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

**ORIGINAL DATE** 1/30/22
**SPONSOR** Louis **LAST UPDATED** 2/14/22 **HB** 167

**SHORT TITLE** Tribe & Pueblo Car Excise Tax Credit **SB**

**ANALYST** Graeser

## REVENUE (dollars in thousands)

Parenthesis ( ) indicate revenue decreases

| Estimated Revenue | | | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| FY22 | FY23 | FY24 | FY25 | FY26 | | |
| | Up to ($280.0) | Up to ($280.0) | Up to ($310.0) | Up to ($340.0) | Recurring | General Fund |
| | Up to ($80.0) | Up to ($80.0) | Up to ($90.0) | Up to ($100.0) | Recurring | State Road Fund |
| | Up to ($80.0) | Up to ($80.0) | Up to ($90.0) | Up to ($100.0) | Recurring | Local Governments Road Fund |

This proposed tax credit may be related to the Tesla dealership located on Nambe Pueblo land.

**SOURCES OF INFORMATION**
LFC Files

Responses Received From
Indian Affairs Department (IAD)
Taxation and Revenue Department (TRD)

**SUMMARY**

Synopsis of Bill

House Bill 167 proposes the following:

> "If a vehicle has been acquired through a transaction on reservation or trust land within an Indian nation, tribe or pueblo, located wholly or partly in New Mexico, upon which a gross receipts, sales, compensating or similar tax was levied by the Indian nation, tribe or pueblo, the amount of the tax paid may be credited against the tax due this state on the same vehicle."

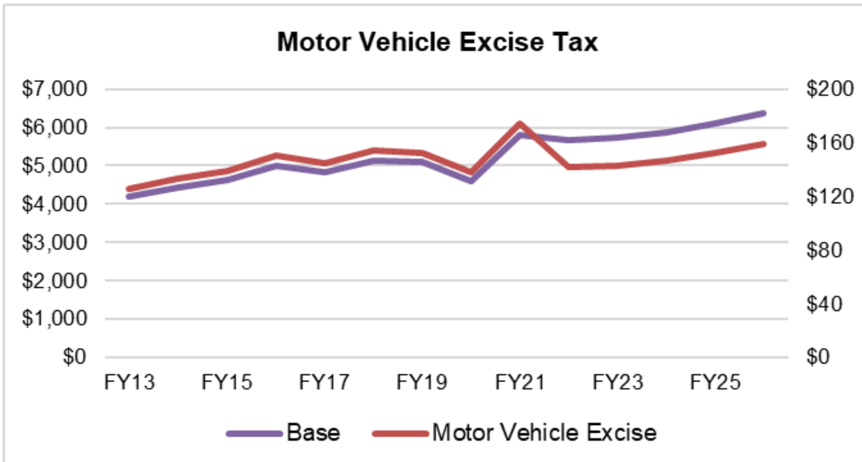
The effective date of this bill is July 1, 2022

**FISCAL IMPLICATIONS**

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.

HB6, in 2019, (Chapter 270 Section 44 Laws 2019), increased the motor vehicle excise tax from 3 percent to 4 percent and the distribution for FY22 and subsequent years is:

| | |
|---|---|
| General Fund | 2.5% |
| State Road Fund | .75% |
| Local Governments Road Fund | .75% |




The chart above shows the history and forecast of statewide general fund motor vehicle excise tax revenues.

Advocates indicate that only one tribe, nation, or pueblo would be interested in adopting the provisions of this bill. The provisions of this bill do not provide any price incentive for motor vehicle dealers to establish branch locations on Indian lands, but only remove a disincentive for that expansion and economic development opportunity. The fiscal impacts of the provisions of this bill on that issue would have to be remote in time and minimal in impact.

However, that may not be the only issue in play. In 2019, HB294 was introduced and would have permitted Tesla to sell cars directly to the public and not have to establish franchise locations. Apparently, this bill was assigned to the House Commerce and Economic Development Committee but was not heard. In response, Tesla negotiated with Nambe Pueblo to establish a repair/service facility on Indian lands. If this bill were to pass and Tesla were to convert the service facility to a sales facility, that would possibly invoke the provisions of this bill.

Baring testimony to inform this assumption, it is expected that the provisions of this bill will, in the short run, only affect the Tesla dealership located on Nambe Pueblo lands. The FIR for SB21 of this session indicates that TRD and DOT expect approximately 250 Teslas to be sold. This number is obtained by assuming that the number BEVs sold expected for 2023 will be about 530. National data implies that Tesla has captured about 47 percent of the BEV market. We further assume that the average price of a Model 3 Tesla, net of trade-in will be about $44,000. The Nambe Pueblo will impose a motor vehicle excise tax of 4 percent, to match the amount of tax imposed by the state and the treasurer of Nambe Pueblo will collect this tribally imposed excise tax and issue a receipt that can be presented to a local MVD or MVD Express office for the new car owner to claim the credit. If this is the administrative mechanism, then the following table indicates the approximate fiscal impact pursuant to these listed assumptions.

| | | FY22 | FY23 | FY24 | FY25 | FY26 |
|---|---|---|---|---|---|---|
| BEVs Sold | | 513 | 529 | 542 | 587 | 644 |
| Teslas -- Assumed 100% in Nambe | | 241 | 249 | 255 | 276 | 303 |
| Cost net of 15% trade-in (Thousands) | $44,200 | | ($11,000) | ($11,300) | ($12,200) | ($13,400) |
| General Fund | 2.50% | | ($280.0) | ($280.0) | ($310.0) | ($340.0) |
| State Road Fund | 0.75% | | ($80.0) | ($80.0) | ($90.0) | ($100.0) |
| Local Governments Road Fund | 0.75% | | ($80.0) | ($80.0) | ($90.0) | ($100.0) |

This outcome is questionable as to timing and magnitude, so the table on page 1 shows this Nambe Pueblo /Tesla Scenario as a maximum impact.

**SIGNIFICANT ISSUES**

This bill could possibly narrow the motor vehicle excise tax base. Many of the efforts over the last few years to reform New Mexico's taxes focused on broadening the GRT and other tax bases and lowering the rates. Narrowing the base leads to increasing volatility in the general fund.

IAD notes that, "…New Mexico tribes want equity with other states when it comes to the credit against tax on vehicles purchased within their territory. This will allow tribes to try and attract auto dealerships to locate branch operations on Indian land. HB167 may expand economic opportunities for tribal governments and bring more business to the state. Increasing tribal economic opportunities will likely benefit the state by increasing purchases in New Mexico while supporting tribal economic development."

Proponents indicate that the purpose for this bill is to remove the impediment of double taxation which is a significant obstacle for economic development. Under current law, any tribe, nation, or pueblo would have the right to impose a tax on motor vehicle sales that occur within reservation or trust boundaries. This is implicit in tribal sovereignty. However, such a tax would be imposed in addition to the state motor vehicle excise tax. The purpose of this proposed credit may be to mirror the long-established Indian dual tax credit affecting oil and gas and a similar dual tax credit for coal or the provisions allowing tribal venues to sell gasoline without state gasoline taxes applied. This proposal is most similar to the gross receipts tax sharing of Section 7-9-88.1 NMSA 1978 -- (75 percent to the Indian entity and 25 percent to state, county and municipality). See analysis of HB15 (2021) for more information.

**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 credit and other information to determine whether the credit is meeting its purpose.

**ADMINISTRATIVE IMPLICATIONS**

TRD comments that, "… implementation of this bill will have a moderate impact on the

Taxation and Revenue Department's Information Technology Division. This bill requires changes to the vehicle title & registration process if the vehicle is purchased from a reservation or trust land within an Indian nation, tribe or pueblo located in New Mexico. Motor Vehicle Division's Tapestry system will need changes to the requirements for purchase documents collected and the way the system calculates Vehicle Excise Tax to account for the credit the bill requires. The estimated time to develop, test and implement the changes is approximately 640 hours or 4 months for an estimated $33,050 of staff workload cost.

## TECHNICAL ISSUES

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

TRD indicates, "…this bill may be broad enough to include an exemption from the Leased Vehicle Gross Receipts Tax, NMSA 1978 Section 7-14A-1 et. seq.

TRD, however, does not indicate that honoring the credits established by the provisions of this bill will cause undue administrative difficulties. Apparently, TRD/MVD and advocates believe that an adopting Indian entity will arrange to collect the excise tax and issue a receipt that will be honored at MVD offices when the vehicle is titled and registered.

## OTHER SUBSTANTIVE ISSUES

HB6 (2019) increased the Motor vehicle excise tax from 3 percent to 4 percent in the following ways: For FY20 and FY21, the general fund continued to receive the existing 3 percent and the additional 1 percent was sent to the Department of Transportation for expenditures needed to mitigate the emergency road conditions related to activity in the oil field in state transportation commission district 2; and for FY22 and subsequent fiscal years, the general fund will receive 2.5 percent (0.5 percent less than current statute), and the remaining 1.5 percent will be split equally between the state road fund and half to the local governments road fund.

## POSSIBLE AMENDMENTS

1. The bill could set a limit on the amount of tax that would be credited. This could mirror the 75-25 split embedded in gross receipts tax sharing or could be set equal to the equivalent state motor vehicle excise tax.
2. It should be established whether the tribal tax is imposed on the sales price net of trade-in or on the gross sale. This is not, perhaps, pertinent to this bill but would be important in the ordinance establishing the tribal tax.

## POSSIBLE QUESTIONS

**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** | ✘ | |
| **Targeted** | | It is difficult to determine the purpose of this bill, except that it probably intends to generate revenue for specific Indian governments with the tribal tax not shared with the general fund, the state road fund or the local government's road fund. This invokes prohibiting double taxation and honoring Indian sovereignty. |
| Clearly stated purpose | ✘ | |
| Long-term goals | ✘ | |
| Measurable targets | ✘ | |
| **Transparent** | ✘ | |
| **Accountable** | | |
| Public analysis | ✘ | |
| Expiration date | ✘ | |
| **Effective** | | Fulfills unstated purpose of honoring tribal sovereignty and removing an impediment to Indian economic development. |
| Fulfills stated purpose | ✘ | |
| Passes "but for" test | ✘ | |
| **Efficient** | ✘ | |
| Key: ✓ Met ✘ Not Met ? Unclear | | |

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