

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: HB 269a

48th Legislature, 2nd Session, 2008

Short Title: Classroom Supply Tax Credit

Sponsor(s): Representative Nathan P. Cote and Others

Analyst: Frances R. Maestas

Date: February 5, 2008

AS AMENDED

The House Education Committee (HEC) amendment extends the repeal date to January 1, 2012 from January 2, 2009. The tax credit would be in effect for a period of four years beginning with tax year 2008.

Original Bill Summary:

HB 269 adds a new section to the *Income Tax Act* to, beginning in tax year 2008, provide a personal income tax credit for Public Education Department (PED) licensed teachers employed in public or accredited private K-12 school in New Mexico for classroom supplies as defined by Taxation and Revenue Department (TRD) rule.

The bill provides a tax credit of between \$50 and \$250 based on the modified gross income¹ of the teacher as follows:

Modified Gross Income	Maximum Tax Credit
Up to \$71,000	\$250
More than \$71,000 but less than \$72,000	\$200
More than \$72,000 but less than \$73,000	\$150
More than \$73,000 but less than \$74,000	\$100
More than \$74,000 but less than \$75,000	\$ 50

Among its other provisions, HB 269:

- allows any portion of the tax credit that remains unused to be carried forward for four consecutive taxable years;
- contains a repeal date of January 1, 2009.

Fiscal Impact:

HB 269 does not contain an appropriation.

¹ The *New Mexico Income Tax Act* (Section 7-2-2, NMSA 1978.) defines “modified gross income” as all income (including gifts, social security and worker’s compensation, public assistance, and welfare benefits, business profits, dividends, royalties, alimony and similar income) undiminished by losses from whatever source derived. This applies to the total combined income of the taxpayer and his/her spouse and dependents.

The TRD bill analysis, however, estimates a \$5.3 million revenue impact to the General Fund for FY 09. The estimate assumes that 95 percent of approximately 22,000 teachers would take the \$250 tax credit and the remaining 5.0 percent would take the \$100 credit:

95 percent of 22,000 teachers = 20,900 teachers X \$250 = \$5,225,000	
5 percent of 22,000 teachers = 1,100 teachers X \$100 = \$ 110,000	
Total	\$5,335,000

TRD also cites a study by the National School Supply and Equipment Association from Maryland that indicates teachers spend, on average, \$458 of their own money annually on classroom materials and supplies.

Issues:

- HB 269 limits the tax credit to individuals who have obtained a valid PED teaching license and addresses only licensed K-12 teachers. The term “teacher” is defined in [Subsection Z of Section 22-1-2 NMSA 1978] as “a person who holds a level one, two, or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers.” School librarians are included within this definition.
- According to the PED bill analysis, the provisions of HB 269:
 - implicate the Establishment Clause of the US Constitution primarily because the tax credit proposed for private school teachers applies only to those employed in **accredited** private schools, including religious nonpublic schools. In an analysis of a similar bill, PED stated that Agostini v. Felton, 521 US 20 (1997) and Mitchell v. Helms, 530 US 793 (2000) indicate that aid to nonpublic schools will be upheld under the Establishment Clause *only* if it is offered neutrally to all private schools without regard to religious affiliation;
 - do not provide a mechanism for verifying these expenditures;
 - do not require a taxpayer to itemize the claimed expenditures; and
 - since not all charter schools provide K-12 instruction, HB 269 would exclude licensed teachers employed in these schools.
- In 2007, legislation was enacted to amend the *Instructional Material Law* to allow school districts to use up to 25 percent of their instructional material allocation for other classroom materials, including classroom supplies for their teachers.
- The federal government provides a similar initiative for teachers. According to the federal Internal Revenue Service (IRS) website, an “eligible educator” is eligible for a federal **tax deduction** up to \$250 for unreimbursed expenses paid or incurred for books, supplies, computer equipment (including related software and services), other equipment, and supplementary materials used in the classroom. For courses in health and physical education, expenses for supplies are qualified expenses only if they are related to athletics. The IRS defines an “eligible educator” includes a K-12 teacher, instructor, counselor, principal, or aide who work at least 900 hours a school year in a school that provides elementary or secondary education, as determined under state law.

In tax year 2005, the IRS reports, teachers and educators deducted just over \$893.0 million of these out-of-pocket classroom expenses.

The IRS indicates that a **tax credit** provides direct reductions to an individual's tax liability and a **tax deduction** is a reduction in taxable income made prior to the calculation of tax liability, as shown in the following example:

Tax credit - A tax credit reduces your taxes directly. If you earn \$1,000 at a 10% tax rate, you owe \$100 in taxes. A \$100 tax credit would reduce your taxes by \$100 and you would owe nothing.

Tax deduction - A tax deduction reduces your taxable income. In the example above, a \$100 tax deduction would reduce your taxable earnings by \$100; but would reduce your tax liability by only \$10.

Related Bill:

SB 462 *Certain Scholarship Donations Tax Credit*