

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Sens. Paul and Campos/Rep. Vincent **ORIGINAL DATE** 2/23/2025

BILL

SHORT TITLE Gaming Tax Exemption in Disaster Area **NUMBER** Senate Bill 393/ec

ANALYST Graeser

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Gaming Tax	(\$393.0)	(\$1,570.0)	(\$1,570.0)	(\$1,570.0)	(\$1,570.0)	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	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Duplicates House Bill 447

Relates to House Bills 326, 191, and 367 and Senate Bill 33

Sources of Information

LFC Files

Agency Analysis Received From

Gaming Control Board (GCB)

Tourism Department (TD)

Agency Analysis was Solicited but Not Received From

Taxation & Revenue Department (TRD)

State Racing Commission (SRC)

SUMMARY

Synopsis of Senate Bill 393

Senate Bill 393/ec (*SB393) would temporarily exempt a gaming licensee located in an area

declared in June 2024 as a 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 licensees claiming this exemption to have waived its privacy right, allowing TRD to report relevant information in the Tax Expenditure report.

This bill contains an emergency clause and would become effective immediately on signature by the governor. The provisions sunset as of July 1, 2028.

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 almost \$1.6 million in gaming tax in the most recent fiscal year before the fire and flood.

GCB also 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.

LFC notes, however, that “net take” is not reduced by the gaming tax or increase 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

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 loses 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 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 four years.

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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates House Bill 447.

Tourism Department notes several other related bills:

Relates to House Bill 326, Small Business Disaster Relief Tax Credit.

Relates to Senate Bill 33, Wildfire Prepared Act.

Relates to House Bill 191, Wildfire Suppression & Preparedness Funds.

Relate to House Bill 367, Add Days of Live Horse Racing

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	X	

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

LG/rl/SL2/hj