BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

February 10, 2025

Bill: HB-237 **Sponsor:** Representatives Tanya Mirabal Moya, Patricia A. Lundstrom, and John Block

Short Title: Gross Receipts Credit for Certain Businesses

Description: This bill adds a new section to the Gross Receipts and Compensating Tax Act to provide a state credit, prior to July 1, 2030, for a taxpayer to claim against 25% of their total state and local gross receipts tax liability if that taxpayer received no more than $1 million in gross receipts in the calendar year prior. The credit shall not exceed $20,000 per calendar year and any amount that exceeds a taxpayer's liability in the taxable period in which the credit is claimed may be carried forward to succeeding tax periods. A taxpayer may not claim this credit in the same tax period that it claims another GRT credit. It also amends Section 7-1-6.4 NMSA 1978 to include receipts attributable to the new credit in calculating distributions to municipalities, effectively creating a new hold harmless distribution to municipalities.

Effective Date: July 1, 2025. The provisions of Section 2 apply to tax liabilities from taxable periods beginning on or after July 1, 2025.

Taxation and Revenue Department Analyst: Pedro Clavijo

Estimated Revenue Impact*					**R or NR****	**Fund(s) Affected**
FY2025	**FY2026**	**FY2027**	**FY2028**	**FY2029**		
--	($265,700 - $836,600)	($274,000 - $836,600)	($281,200 - $836,600)	($290,400 - $836,600)	R	Section 2: General Fund

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Methodology for Estimated Revenue Impact: [Section 3] Businesses with no more than $1 million in gross receipts in the prior calendar year may claim a GRT credit of 25% against their state GRT liability. Given that different GRT deductions, exemptions and tax planning strategies are available for these businesses, the Taxation and Revenue Department (Tax & Rev) presents a range of fiscal impacts to capture how these tax benefits could impact taxpayers' tax liability and, therefore, the credit amount taxpayers could claim. Tax & Rev assumes the credit can be taken after all allowable deductions and exemptions have been applied (see Technical Issues.) Tax & Rev used taxable gross receipts from the RP500 report for fiscal year 2024 to calculate the lower bound of the fiscal impact. The results from a previous study about New Mexico's Gross Receipts Tax by Ernst & Young, LLP, and Georgia State University were employed to determine that 14.1% of taxable gross receipts are generated by taxpayers with no more than $1 million in gross receipts. Then, an estimated statewide effective GRT rate of 6.94% was applied to calculate the amount of the credit as the credit is based on 25% of "total liabilities", defined as state and local gross receipts tax liability. For the upper bound, Tax & Rev used the same study cited before and found that 93% of taxpayers have $1 million or less in gross receipts. Then, Tax & Rev used the number of returns from the RP500 report as a proxy of taxpayers and the cap credit of $20,000 per taxpayer to calculate the ceiling fiscal impact. The lower bound was grown by taking the GRT revenue growth from the December 2024 Consensus Revenue Estimating Group (CREG) forecast.

As noted in Policy Issues below, Tax & Rev is concerned that businesses will have the ability to artificially separate into multiple taxpayers to be eligible for this credit. The fiscal impact range above

does not attempt to incorporate the negative general fund impact that could occur with this type of tax planning action by businesses.

[Section 1]: If not for the proposed changes in Section 1, the range impact in Section 2 would have been decreased due to the savings of a lower distribution amount to municipalities under 7-1-6.4 NMSA 1978.

Policy Issues: The establishments targeted by the bill are typically considered small businesses, which present a high rate of openings and closings, making it a highly volatile segment. This might cause the number of taxpayers claiming the credit to exceed those assumed here during a particular taxable period. On the other hand, the fact that the bill prevents a taxpayer from claiming the credit if they have claimed another GRT credit might reduce the impact, or reduce the impact of existing GRT credits. However, the magnitude of these effects is uncertain, given the unpredictability regarding the intrinsic dynamics of the small business segment and whether the maximum allowed tax credit set in the bill will generate the incentive to claim it. Taxpayers can be expected to evaluate the value of claiming this credit against the value of taking an alternative credit, if any are available, and amend their returns to maximize their tax benefits.

Small businesses are an economically important component of the state economy and a key driver of production, employment, and growth. Tax policies aimed at alleviating the tax burden of small businesses may foster job growth and the production of a dynamic sector of the economy. Even so, the bill goes against the principle of equity, which ensures that all businesses face the same tax regime. Apart from treating businesses differently, establishments that meet the bill's requirements might benefit differently. For instance, the bill will benefit a restaurant and a tech startup equally. However, these two establishments might differ significantly regarding their taxable activity. The bill further erodes equity by treating similar businesses differently; a business with $999,999 in gross receipts would qualify for the credit, while an establishment with $1,000,001 would not receive the credit.

While tax incentives may support particular industries or encourage specific social and economic behaviors, the proliferation of such incentives complicates the tax code. Adding more tax incentives: (1) creates special treatment and exceptions to the code, growing tax expenditures and/or narrowing the tax base, with a negative impact on the general fund; and, (2) increases the burden of compliance on both taxpayers and Tax & Rev. Adding complexity and exceptions to the tax code does not comport generally with the best tax policy.

This bill may unintentionally hinder economic growth by creating a "cliff effect". The "cliff effect" is the sudden loss of benefits when going over an applicable threshold by even $1.00. A small business that might be poised to grow more may opt not to do so because doing so will increase its effective GRT rate by 25%, and result in a reduction of net income. That reduction might be substantial when a small change in gross receipts causes the taxpayer to cross the eligibility threshold. Similarly, an establishment poised to exceed the cap in gross receipts might reduce economic activity if the credit loss exceeds the amount of new net receipts. Additionally, the credit means that they will still charge the GRT to consumers, as required by the Gross Receipts and Compensating Tax Act; but businesses will reap the benefit of the credit while still charging the full rate to purchasers.

Tax & Rev has significant concerns that businesses may engage in tax planning to artificially separate into multiple taxpayers in order to ensure each individual business' gross receipts are under $1 million. There is significant potential for abuse and a higher fiscal impact if that should occur. Businesses have legitimate reasons to form multiple LLCs, etc, and Tax & Rev would likely not have authority or resources to deny credit claims based on the speculation that a business has been artificially separated to be eligible for this credit.

The tax code, including revenue distributions to the state and local governments, should conform to the principle of simplicity. The proposed changes to 7-1-6.4 NMSA 1978 to tie the distribution from the state to municipalities to lost revenue from the credit adds complexity. This added complexity increases the costs of administration. This creates risks for Tax & Rev related to information technology (IT) programming, incorrect distributions, taxpayer amended returns that result in claw-backs from local governments, and diminished customer service capabilities.

It is unclear who would benefit from the significant tax relief provided in this proposal. Businesses are liable for the GRT but generally pass the tax along to consumers. In this bill, credit eligibility is based on prior calendar year receipts being under $1 million. A business may still pass along GRT to consumers, even if the business is ultimately eligible for this credit. So, the benefits may increase the profitability of businesses, but not result in any tax relief passed along to New Mexico consumers.

For ease of taxpayer reporting, ease of tax administration, and to ensure tax relief is shared between businesses and consumers, Tax & Rev recommends this proposal instead be a GRT deduction rather than a GRT credit. Deductions are claimed on GRT returns by taxpayers and allow businesses to not pass the GRT on to their consumers in real time, and Tax & Rev simply processes them. This is much more straightforward than the proposal in this bill. Here, taxpayers would be required to apply for the credit on forms and in the manner required by Tax & Rev, which results in more administrative burden for the department. Conversely, deductions are claimed on the regular GRT return. Furthermore, with this credit, Tax & Rev would have to track carryforward of unused credits. The great majority of gross receipts tax returns are filed monthly, adding even more to the burden of tracking these credit carry-forwards.

While there are over 100 deductions and exemptions from the gross receipts tax codified in Chapter 7, Article 9 NMSA 1978, there is a relatively small number of credits that may be claimed against State GRT. Under this proposal, taxpayers will be able to fully reduce their State and local GRT liabilities using every deduction and exemption, and then after that will retain the ability to further offset 25% of remaining GRT liability with a credit.

Technical Issues: [Section 2] Tax & Rev suggests that a definition of "state gross receipts tax due", on page 4, line 11, be added to subsection G, on page 5. For administration and certification of the credit this definition will clarify that tax due includes:

1. Total receipts - total gross receipts before any deductions or exemptions; or,
2. Net receipts After deductions - the taxable gross receipts after allowable deductions have been applied; or,
3. Net receipts excluding exemptions – taxable gross receipts excluding exemptions, which are not included in the gross receipts tax reported to Tax & Rev; or,
4. Net receipts excluding deductions and exemptions – taxable gross receipts excluding exemptions and deductions.

On page 4, on line 14: Tax & Rev recommends inserting the word "certified" before the word "credit" so that lines 14-16 read: "The amount of credit certified shall not exceed twenty thousand dollars ($20,000) per taxpayer per calendar year."

As the amount of credit that exceeds the taxpayer's tax liability for the period can be carried forward, Tax & Rev suggests that the amount of time the credit can be carried forward should be limited. Tax & Rev suggests on page 4, line 22, after the word "forward" delete "to succeeding taxable periods" and replace with "for thirty-six consecutive taxable periods."

[Sections 3 and 4] The tax credit is based on calendar year activities, which means taxpayers calculate their eligibility based on their gross receipts for an entire calendar year. However, the applicability date

for the credit is set to begin on or after July 1, 2025, which represents only six months of 2025. This misalignment can lead to confusion and potential administrative complexities for taxpayers and Tax & Rev. A taxpayer that typically has less than $2 million in receipts in calendar year 2025 may have less than $1 million in receipts in the last six months of 2025 – creating an unintended fiscal impact for credit claims in 2026. In addition, with an effective date of July 1, 2025, the taxpayer will only be able to take the credits for six months of 2025. Tax & Rev suggest an applicability and effective date of January 1, 2026. This provides time for taxpayers and Tax & Rev to prepare for the implementation of the credit and align all criteria to the calendar year.

Other Issues: None.

Administrative & Compliance Impact: Tax & Rev will need to update forms, instructions, and publications and make information system changes. Tax & Rev's Administrative Services Division (ASD) anticipates implementation of this credit will require two existing FTEs and 40 hours split between pay-band 70 and 80 positions. Tax & Rev's Revenue Processing Division (RPD) will require two FTE at a pay band 65 to review certification requests. This bill will have an impact on Tax & Rev's Information Technology Division (ITD) of approximately 500 hours or 3 months for an estimated staff workload cost of $115,000.

This estimate notably does not include additional audit resources for Tax & Rev's Audit and Compliance Division. This credit may be susceptible to abuse as businesses separate into multiple taxpayers to claim multiple credits that they would otherwise not be eligible to claim. But, the bill does not give Tax & Rev authority to deny credits on this basis or audit this activity.

Estimated Additional Operating Budget Impact*				**R or NR****	**Fund(s) or Agency Affected**
FY2025	**FY2026**	**FY2027**	**3 Year Total Cost**		
--	$2.5	--	$2.5	NR	Tax & Rev's ASD - Operating
$115	--	--	$115	NR	Tax & Rev's ASD - Contractual costs
--	$85.6	$85.6	$171.2	R	Tax & Rev's RPD - FTE

* In thousands of dollars. Parentheses ( ) indicate a cost saving. ** Recurring (R) or Non-Recurring (NR).

Related Bills: Similar to HB-163 (2023 Regular Session), and HB-51 (2024 Regular Session)