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FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Sens. Wirth and Gonzales/Rep. Parajon	**ORIGINAL DATE**	2/12/24
SHORT TITLE	$100,000 Standard GRT Deduction	**BILL NUMBER**	Senate Bill 141
		ANALYST	Torres

APPROPRIATION*
(dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
$100.0		Nonrecurring	General Fund

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

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
CIT			$164,000	$168,200	$173,000	Recurring	General Fund
GRT		($182,100)	($182,100)	($182,100)	($182,100)	Recurring	General Fund
GRT		($121,400)	($121,400)	($121,400)	($121,400)	Recurring	Local Governments

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

Sources of Information
LFC Files

Agency Analysis Received From
New Mexico Attorney General (NMAG)
Economic Development Department (EDD)
New Mexico Municipal League (NMML)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Senate Bill 141

Senate Bill 141 (SB141) increases the corporate income tax rate from 5.9 percent to 6.9 percent and modifies the definition of "engaging in business" for tax purposes to include out-of-state businesses meeting a $100 thousand gross receipts threshold rather than a taxable gross receipts threshold. The bill also provides a gross receipts tax (GRT) deduction of up to $100 thousand for taxpayers who did not claim any GRT credit, deduction, or exemption in the prior calendar year.

Additionally, the bill appropriates $100 thousand to the Taxation and Revenue Department (TRD) for administrative updates required by the bill.

The effective date of the tax change is January 1, 2026. The appropriation will be available June 20, 2025, if enacted.

FISCAL IMPLICATIONS

LFC and TRD calculated the estimated corporate income tax (CIT) tax base based on the Consensus Revenue Estimating Group (CREG) December 2024 forecast. The higher 6.9 percent tax rate was applied to the estimated tax base and then used to calculate the net growth in revenue. This tax base includes the estimated revenue from pass-through entity (PTE) filers who as of FY24 are now included in the revenue under CIT. Per Section 7-3A-10(C) NMSA 1978, these taxpayers who have elected the entity-level tax will pay income tax liability at the higher of the maximum tax rate under personal income tax (PIT), 7-2-7 NMSA 1978 or under CIT, 7-2A-5 NMSA 1978. Because the CIT rate is now higher than the top rate in PIT, these filers will also have a higher tax liability. It is assumed that despite a higher income tax liability, the election of entity-level tax is still advantageous over the tax liability impact for federal income tax due to the state and local tax (SALT) deduction cap.

The removal of the term "taxable" in Section 2 of the bill broadens the definition of "engaging in business," potentially creating a nexus for businesses that currently do not have a reporting requirement in New Mexico. This change could result in increased gross receipts tax (GRT) revenue by expanding the tax base to include additional businesses, including out-of-state entities. However, it may also lead to a significant rise in the number of taxpayers eligible for deductions, credits, or exemptions that they had not previously claimed, resulting in potential revenue losses for both the state and local governments. The offsetting risks are assumed to net and also are difficult to estimate and are, therefore, not represented in the tables on page 1.

Section 3 of the bill allows businesses to deduct up to $100 thousand in gross receipts over any 12-month period, with amounts exceeding this threshold remaining subject to GRT. Data from the RP500 report for fiscal year 2024 was used to estimate the number of eligible taxpayers and applied findings from a prior study conducted by Ernst & Young, LLP and Georgia State University on New Mexico's GRT.[1] Based on this analysis, 93 percent of taxpayers could claim this credit. The estimated fiscal impact was projected using GRT revenue growth assumptions from the December 2024 Consensus Revenue Estimating Group (CREG) forecast and adjusted for the statewide effective GRT rate.

The fiscal impact of the deduction is partially offset by the bill's provision that prohibits taxpayers from claiming both the $100 thousand deduction and any other GRT credit, deduction, or exemption within the same taxable period. This restriction could reduce the cost of existing tax expenditures, though the magnitude of this effect remains indeterminate.

The appropriation of $100 thousand contained in this bill is a nonrecurring expense to the general fund.

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[1] https://www.nmlegis.gov/handouts/RSTP%20062518%20Item%203%20EY%20Tax%20Study%20Final%20Report.pdf

This bill creates or expands a tax expenditure. Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

Currently, out-of-state businesses with taxable gross receipts under $100 thousand do not file or pay the GRT while in-state businesses are required to file and pay. By providing this deduction, local businesses will have a leveled competitive landscape with out-of-state firms on a GRT basis.

Further, the bill may provide economic benefits by reducing tax burdens on small businesses, potentially enabling greater investment, employment, and business expansion. However, the extent to which the credit stimulates business activity sufficient to offset the loss in tax revenue is uncertain. The effectiveness of the credit in promoting economic growth should be evaluated throughout the period it remains in effect and after. Evaluation and sunset of the credit are not included in the bill.

However, this bill narrows the gross receipts tax (GRT) base. Many New Mexico tax reform efforts over the last few years have focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state's largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

Moreover, the GRT is significantly more stable than the corporate income tax, and erosion of the GRT and replacement with greater corporate income taxes is likely to exacerbate revenue volatility within the general fund. This is due to a broad base across industries which are subject to the GRT and who would benefit from the proposed deduction, compared with the corporate income tax which is even more dependent on the oil and gas industry than the GRT.

Businesses prefer economic certainty to support making strategic investments and business plans which also applies to the tax code. Changing the tax code and in this case the tax rates would be the seventh change to the CIT brackets in 11 years as detailed in the table below. The most recent change to a flat rate of 5.9 percent will only have been in place for one calendar year when the CIT rate increase proposed in this bill takes effect. TRD notes this uncertainty is seen by corporations as creating a less favorable business environment.

<table>
<tr><th colspan="8">Table 1 – Historical and Current New Mexico CIT rates</th></tr>
<tr><th>Taxable Income</th><th>1987-2013</th><th>2014</th><th>2015</th><th>2016</th><th>2017</th><th>2018-2024</th><th>2025 - present</th></tr>
<tr><td>Up to $500,000</td><td>4.8%</td><td>4.8%</td><td>4.8%</td><td>4.8%</td><td>4.8%</td><td>4.8%</td><td rowspan="3">5.9%</td></tr>
<tr><td>$500,000.01 to $1,000,000</td><td>6.4%</td><td>6.4%</td><td>6.4%</td><td>6.4%</td><td rowspan="2">6.2%</td><td rowspan="2">5.9%</td></tr>
<tr><td>Over $1,000,000</td><td>7.6%</td><td>7.3%</td><td>6.9%</td><td>6.6%</td></tr>
</table>

Agency Analysis

TRD raises concerns about the impact of this bill on corporate income tax (CIT) rates and its implications for pass-through entities (PTEs). Under current law, the highest CIT and personal income tax (PIT) rates are equal at 5.9 percent. This bill increases the CIT rate to 6.9 percent, automatically raising the tax rate for entities that elect to pay at the entity level because they are required to use the higher of the PIT or CIT rates. TRD notes this creates an inequity among businesses based on their organizational structure; many PTEs—such as LLCs and sole proprietorships—do not elect to pay at the entity level and instead pass income through to their owners, who pay under the Income Tax Act. Businesses may expend additional resources analyzing whether to restructure or alter their tax filing status at both the state and federal levels to optimize their tax liability.

TRD also highlights concerns regarding the volatility of CIT revenue in New Mexico, which is heavily influenced by oil and gas industry fluctuations. The inclusion of new PTE revenue under CIT may increase this volatility, particularly as taxpayer behavior regarding the new entity-level tax continues to develop. Additionally, potential changes to federal tax policy, such as modifications to the Tax Cuts and Jobs Act of 2017 and its state and local tax (SALT) deduction cap, could further alter PTE filing preferences. The fiscal impact of this bill assumes that PTE filers will maintain current election patterns, but TRD cautions the rate increase introduces additional uncertainty in future taxpayer behavior and revenue projections. However, the bill maintains horizontal equity by applying the CIT rate increase uniformly to all taxpayers.

Regarding Section 3, TRD notes the proposed tax incentive will primarily benefit small businesses and their customers. Because businesses cannot deduct taxes they do not collect from customers, the primary impact of the bill will be a reduction in the cost of goods and services for consumers. While the direct financial benefit to small businesses may be limited, they could see indirect benefits through increased sales because lower tax burdens on consumers may lead to higher spending.

TRD notes, while the deduction aims to provide tax relief, it introduces compliance challenges for businesses, particularly small businesses lacking dedicated accounting resources. Tracking eligibility on a monthly basis may increase filing costs and errors, and larger businesses with multiple locations may struggle to determine when they exceed the threshold and must begin collecting tax again.

TRD warns the deduction could create competitive imbalances. Businesses still collecting GRT may be at a disadvantage compared to those temporarily exempt. Consumer behavior may shift toward businesses that have not exhausted their deductible amount, leading to unpredictable sales fluctuations. Additionally, the potential for abuse—such as improper claims or misreporting—could result in lost tax revenue and increased enforcement efforts.

Finally, the fiscal impact includes an estimated 4 percent loss of GRT general fund revenue in FY26 and FY27, with partial offsetting from the proposed corporate income tax (CIT) rate increase in Section 1. However, TRD notes that CIT is more volatile than GRT, making revenue projections uncertain.

ADMINISTRATIVE IMPLICATIONS

TRD notes the Audit and Compliance Division and the Legal Services Bureau do not have existing resources necessary to ensure taxpayers do not abuse this deduction by artificially splitting into multiple taxpayers to lower receipts or to address protests that will occur if TRD attempts to enforce this provision. TRD estimates that it will need 1 FTE employee at a pay band 70 to ensure compliance and audit functions on a reoccurring basis.

TRD will need to implement a process to confirm the taxpayer qualifies for the deduction by doing a lookback of prior returns and checking for credits and deductions. TRD finds exemptions will be impossible to track since they are not claimed on the return. Some taxpayers may be filing for this deduction while taking exemptions, and TRD does not have a way to review for exemptions. TRD will also need to implement a process to be able to identify companies that restructure to create subsidiaries for the purpose of the deduction. This will ensure the deduction is only allowed once.

TECHNICAL ISSUES

This bill likely intends to offer this deduction year after year. However, as written, the deduction could only be taken once every other year because taking the deduction in one year disqualifies a filer for the next year. To correct this, in subsection A, on page 2, on line 21, after the word "exemption" , add "excluding the one for this section" so that lines 19 through 22 read in part: "deducted from the gross receipts of a taxpayer that did not claim a credit, deduction or exemption excluding the one for this section pursuant to the Gross Receipts and Compensating Tax Act in the previous calendar year."

TRD suggests in Subsection A, page 2, line 19, that "any twelve-month period" be changed to "the calendar year." It will then read on line 19: "during the calendar year may be deducted . . ." This will bring clarity for taxpayers and TRD tracking deductions and align the application of both the eligibility on lines 22 and 24 of "engaged in business in each month of the previous calendar year" with claiming deductions then in the following calendar year.

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.	✗	
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	✗	
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✓	
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	✗	
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	?	
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	?	
Key: ✓ Met ✗ Not Met ? Unclear		

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