FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Padilla	**ORIGINAL DATE**	2/17/23
SHORT TITLE	Temporary GRT Deductions for Restaurants	**BILL NUMBER**	Senate Bill 121/ec
		ANALYST	Torres, I.

APPROPRIATION*
(dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	**FY24**		
$150.0		Nonrecurring	General Fund

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

REVENUE* (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	**FY24**	**FY25**	**FY26**	**FY27**		
($22,300.0)					Recurring	General Fund – Deduction
($14,900.0)					Recurring	Local Governments – Deduction
($14,900.0)					Recurring	General Fund- Hold Harmless
$14,900.0						Local Governments – Hold Harmless
($37,200.0)					**Recurring**	**General Fund – Total**

Parenthesis ( ) indicate revenue decreases
*Amounts reflect most recent version of this legislation.

Relates to SB 1 of the 2021 Regular Session

Sources of Information

LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Senate Bill 121

Senate bill 121 (SB121) creates a deduction from gross receipts beginning March 1, 2023, and prior to July 1, 2023 for receipts from the sale of prepared food or non-packaged beverages served or picked up at certain food or beverage establishments or delivered to customers for immediate consumption. This deduction may be taken by a food or beverage establishment that has not received a grant from the restaurant revitalization fund administered by the United States Small Business Administration. SB121 also provides for a hold harmless distribution to local governments for revenues lost associated with the deduction.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

This bill proposes a temporary gross receipts tax deduction for specific food and beverage establishments that have not received a grant from the restaurant revitalization fund administered by the United States Small Business Administration. The Taxation and Revenue Department (TRD) employed data from the United States Small Business Administration to estimate the lost revenue from this exemption. This dataset shows the number of restaurants approved to receive a grant. In New Mexico, 602 restaurants have been authorized to receive grants totaling $169,482,192.

To estimate the lost revenue to the general fund and local governments, TRD used data on taxable gross receipts and information on North American Industry Classification System (NAICS) codes reported in the TRD RP-80 GRT report for the fiscal year 2022. TRD assumed that approximately 1,618 targeted food and beverage establishments that have not received a grant might claim the deduction. For FY23, the estimated revenue impact evenly prorates the forecasted taxable gross receipts through the end of the fiscal year and includes the distribution to local governments to reimburse them for revenue they would have received but for the deduction. Estimated costs are reflected in the table on page 1.

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 significant risk to state revenues from tax expenditures. 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.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity.

SIGNIFICANT ISSUES

The American Rescue Plan Act established the restaurant revitalization fund to help restaurants and other eligible businesses severely impacted by the Covid-19 pandemic to keep their doors open. Unfortunately, not all businesses that submitted a grant application were approved. Creating a temporary gross receipts tax deduction provides relief to these non-approved food and beverage establishments. The food service industry is labor intensive and employs a significant number of workers that often earn at or below the median wage and may be more vulnerable to layoffs. To some extent, this evens the treatment between approved and non-approved businesses to support restaurants that have been struggling since the beginning of the pandemic.

The cost of the GRT deduction is solely to the general fund and keeps local governments whole.

The proposed deduction mimics a similar four-month GRT holiday for restaurants and bars that was available from March 1, 2021 through June 30, 2021. At the time the 2021 deduction was enacted, restaurants and bars were operating under public health order restrictions on their ability to host indoor dining to full capacity. Such public health order restrictions are no longer impacting restaurant or bar operations.

TECHNICAL ISSUES

TRD's Information Technology Division maintains it will take a minimum of two months to implement this new deduction. This would require amended returns so taxpayers can take the deduction once the IT specifications are implemented, which requires more taxpayer burden, more TRD processing, and will impact distributions to local governments. Related distributions, in turn, could cross over fiscal years. In these situations, FY24 general fund revenues may be reduced to make the distribution to local governments. As such, it is recommended that the monthly periods to be exempted be delayed by two to three months.

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	✘	
Clearly stated purpose	✘	
Long-term goals	✘	
Measurable targets	✘	
Transparent	✘	
Accountable		
Public analysis	✘	
Expiration date	✓	
Effective		
Fulfills stated purpose	✘	
Passes "but for" test	✘	
Efficient	✘	
Key: ✓ Met ✘ Not Met ? Unclear		

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