution of the annual tobacco payment to the tobacco settlement program fund, appropriates from the tobacco settlement program fund and uses federal TANF funds for refunds of the working families tax credit.
- House bill 9 reauthorizes \$93 million of outstanding capital outlay appropriations for projects that are several years old and have had no activity.

House bill 8 as amended allows an eighth payment as well but requires the other one-eighth to be made in the sixth month which preserves the fiscal impact of \$65 million.

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