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

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 02/27/13
SPONSOR Lewis **LAST UPDATED** **HB** 559

SHORT TITLE Small Business Gross Receipts **SB**

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	**FY14**	**FY15**	**FY16**	**FY17**		
$0.0	($55,500.0)	($58,000.0)	($61,500.0)	($64,000.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 559 amends the Gross Receipts and Compensating Tax Act to provide a new gross receipts tax (GRT) credit for small businesses. A small business that files a gross receipts tax return may, by April 15 of each calendar year, claim the new credit (in the amount specified below) against the state portion of gross receipts tax paid during the 2013 and 2017 calendar years. If the total gross receipts in the previous calendar year was:

Over:	But not over:	The tax credit shall be:
$0	$40,000	1.00 x gross receipts tax paid
$40,000	$45,000	0.88 x gross receipts tax paid
$45,000	$50,000	0.76 x gross receipts tax paid
$50,000	$55,000	0.64 x gross receipts tax paid
$55,000	$60,000	0.52 x gross receipts tax paid
$60,000	$65,000	0.39 x gross receipts tax paid
$65,000	$70,000	0.26 x gross receipts tax paid
$70,000	$75,000	0.12 x gross receipts tax paid.

A credit amount must be first deducted from the taxpayer's gross receipts tax liability and any excess will be refunded to the taxpayer. The credit must be stated separately by the taxpayer on a form provided by the Taxation and Revenue Department (TRD). The TRD is also required to annually report to the Revenue Stabilization and Tax Policy Committee the aggregate amount of tax credits taken pursuant to this section, the number of taxpayers claiming the tax credit and any other information that is necessary to determine that the tax credit is performing the stated purpose. The purpose of the credit is to help support small businesses in New Mexico and promote job creation.

For purposes of this credit "small business" means a business:

(1) with fewer than ten employees, including all persons for whom the business pays part or all of the person's social security taxes due pursuant to the Federal Insurance Contributions Act; and

(2) that has paid gross receipts taxes pursuant to the provisions of the Gross Receipts and Compensating Tax Act for at least twelve months prior to the first year in which a credit pursuant to this section is taken.

Effective Date: Not specified

FISCAL IMPLICATIONS

The TRD notes that nearly all businesses in New Mexico can be classified as small businesses. According to the U.S. Small Business Association, over 96 percent businesses in New Mexico have either no employees, or fewer than twenty. Therefore, with no way to directly measure which firms have less than ten employees, it is relatively safe to assume that all firms reporting less than $75,000 in gross receipts would qualify as small by the number of employees. This estimate should be understood, then as a ceiling.

In FY12 there were 72,501 firms that filed gross receipts amounts below $75,000 that would have benefited from this credit. Based on confidential taxpayer information for Fiscal Years 2010, 2011 and 2012, the proposed credit would have an impact of approximately $54 million per year in foregone GRT borne by the General Fund. Forecast amounts adjusted based on forecast GRT growth rates.

This bill may be counter to the Legislative Finance Committee (LFC) tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

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 expenditure's 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.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since the TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

The TRD reports a high impact. Many businesses will qualify and will be submitting credit claims on April 15th, which is also the due date of many other tax forms, and payments including personal income tax returns, adding additional processing costs for an already high peak period. The TRD does not have the permanent or temporary employees to process this bill if it went into law. The TRD would require more than 20 temporary employees to effectively manage the bill. This will assist to reduce any interest paid. Changes will need to be made to GenTax to account for the credits allowed. The online application would need to be modified. A new credit claim form and instructions would be needed at a cost of $6,000.

TECHNICAL ISSUES

The TRD notes the following:

- The bill requires the Department to refund the amount of the tax credit in excess of GRT liability within one hundred twenty days after the date the taxpayer claimed the tax credit. There is no enforcement or penalty for the Department failing to meet this deadline, and the reality is that some credits and refunds may take longer to approve than 120 days, depending on when the credit is claimed, staffing levels of the Department, and the backlog of other credits and refunds. Also, a conflict arises with allowing the credit to be issued within 120 days. Interest is due on a refund after 60 days pursuant to 7-1-68 NMSA 1978. The Department will likely pay interest on these returns.

- There is no effective date specified in this bill. The Department recommends January or July for consistency and ease of administration.

- The phrase “ten employees” needs to be clarified. Are only full time employees counted, or are part time employees counted as well? How will employee turnover affect the count?

- Page 1, line 23. If the intent is to link the gross receipts to what is paid in the previous calendar year, then, insert the word “paid” between “receipts” and “in” on page 1, line 23. This will eliminate the potential interpretation that the calculation of the credit is to be applied to the gross receipts reported in the calendar year, versus the gross receipts tax paid in the calendar year. Gross receipts are reported in the month following the end of the calendar month, so that December gross receipts will be paid in the following year.

- Page 1, line 23. If the intent is to link the gross receipts to what is paid in the previous calendar year, then, insert the word “paid” between “receipts” and “in” on page 1, line 23. This will eliminate the potential interpretation that the calculation of the credit is to be