FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Duncan/Henry/Lord/Brown	**ORIGINAL DATE**	02/19/25
SHORT TITLE	Foster Care Organization Tax Credit	**BILL NUMBER**	House Bill 437
		ANALYST	Graeser

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
PIT	$0	($82,100.0)	($85,300.0)	($88,300.0)	($91,900.0)	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.
*Amounts reflect the most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD	**No fiscal impact**	**$19.9**	**No fiscal impact**	**$19.9**	Nonrecurring	**General Fund**
TRD	**No fiscal impact**	**$85.0**	**$85.0**	**$170.0**	Recurring	**General Fund**
Total	**No fiscal impact**	**$104.9**	**$85.0**	**$199.9**		**General Fund**

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect the most recent analysis of this legislation.

Relates to House Bills 225; Duplicates Senate Bill 304.

Sources of Information

LFC Files

Agency Analysis Received From
Children, Youth and Families Department (CYFD) on SB304

Agency Analysis was Solicited but Not Received From
Taxation & Revenue Department (TRD)

SUMMARY

Synopsis of House Bill 437

House Bill 437 (HB437) creates the qualifying foster care organization income tax credit, which allows an income tax credit of $500 for a single or head of household taxpayer or $1,000 for a married taxpayer for any donation to a foster parent organization. This is a nonrefundable credit, but any tax credit in excess of the taxpayer’s liability may be carried forward for five years.

The bill defines "qualifying foster care organization" as organization that: (a) has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code; and (b) each operating year, provides foster care services to at least 200 qualified individuals in New Mexico and spends at least 50 percent of its budget on foster care services to qualified individuals in New Mexico.

The bill defines "foster care services" to mean cash assistance, medical care, child care, behavioral health services, food, snacks at the qualifying foster care organization's foster youth events, clothing, shelter, character education programs, workforce development programs, secondary education student retention programs, housing or financial literacy services, activities to support, train and retain foster parents licensed or certified by the Children, Youth and Families Department (CYFD) or a child placement agency to provide care for children in the custody of the department or agency in their role as a foster parent and activities to support caregivers and guardians pursuant to the Kinship Guardianship Act or any other assistance that is reasonably necessary to meet basic needs or provide normalcy and that is provided and used in New Mexico.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or June 20, 2025, if enacted. The provisions of the bill are applicable to tax years beginning January 1, 2025. There is no sunset date.

FISCAL IMPLICATIONS

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 substantial 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 action be postponed until the implications can be more fully studied.

There is one substantial technical issue limiting the ability to estimate the fiscal impact of the provisions of this bill; the tax credit is granted for any individual who donates money to the foster care organization, but the size of the donation is not referenced in establishing the value of the credit for each donor. Because of this lack of specificity, a $1 donation could qualify a married couple to $1,000 of tax credit. Therefore, HB437 implies that every taxpayer, with any amount of liability can wipe out all or a significant portion of their net liability by donating as little as $1 to the Foster Care Organization. The credits may be granted annually.

Recently, the number of children in foster care has been about 2,200. Before the Covid-19 pandemic, 2,500 children were consistently in foster care. However, nothing in the provisions of this bill is tied to the number of children in foster care.

TRD publishes personal income tax (PIT) tables in the annual Tax Expenditure Report. Because the proposed tax credit is not refundable, the donation would only be elected by taxpayers with more than $500 in liability annually. To get an idea of the potential impact of this bill, LFC extracted the number of taxpayers by filing status with greater than $1,000 and then further assumed that only 25 percent of this population would make a donation and claim the $500/$1,000 credit.

Table 1. Estimated Tax impact For Different Filing Groups Assuming 25 Percent Participation

	Returns w/ >$1,000 Tax	25% Participation	Total Credit
Single Filers	190,101	47,530	$23,765,000
Head of Household Filers	48,415	12,100	$6,050,000
Married Filing Separate Filers	8,216	2,050	$1,025,000
Married Filing Joint & Surviving Spouse Filers	219,698	54,920	$54,920,000
Total	**466,430**	**116,600**	**$85,760,000**

This $85.8 million general fund cost was then ratioed by the net amount from the Consensus Revenue Estimating Group's December estimate to arrive at the amounts in Table 1.

If 100 percent of taxpayers with any liability elected to make this donation, the amounts would be those in Table 2.

Table 2. Estimated Tax impact For Different Filing Groups Assuming 100 Percent Participation

	Returns w/ any Liability Tax	100% Participation	Total Credit
Single Filers	532,022	532,020	$228,135,373
Head of Household Filers	95,749	95,750	$36,999,247
Married Filing Separate Filers	11,929	11,930	$5,822,458
Married Filing Joint & Surviving Spouse Filers	261,866	261,870	$61,157,966
Total	**901,566**	**901,570**	**$332,115,044**

SIGNIFICANT ISSUES

The bill requires that a qualified foster care organization must demonstrate that it is planning to spend 50 percent of its budget on providing services to at least 200 foster children each year. Typical non-profit organizations spend over 85 percent on program costs and less than 15 percent on fund raising and administration costs.

It is unusual for donations to a 501(c)(3) organization to generate a tax credit without instructions on whether those donations that generate the tax credit can also be claimed as a federal and state charitable tax deduction for individuals that itemize deductions or the special New Mexico provisions that allow non-itemizers to deduct donations to non-profits.

The percentage of donations eligible for the proposed tax credit should be specified to align with typical state practice for tax credits, even if that percentage is 100 percent. A more reasonable percentage would be in the range of 10 percent or 15 percent.

The bill does not contain: usual guardrails, such as a not-to-exceed aggregate cap; a sunset date so that the effectiveness of the bill in accomplishing stated goals can be reviewed; or a requirement that the costs, coverage, and benefits of the tax credit be included in TRD's annual tax expenditure report.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met because TRD is required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the credit and other information to determine whether the credit is meeting its purpose. This parallels the statutory requirement of 7-1-84 NMSA which requires TRD to prepare a comprehensive tax expenditure budget annually.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to House Bill 225 Foster parent tax credit, which would create a $100 a week tax credit for foster families. It is a duplicate of Senate Bill 304.

TECHNICAL ISSUES

The bill does not:

1. Provide the percentage of donation eligible for the tax credit. Currently, any donation, even $1, would qualify the donor for a $500/$1,000 tax credit;
2. Provide an annual cap on the amount of approved credits;
3. Ensure that donations that generate tax credits cannot also be deducted from income taxes or claimed on New Mexico income tax returns that allow deductions of charitable contribution outside of itemized deductions.

Additionally, CYFD should be required to certify the organization and certify the amount of the donation. This should be a two-step process as with the majority of other tax credits.

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

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

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	Met?	Comments
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.	X	
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. Clearly stated purpose Long-term goals Measurable targets	 X X X	
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✓	Required in the bill; TR will analyze annually pursuant to 7-1-84 NMSA 1978.
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. Public analysis Expiration date	 X X	
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. Fulfills stated purpose Passes "but for" test	 X X	
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	X	
Key: ✓ Met ✗ Not Met ? Unclear		

LG/hj/SD/SL2