BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

February 25, 2025

Bill: SB-304 **Sponsor:** Senator Nicole Tobiassen

Short Title: Foster Care Organization Tax Credit

Description: This bill enacts a new section of the Income Tax Act providing the qualifying foster care organization income tax credit for a taxpayer who makes a contribution to a qualifying foster care organization. The amount of the credit is $500 for individuals, married individuals filing separately, heads of household and surviving spouses, and $1,000 for married individuals filing jointly. The portion of the credit that exceeds a taxpayer's income tax liability will not be refunded to the taxpayer but may be carried forward for five consecutive taxable years. To be eligible for the credit, a taxpayer must provide to the department the name of the qualifying foster care organization to which a contribution is made and the amount of that contribution. Additionally, the organization must provide to the department written documentation that the organization meets the necessary requirements, and that documentation must be signed by an officer of the organization.

Effective Date: Not specified; 90 days following adjournment (June 20, 2025). Applicable to taxable years beginning on or after January 1, 2025.

Taxation and Revenue Department Analyst: Sara Grubbs

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		
--	($330)	($330)	($330)	($330)	R	General Fund

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

Methodology for Estimated Revenue Impact: The Taxation and Revenue Department (Tax & Rev) used the National Taxonomy of Exempt Entities (NTEE) provided by the National Center for Charitable Statistics to estimate the number of qualified foster care charitable organizations in New Mexico. Currently, there are 15 503(c)(3) foster care organizations out of a total of 15,572 501(c)(3) organizations in New Mexico, or 0.096% of 501(c)(3) organizations in New Mexico are foster care organizations. Tax & Rev assumes each foster care organization qualifies under section 1(G)(2) on page 4.

Approximately 47% of US households monetarily donated to a charitable cause in 2020[1]. Using 2023 tax year income tax returns and assuming each tax return is a household, Tax & Rev estimates approximately 516,000 taxpayers donate to a charity on average each year. Tax & Rev calculates that approximately 500 taxpayers donate to an eligible foster care organization. In tax year 2023, 32% of tax returns were filed as married, filing jointly and 78% for all other filing statuses. Tax & Rev applied this percentage to the number of eligible taxpayers and calculated the revenue impact by filing status. Tax & Rev cannot know if the number of eligible organizations or taxpayer contributions will change in the future, therefore, the number of each has been held constant.

[1] Indiana University Lilly Family School of Philanthropy, The Giving Environment, Giving During Times of Uncertainty, Oct 2024

The average charitable donor in the U.S. is 64 years old and makes two charitable donations a year and for a middle-income earner, the average yearly charitable donation is approximately $3,296[2]. As such, eligible taxpayers are assumed to have personal income tax (PIT) liability amounts that can absorb their associated credit amounts ($1,000 or $500 depending on filing status) leaving a minimal amount to be carried over.

Policy Issues: Personal income tax (PIT) represents a consistent source of revenue for many states. For New Mexico, PIT is approximately 16 percent of the state's recurring general fund revenue. While this revenue source is susceptible to economic downturns, it is also positively responsive to economic expansions. New Mexico is one of 41 states, along with the District of Columbia, that impose a broad-based PIT (New Hampshire and Washington do not tax wage and salary income). Like several states, New Mexico computes its income tax based on the federal definition of taxable income and ties to other statues in the federal tax code. This is referred to as "conformity" to the federal tax code. PIT is an important tax policy tool that has the potential to further both horizontal equity by ensuring the same statutes apply to all taxpayers, and vertical equity, by ensuring the tax burden is based on taxpayers' ability to pay. This tax incentive erodes both horizontal and vertical equity as taxpayers with middle and higher income have more disposable income and more likely to donate.

Foster youths are often exposed to multiple childhood adverse experiences (ACEs) before entering the foster care system[3]. ACEs can include violence, abuse, or neglect - in the home or community, parental or guardian substance abuse or mental health issues, or through parental separation, among others. The greater the number of ACEs a child experiences, the more likely the child will suffer from mental health or chronic health conditions[4]. Foster children are twice as likely to experience post-traumatic stress disorder (PTSD) compared to non-foster children[5]. Youths placed in foster group homes are 2.5 times more likely to be involved in the criminal justice system[6].

This bill may reduce the social, economic, and psychological impact on a foster child over the long-term by increasing the resources available to foster children via foster organizations. In this sense, the bill is expected to have a positive future social impact, and therefore a positive fiscal impact in the long term.

This bill does not have a sunset date with a delayed repeal. Tax & Rev supports sunset dates for policymakers to review the impact of a credit or other tax incentive before extending it if a sufficient timeframe is allotted for tax incentives to be measured. A delayed repeal promotes accuracy, brevity, and clarity in the tax code.

Because a foster care organization must have been granted an exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code for a taxpayer's donation to qualify for this credit, that taxpayer's donation will already be deductible from income for purposes of federal income taxation, and so also for purposes of New Mexico personal income taxation. Claiming a deduction for charitable donations does require that a taxpayer itemize deductions rather than claim the standard deduction. For a taxpayer that itemizes deductions, the same donation will therefore give the taxpayer both an income tax deduction to reduce taxable income and an income tax credit subtracted from net tax iability. Good tax policy avoids such "double dipping" of tax expenditures.

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[2] https://www.nptrust.org/philanthropic-resources/charitable-giving-statistics/
[3] The Permanente Journal, Adverse Childhood Experiences and Psychosocial Well-Being of Women Who Were in Foster Care as Children, https://pmc.ncbi.nlm.nih.gov/articles/PMC3783064/
[4] https://www.cdc.gov/aces/about/index.html
[5] Child Abuse Neglect, The trajectory of PTSD among youth in foster care: A survival analysis examining maltreatment experiences prior to entry into care, 2021 Mar 12
[6] https://jlc.org/news/what-foster-care-prison-pipeline

The bill imposes administrative burdens on foster care organizations receiving donations for the donating taxpayer to qualify for the credit. If there are not sufficient donors, the administrative burden to the receiving organizations may outweigh the benefits.

Technical Issues: In subsection A on page 1, the proposal does not stipulate the amount of the contribution made by the taxpayer to qualify for this credit. In theory, a taxpayer could contribute $1 to an eligible foster care organization and receive a $1000/$500 tax credit. If the intent of this bill is to increase revenue to foster care organizations, Tax & Rev suggests defining the amount of the contribution as "of at least five hundred/one thousand dollars" after the word "contribution" on line 20 on page 1.

Because the bill creates a new section of the Income Tax Act, Tax & Rev assumes that references in the bill to the "department" are to Tax & Rev. Subsection (C)(2) requires Tax & Rev to review the organization's budget to determine whether it qualifies, including a determination of the proportion of the organization's budget spent on foster care services. This requirement will impose significant administrative burdens on Tax & Rev, as Tax & Rev does not currently receive, review or make determinations based on the budgets of foster care organizations; and furthermore, Tax & Rev may not be the best agency to certify foster care organizations or review their budgets.

Tax & Rev also notes that the bill is ambiguous as to when this certification must take place. The language could be read to require such certification by the organization and Tax & Rev every time a donation takes place.

Subsection (G)(2)(b) on page 4, lines 18-21, requires a qualifying foster care organization to "provide foster care services to at least two hundred qualified individuals in New Mexico", in addition to the spending requirement stated in Subsection (C)(2). But the certification required from the organization in Subsection (C)(2) does not require proof or attestation that the organization meets that requirement. It is unclear what the effect of the requirement is, or whether it can be enforced. And, as with the foster care requirements, Tax & Rev is not the proper agency to monitor the number of qualified individuals to whom a foster care organization is providing foster care services.

For these reasons, Tax & Rev suggests: (1) having a different agency certify that a foster care organization meets the requirements of the bill for receipt of qualifying donations; (2) that the organization's certification include proof of the number of qualified individuals receiving foster care services; and (3) that such certification take place on an annual basis

Other Issues: None.

Administrative & Compliance Impact: Tax & Rev will update forms, instructions and publications and make information system changes. Staff training to administer the credit will take place. This implementation will be included in the annual tax year changes.

For Tax & Rev's Administrative Services Division (ASD), implementation of this credit will require 2.0 existing FTEs with 40 hours split between pay-band 70 and 80 positions. Pay band 70 hours are estimated at time and ½ due to extra hours worked required for implementation.

Depending on the number of taxpayers that request this credit, Tax & Rev's Revenue Processing Division (RPD) will need 1 FTE at a pay band of 60 to properly review each credit claim request.

Implementing this bill will have a moderate impact on Tax & Rev's Information Technology Division (ITD) requiring approximately 480 hours or 3 months at a cost of $31,987.

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	ASD – Operating
--	$31.9	--	$31.9	NR	ITD – Staff workload
--	$76	$76	$152	R	RPD – FTE

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

Related Bills: Duplicate of HB-437 (2025 Regular Session)