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

**ORIGINAL DATE** 2/3/2020
**SPONSOR** Neville **LAST UPDATED** **HB**

**SHORT TITLE** Health Gross Receipt Deduction Eligibility **SB** 227

**ANALYST** Iglesias

## REVENUE (dollars in thousands)

| Estimated Revenue* | | | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| FY20 | FY21 | FY22 | FY23 | FY24 | | |
| - | No Fiscal Impact Under Prior TRD Interpretation | | | | Recurring | General Fund |
| - | No Fiscal Impact Under Prior TRD Interpretation | | | | Recurring | Local Governments |

Parenthesis ( ) indicate revenue decreases

*Estimates depend on interpretation of the amended language. See *Fiscal Implications* for discussion.

Duplicates HB282

**SOURCES OF INFORMATION**
LFC Files

No Response Received
Taxation and Revenue Department (TRD)

**SUMMARY**

Synopsis of Bill

Senate Bill 227 amends the gross receipts tax (GRT) health care practitioner deductions (Section 7-9-77.1 and Section 7-9-93) to specify that not just practitioners themselves may take the deduction but also businesses that are majority owned by practitioners may take it. The effective date of this bill is July 1, 2020.

**FISCAL IMPLICATIONS**

Current analysis from TRD is necessary to determine the fiscal implications of this bill.

Any fiscal impact for this bill would be determined by whether this is viewed as providing clarification that the deduction applies to businesses or if the amended language is viewed as expanding the applicability of the deduction. If the bill is considered to expand applicability, the cost to the general fund could be as high as $14 million to $15 million annually when considering potential costs of the deduction based on prior “HealthSouth” and related claims in FY16 and associated hold harmless payments to local governments (see *Significant Issues*).

In response to this bill introduced in the 2019 session (HB346), the Taxation and Revenue Department (TRD) stated this bill will have no fiscal impact and provided the following analysis:

> The bill provides clean-up language that clarifies that a private physician is eligible for a gross receipts deduction regardless of whether they are organized as an LLC, partnership, etc. The cleanup is consistent with a bulletin issued by TRD; however, this bill would put that clarification into statute.

However, not all analysts and tax professionals agree with this interpretation, and it is possible the TRD bulletin might be a misapplication and expansion of current law. TRD previously reported its interpretation of statute is not altered by the bill, so it is not expanding the deduction. Therefore, the scoring is indeterminate but would have no fiscal impact under the prior TRD interpretation.

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

Laws 2016, Chapter 3, 2nd Special Session (SB6) amended this deduction. The FIR for that bill said the purpose was to "address a recent hearing officer's decision in the HealthSouth Rehabilitation Hospital dispute, where the hearing officer determined a hospital can take the health care practitioner deduction. This bill reinstates the presumed original intention of the deduction. The bill also simplifies the statute by defining in one place the meaning of the phrase, 'health care practitioner.'"

If the phrasing in that FIR is interpreted as restricting the deduction to individuals and not businesses, this bill would be expanding the deduction. There can be reasonable policy implications to do this, as doctor groups are reportedly becoming more and more prevalent than individual practices, but this would lead to additional general fund costs.

During the interim, TRD should discuss its interpretation of existing law with other tax professionals and people involved with the language changes from 2016 to determine if its bulletin is accurate and should remain in place or if it should be amended.

## PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is <u>not</u> met since TRD is <u>not</u> required in the bill 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.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates House Bill 282

## TECHNICAL ISSUES

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

**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 (RSTP) 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** | ✘ | The provisions of this bill was not vetted in the interim by LFC or RSTP. |
| **Targeted** | | |
| Clearly stated purpose | ✘ | No purpose statement, goals or targets. |
| Long-term goals | ✘ | |
| Measurable targets | ✘ | |
| **Transparent** | ✓ | This bill requires annual reporting from TRD. |
| **Accountable** | | Unclear if the required reporting from TRD on number of taxpayers claiming the deduction and aggregate amount of the claims would provide sufficient information to analyze the effectiveness and efficiency of this deduction. |
| Public analysis | ? | |
| Expiration date | ✘ | |
| **Effective** | | |
| Fulfills stated purpose | ? | |
| Passes “but for” test | ? | |
| **Efficient** | ? | |
| Key: ✓ Met ✘ Not Met ? Unclear | | |

DI/rl/sb