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

		ORIGINAL DATE	1/18/22		
SPONSOR	Gallegos	**LAST UPDATED**	1/27/22	**HB**	39
SHORT TITLE	GRT Deduction For Nonathletic Special Events			**SB**	
				ANALYST	Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24	FY25	FY26		
	($26.0)	($26.0)	($26.0)	($26.0)	Recurring	NM Youth Conservation Corps
	($36.0)	($36.0)	($36.0)	($36.0)	Recurring	State Park & Rec Area Capital
	($3.0)	($3.0)	($3.0)	($3.0)	Recurring	Office of Cultural Affairs
	($192.0)	($192.0)	($192.0)	($192.0)	Recurring	Public Projects Revolving Fund

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	$0.0	$0.0	$0.0	Recurring	TRD Operating

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
New Mexico State University (NMSU)

SUMMARY

Synopsis of Bill

House Bill 39 extends the Gross Receipts and Compensating Tax Act deduction of 7-9-104 NMSA 1978 to be effective for five more years until July 1, 2027. This deduction is known as the non-athletic special event at post-secondary educational institution deduction.

The effective date of this bill is July 1, 2022. The provisions of the bill sunset July 1, 2027.

FISCAL IMPLICATIONS

This bill may be counter to the 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.

The following data were extracted from various editions of Taxation and Revenue Department's (TRD) Tax Expenditure Reports. "Claims" may be the number of events held in the Pan American Center at New Mexico State University (NMSU) in a particular month. Gross ticket sale figures were provided by NMSU's Auxiliary Business Support Office and used to estimate the cost of this deduction. Due to COVID-19 health recommendations, events scheduled for FY21 have been postponed to a later date. The unusually large impact in 2017 is attributed to a Garth Brooks concert.

	Fiscal Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Nonathletic Special Event at NMSU GRT Deduction	Claims	11	8	9	11	9	11	10	10	7	4	0
	State General Fund Expenditure (thousands)	$71	$68	$88	$78	$71	$126	$238	$90	$38	$8	$0
	Local Government Expenditure (thousands)	$58	$45	$58	$52	$47	$80	$160	$57	$23	$4	$0

TRD discounted the FY20 and FY21 deductions because of cancelled concerts attributed to Covid-19 rules and estimates a negative general fund revenue impact of $200 thousand and a negative local government revenue impact of $130 thousand for fiscal years FY23 through FY27.

The analysis of the fiscal impact of this bill then is somewhat difficult. The text of TRD's Tax Expenditure Report and the text of NMSU's comments on this bill implies that the performers at the Pan American Center are claiming the deduction against gross receipts tax and the Pan American Center is claiming the deduction against governmental gross receipts. This is quite proper.

The counterfactual analysis would then be if this deduction were to expire, then Pan American Center would issue a nontaxable transaction certificate (NTTC) pursuant to Section 7-9-48 NMSA 1978 for resale of services to Pan American Center and, in order to qualify to issue the NTTC, the Pan American Center would be required to report and pay the government gross receipts tax. Therefore, the revenue loss shown in the revenue table on page 1 reports the loss, not of gross receipts tax, but to the beneficiaries of the governmental gross receipts tax. This analysis is based on $5.1 million in average ticket sales.

What this analysis implies is that with or without the deduction, the performers would have no GRT liability. The benefit of this deduction is strictly enjoyed by the Pan American Center which is relieved of the governmental gross receipts tax burden. However, prior to the Section 7-9-104 NMSA deduction, Pan American Center, by contract, passed the GGRT liability to the producers and performers.

See TECHNICAL IMPLICATIONS for explanation.

SIGNIFICANT ISSUES

Per the 2015 Tax Expenditure Report, according to NMSU, the vast majority of non-athletic events held at the Pan American Center would otherwise be held in various venues located in El Paso, Texas if it was not for the incentive generated by this deduction.

The 2012 Tax Expenditure Report highlighted the history of this deduction, stating that prior to

2007 when the original deduction was enacted, the Pan American Center at NMSU applied the governmental gross receipts tax to income from special events. After the gross receipts tax deduction was enacted, the performer contracts were revised to take advantage of the gross receipts tax deduction. Without this tax expenditure, the Pan American Center would presumably revise contracts to move the receipts, once again, under governmental gross receipts tax provisions.

{LFC staff note: this testimony implies that, prior to the 7-9-104 NMSA 1978 deduction, the Pan American Center passed the governmental gross receipts tax liability to the performers by contract in exchange for relieving the performers of the regular gross receipts tax liability. Because of the available deduction of 7-9-48 NMSA 1978 resale of services, the performers could have received an NTTC from Pan American Center provided that the Center paid the governmental gross receipts tax. Passing the GGRT liability the performers by contract was elected, not required. Ultimately, because this deduction benefits the Pan American Center, concert attendees also benefit in terms of ticket prices somewhat less than would otherwise be required or would not have been able to experience the concert in Las Cruces, but would have had to travel to an El Paso venue in order to participate in the concert experience.}

Event promoters and performers that receive proceeds from ticket sales get the direct benefits of this tax expenditure. An argument can be made that but for the gross receipts deduction, promoters would host these events in El Paso, Texas where ticket sales are not subject to taxation. If this is true, the benefit of the tax expenditure encompasses all economic activity associated with these special events including certain vendor sales, hotel stays, and other goods and services purchased by attendees. These additional economic benefits from the direct expenditures on promotion and ticket sales associated with performing arts, sports and public figures can be asserted to have indirect and induced economic output multiplier effects of 1.894.[1]

NMSU analysis states the intent of the GRT deduction initially granted in July of 2007 was to neutralize an unfair competitive edge University of Texas El Paso (UTEP) facilities had over NMSU's facilities, including the Pan Am, in attracting and contracting major concert and performance events. The competitive disadvantage resulted when performers faced with the comparative option of playing a concert at either the UTEP (tax exempt) or NMSU (Pan Am). Performers would opt to play the UTEP facility because of a tax exemption from payment of sales and use tax granted since 1983. This disincentive is potentially strengthened as artists, tour managers and concert promoters consider Las Cruces and El Paso as a single geographic area when identifying concert sites. Thus, artists may be more inclined to perform in a location that offers the most financial advantage, as the 5 percent GRT payment would potentially result in lost revenue to the performers of between \$20 thousand to \$50 thousand, depending on concert gross receipts.

Since the enactment of the deduction, NMSU Pan Am has competed and contracted a list of major events. The list of attracted events include major national concert tours with a wide range of major artists such as Luke Bryan, Carrie Underwood, Trans-Siberian Orchestra, World Wrestling Entertainment, Jeff Dunham, and multiple appearances by legendary artists like

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[1] Sector 404, Promoters of performing arts and sports and agents for public figures, Final Output Multipliers (Direct, Indirect, and Induced effects), New Mexico State Table, Minnesota IMPLAN Group, Inc., © 2012.

George Strait and Garth Brooks. NMSU states that without the deduction, events and economic benefits would be reduced at a high rate.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since 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. However, TRD reports its estimate of the impact of the provisions of this bill in its annual Tax Expenditure Report using data obtained from NMSU business office. The deduction is not separately reported.

TECHNICAL IMPLICATIONS

As indicated in FISCAL IMPLICATIONS, the analysis of the provisions of this bill are not absolutely clear. There are three sections of the statute that are relevant to the analysis:

7-9-4.3. Imposition and rate of tax; denomination as "governmental gross receipts tax".
For the privilege of engaging in certain activities by governments, there is imposed on every agency, institution, instrumentality or political subdivision of the state … an excise tax of five percent of governmental gross receipts. The tax imposed by this section shall be referred to as the "governmental gross receipts tax".

7-9-3.2. Additional definition.
A. As used in the Gross Receipts and Compensating Tax Act, "governmental gross receipts" means receipts of the state or an agency, institution, instrumentality or political subdivision from:
(1) the sale of tangible personal property other than water from facilities open to the general public;
(2) the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public;
…
C. As used in this section, "facilities open to the general public" does not include point of sale registers or electronic devices at a bookstore owned or operated by a public post-secondary educational institution when the registers or devices are utilized in the sale of textbooks or other materials required for courses at the institution to a student enrolled at the institution who displays a valid student identification card.

7-9-48. Deduction; gross receipts tax; governmental gross receipts; sale of a service for resale.
Receipts from selling a service for resale may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978. The buyer must resell the service in the ordinary course of business and the resale must be subject to the gross receipts tax or governmental gross receipts tax.

7-9-104. Deduction; gross receipts; nonathletic special event at post-secondary educational institution.
Receipts received from July 1, 2007 through June 30, 2022 from admissions to a nonathletic special event held at a venue that is located on the campus of a post-secondary educational institution within fifty miles of the New Mexico border and that accommodates at least ten thousand persons may be deducted from gross receipts or from governmental gross receipts.

Without the deduction Section 7-9-104 NMSA 1978 (this bill), receipts from non-athletic performances at Pan American Center at NMSU would be taxable pursuant to the governmental gross receipts tax section of statute 7-9-4.3 NMSA 1978 because of 7-9-3.2(A)(2). This assumes that the performers would receive a non-taxable transaction certificate (NTTC) from the Pan American Center pursuant to the deduction provisions of 7-9-48 NMSA 1978. This deduction is for sale of a service for resale. Having received this NTTC, the performer would have a nominal obligation to report receipts from the venue to TRD, but would claim a deduction pursuant to 7-9-48 NMSA 1978 equal to the receipts. This procedure then requires that the Pan American Center report and pay the 5 percent governmental gross receipts tax imposed on the receipts deducted by the performer. Apparently, prior to the 7-9-104 NMSA 1978 deduction, the Pan American Center would pass the 5 percent GGRT to the performers and performers by contract. The deduction of 7-9-104 NMSA 1978 relieves the promoters and performers of a gross receipts tax liability and the Pan American Center of the GGRT liability

POSSIBLE QUESTIONS

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✓	Has been in statute since 2007.
Targeted Clearly stated purpose Long-term goals Measurable targets	 ✗ ✗ ✗	The purpose of this deduction is not explicitly stated, but history has shown that better events have chosen to book the Pan American Center with the deduction. Note, however, that a careful analysis of the deduction might impose a regular gross receipts tax liability on the performer. The deduction has been renewed at five-year intervals since 2007.
Transparent	✗	Deduction is not separately reported, but collateral data is readily available.
Accountable Public analysis Expiration date	 ✗ ✓	
Effective Fulfills stated purpose Passes "but for" test	 ✓ ?	The purpose of this deduction is not explicitly stated, but history has shown that better events have chosen to book the Pan American Center with the deduction.
Efficient	✗	
Key: ✓ Met ✗ Not Met ? Unclear		

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