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FISCAL IMPACT REPORT

SPONSOR Reps. Vincent, Gallegos, Block, and Armstrong/Sen. Paul
LAST UPDATED 03/03/25
ORIGINAL DATE 02/22/25
SHORT TITLE Gaming Tax Exemption In Disaster Area
BILL NUMBER House Bill 447/ec
ANALYST Graeser

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Gaming Tax	Up to (\$400)	Up to (\$1,600.0)	Up to (\$1,600.0)	Up to (\$1,600.0)	Up to (\$1,600.0)	Recurring	General Fund
Purses & Jockey Fees	\$0	\$0	\$0	\$0	\$0	Recurring	Ruidoso Downs and Casino

Parentheses () indicate revenue decreases.
 *Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CGB	No fiscal impact	No fiscal impact	No fiscal impact		Recurring	General Fund
TRD	31.9			31.9	Non-Recurring	General Fund

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

Duplicates Senate Bill 393

Sources of Information

LFC Files

Agency Analysis Received From
 Gaming Control Board (GCB)
 Taxation & Revenue Department (TRD)
 State Racing Commission (SRC)

SUMMARY

Synopsis of House Bill 447

House Bill 447 (HB447) would temporarily exempt a gaming licensee located in an area declared in June 2024 as disaster area due to a wildfire from the gaming tax through July 1, 2029. This area includes Lincoln and Otero Counties and Mescalero Apache Nation. However, because the two casinos located on the Mescalero Apache Nation are liable for the Indian gaming tax, not the gaming tax, these two entities would not benefit from the provisions of this bill.

The Taxation and Revenue Department (TRD) is required to include the costs of this exemption in the annual Tax Expenditure Report. The bill considers an eligible licensee claiming this exemption to have waived its privacy right, allowing TRD to report relevant information in the Tax Expenditure report. This provision is redundant, since 7-1-8.3. Information that may be revealed to public allows TRD to reveal returns information to the public for the gaming tax imposed pursuant to Chapter [60](#), Article [2E](#) NMSA 1978.

This bill contains an emergency clause and would become effective immediately on signature by the governor. The provisions are applicable the first day of the month following signing of the bill. This will be April 1, 2025. The provisions sunset as of July 1, 2029. TRD notes that a more realistic and feasible effective date is July 1, 2025 (See Administrative Impacts).

FISCAL IMPLICATIONS

LFC staff analysis indicates that, due to the provisions of the bill, only the Ruidoso Downs and Casino would be eligible for the exemption. According to the Gaming Control Board (GCB), Ruidoso Downs and Casino paid \$1.6 million in gaming tax in the most recent fiscal year before the fire and flood.

TRD explains in more detail the fiscal impacts of this bill:

This bill provides tax relief for gaming operator licensees impacted by wildfire disasters in June 2024, when areas in Lincoln County impacted by the South Fork and Salt Fires were declared a natural disaster.¹ The All-American Ruidoso Downs is the only gaming operator licensee deemed eligible for this exemption. TRD assumes that one quarter of FY2025 may be exempted under the emergency clause. TRD assumes a range up to \$1.6 million per year impact for FY2026 through FY2029. In FY2024, Ruidoso Downs was at approximately 70% of FY2023 net receipts. TRD cannot determine when or if Ruidoso Downs will resume at the level prior to the impact from the South Fork and Salt fires or if revenue will grow in the future. Therefore, TRD used the 2022 and 2023 average tax liability for the upper end of the range. The lower end of the range is representative of the fact that it is unclear if the Ruidoso Downs will be at full operation in the coming years.

GCB notes that pursuant to Section 60-2E-47(E) NMSA 1978, Racetrack Casinos pay:

1. Twenty percent of net take solely to purses in accordance with rules adopted by the state racing commission; and
2. One and two-tenths percent of net take solely to offset the costs of jockey and exercise rider insurance and to comply with federal and state laws affecting horse racing.

The NM Racing Commission (NMRC) similarly notes these two distributions from the gaming operator net take. Ruidoso Downs Racetrack will still be responsible for the weekly contribution of 20 percent net take from slot revenue to its gaming account for eventual payment of purses and one and two-tenths percent net take, under NMSA Section 60-2E-47(E)(1)(2), for the offset of jockey and exercise rider insurance and for compliance with state and federal law.

Both GCB and NMRC expect that the reduction in gaming taxes will increase the distributions

¹ <https://www.governor.state.nm.us/2024/06/20/president-biden-approves-major-disaster-declaration-request-for-new-mexico/>

for purses and jockey and exercise rider insurance. LFC notes, however, that “net take” is not reduced by the gaming tax or increased by the gaming tax exemption and the purse and jockey insurance deductions would not be reduced or increased by the gaming tax exemption.

This bill creates or expands a tax expenditure with a cost that is significant. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. In addition, LFC is concerned about the fairness of exempting one taxpayer from a significant tax liability and not creating similar deductions or exemptions for other businesses or individuals with uncompensated damage from the fire and subsequent floods.

TRD collects the gaming tax. Although the exemption will be instructed, only a single taxpayer benefits so administrative implications should be minimal.

GCB is not involved in the administration of the tax.

SIGNIFICANT ISSUES

TRD notes the following significant issues:

New Mexico has seen how the frequency and costs of natural disasters has increased recently. These disasters include droughts, severe storms, wildfires, floods in recently burned areas, and even a tropical cyclone.² In 2024, several wildfires cause damage to homes, vehicles, businesses, agriculture and other infrastructure in New Mexico at an estimated cost of over \$1.8 billion. The most impactful wildfires in 2024 were the South Fork and Salt Fires that began on June 17, 2024 near Ruidoso. They spread rapidly due to strong winds and destroyed over 1,400 structures. The Federal Emergency Management Agency (FEMA) has identified six Counties in New Mexico that face a relatively high wildfire risk: Colfax, Santa Fe, Lincoln, Otero, Roosevelt, and Lea.³

Providing tax relief to those affected businesses might help them weather difficult economic times and make New Mexico’s wildfire-prone areas more resilient. However, the bill creates inequity between gaming businesses outside of the disaster area such as the Mescalero Apache’s Inn of the Mountain Gods Resort and Casino, which is subject to the Indian Gaming Compact and not to the Gaming Tax, and for non-gaming businesses inside the disaster area that are not afforded an exemption under other tax programs. In addition, the exemption extends for five years adding another level of inequity between other businesses in the area subject to other taxes while they recover and remain in business.

While tax incentives can support specific industries or promote desired social and economic behaviors, the growing number of such incentives complicate the tax code. Introducing more tax incentives has two main consequences: (1) it creates special treatment and exceptions within the code, leading to increased tax expenditures and a narrower tax base, which negatively impacts the general fund; and (2) it imposes a heavier compliance burden on both taxpayers and TRD. Increasing complexity and exceptions in the tax code is generally not in line with sound tax policy.

² <https://www.ncei.noaa.gov/access/billions/state-summary/NM>

³ <https://hazards.fema.gov/nri/ma>

GCB notes that pursuant to Section 60-2E-47(B) NMSA 1978, the gaming tax is “twenty-four and eight-tenths percent of the net take of every other gaming operator licensee.” Pursuant to Section 60-2E-3(FF) NMSA 1978, “net take” means the total of the following, less the total of all cash paid out as losses to winning patrons and those amounts paid to purchase annuities to fund losses paid to winning patrons over several years by independent administrators: (1) cash received from patrons for playing a game; (2) cash received in payment for credit extended by a licensee to a patron for playing a game; and (3) compensation received for conducting a game in which the licensee is not a party to a wager.

LFC is somewhat concerned that this is a tax exemption for a single taxpayer. The restrictions in the provisions of the bill restrict the exemption to a single taxpayer. This bill would create a significant disparity between the Ruidoso Racetrack and Casino and the Apache Casino and the Inn of the Mountain Gods Casino – both located on the Mescalero Indian Nation territory. The gaming tax exemption for Ruidoso Racetrack and Casino significantly alters the competitive positions between the casinos. Additionally, many businesses and residents were damaged by the fires and floods. The provisions of this bill identify a single entity for tax benefit and extends that benefit for over five years.

As noted in the description, the waiver for disclosure of information for a single taxpayer is irrelevant. This information may currently be revealed to the public pursuant to 7-1-8.3: “Information that may be revealed to public....B. return information with respect to the taxes or tax acts administered pursuant to Subsection B of Section [7-1-2](#) NMSA 1978.” The gaming tax is a Subsection B tax.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill’s requirement to include this exemption in the annual Tax Expenditure Report required by 7-1-84 NMSA 1978. The purpose of this exemption is not clear.

ADMINISTRATIVE IMPLICATIONS

TRD will update forms, instructions and publications and make information system changes. Implementing this bill will have a moderate impact on TRD’s Information Technology Division (ITD) requiring approximately 480 hours or 3 months at a cost of \$31,987. TRD currently receives monthly gaming operator tax returns electronically from the GCB. This administrative impact estimate includes updating a data exchange specification between TRD and the GCB to include a new gaming tax exemption field. This will require coordination with the GCB. Considering the effort to implement this bill and the effective date of the Emergency clause, a more feasible effective date is July 1, 2025.

TRD will work with the Gaming Control Board (GCB) to ensure the GCB provides TRD with sufficient data to accommodate the processing of this new gaming excise tax exemption. This data is necessary to ensure TRD is able to process the exemption smoothly, rather than assessing the tax liability and then following the tax abatement process.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates Senate Bill 393.

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy:** Revenue should be adequate to fund needed government services.
- **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity:** Different taxpayers should be treated fairly.
- **Simplicity:** Collection should be simple and easily understood.
- **Accountability:** Preferences should be easy to monitor and evaluate

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	Met?	Comments
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.	X	
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. Clearly stated purpose Long-term goals Measurable targets	X X X	The purpose is not stated.
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	:✓	Required b 7-1-84 NMSA 1978. Includes waiver of confidentiality.
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. Public analysis Expiration date	X :✓	No targets
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. Fulfills stated purpose Passes “but for” test	X X	
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	?	
Key: ✓ Met ✗ Not Met ? Unclear		

POSSIBLE QUESTIONS

Is a tax exemption granted to one taxpayer fair and constitutional?

LG/r/SL2/r/SL2