# FISCAL IMPACT REPORT

**LAST UPDATED**

**SPONSOR** Jones/Terrazas **ORIGINAL DATE** 1/30/24

**SHORT TITLE** Convenience Store Food Gross Receipts **BILL NUMBER** House Bill 257

**ANALYST** Graeser

## REVENUE*
**(dollars in thousands)**

| Type | FY24 | FY25 | FY26 | FY27 | FY28 | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|---|
| TRD/GRT | | ($7,030.0) | ($7,210.0) | ($7,420.0) | ($7,650.0) | Recurring | General Fund |
| TRD/GRT | | ($4,690) | ($4,800) | ($4,950) | ($5,100) | Recurring | Local Governments |
| TRD/GRT | | ($3,600.0) | ($3,700.0) | ($3,800.0) | ($3,900.0) | Recurring | General Fund – Hold Harmless distributions under 7-1-6.46 and 7-1.6.47 NMSA 1978 |
| TRD/GRT | | $3,600.0 | $3,700.0 | $3,800.0 | $3,900.0 | Recurring | Local Governments – Hold Harmless distributions under 7-1-6.46 and 7-1.6.47 NMSA 1978 |

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

## ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
**(dollars in thousands)**

| Agency/Program | FY24 | FY25 | FY26 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| TRD | $12.2 | $3.6 | | $15.8 | Nonrecurring | General Fund |

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

Conflict and companion bills this session:

| | | |
|---|---|---|
| HB 219 | REDUCE GROSS RECEIPTS TAX RATE | Jason C. Harper |
| HB 257 | CONVENIENCE STORE FOOD GROSS RECEIPTS | Jenifer Jones |
| SB 36 | HEALTH CARE SERVICES GROSS RECEIPTS | Mark Moores |
| SB 54 | SCHOOL GROSS RECEIPTS WEEKEND DATES | Harold Pope |
| SB 174 | CALF CANYON FIRE LEGAL SVCS. GROSS RECEIPTS | Leo Jaramillo |

### Sources of Information

LFC Files

Agency Analysis Received From
New Mexico Municipal League (NMML)
Taxation and Revenue Department (TRD)

Agency Analysis was Solicited but Not Received From
New Mexico Counties (NMC)

## SUMMARY

### Synopsis of House Bill 257

House Bill 257 (HB257) proposes to expand the coverage of the gross receipts tax deduction for food (7-9-92 NMSA 1978) to include some convenience stores. Convenience stores covered by the expansion of this deductions would have to qualify with the following restrictions:

1. Located at least 35 miles from the nearest retail food store;
2. Sells at least 20 percent of the establishment's total sales in staple foods pursuant to the federal supplemental nutrition assistance program (SNAP). For the purpose of calculating the 20 percent qualification floor, SNAP and the state of New Mexico prohibit the store from counting coffee, tea, cocoa, carbonated and non-carbonated drinks, candy, condiments and spices in the 20 percent.

Local Governments would receive food hold harmless distributions under Sections 7-1-6.46 and 7-1.6.47 NMSA 1978 to compensate local governments for the revenue loss pursuant to this expanded deduction.

The effective date of this bill is July 1, 2024. The bill does not provide a sunset date which would allow the legislature to determine costs and benefits of this proposal.

## FISCAL IMPLICATIONS

This bill expands a tax expenditure with a cost that is difficult to determine but likely 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. This bill expands the food tax deduction, which is separately stated. However, it will be difficult for TRD to determine the costs and benefits of this expansion because the separate reporting will be merged in the analysis with the costs and benefits of all retail food establishments claiming the deduction.

The qualifications for this food deduction expansion in coverage are quite narrow and may apply to only a few establishments. A sample of data from the RP80 for NAICS 44512 and 445120 indicates that 101 convenience stores regularly report average total sales of $2.3 million annually, with 72 percent deductions – probably for gasoline sales. However, 13 percent of the deductions are currently reported as eligible for the food deduction. 2019 data imply that total turnover of a convenience store nationwide is $1.73 million, excluding gasoline sales[1]. The RP80

[1] sharpsheets.io/blog/how-profitable-is-a-convenience-

data put average taxable sales per establishment in New Mexico at $732 thousand. While the 20 percent qualification floor excludes coffee, tea, candy and soda, these items would be covered by the expanded food deduction. The excluded items for the 20 percent floor qualification provide the bulk of the turnover subject to the food deduction. Assuming that at least 50 percent of a typical convenience store turnover would be deductible pursuant to this proposal, the costs of the deduction per establishment would be about $26,000, split between the general fund and the local government. Judging from the average total tax rate from the RP80, most convenience stores are situated within municipal boundaries. Further assuming that only 20 percent of the 100 reporting convenience stores would qualify based on the 35-mile criterion, the annual cost would be $310.0 for the general fund and $210.0 for local governments.

The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

TRD expects this credit to be more expensive than LFC's analysis.

| Estimated Revenue Impact* | | | | | R or NR** | Fund(s) Affected |
|---|---|---|---|---|---|---|
| FY24 | FY25 | FY26 | FY27 | FY28 | | |
| -- | ($7,030) | ($7,210) | ($7,420) | ($7,650) | R | General Fund |
| -- | ($4,690) | ($4,800) | ($4,950) | ($5,100) | R | Local Governments |
| -- | ($3,600) | ($3,700) | ($3,800) | ($3,900) | R | General Fund – Hold Harmless distributions under 7-1-6.46 and 7-1.6.47 NMSA 1978 |
| -- | $3,600 | $3,700 | $3,800 | $3,900 | R | Local Governments – Hold Harmless distributions under 7-1-6.46 and 7-1.6.47 NMSA 1978 |

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

The Taxation and Revenue Department (TRD) used taxable gross receipts data identified for specific NAICS codes as reported in the RP-80 report to estimate the revenue loss. Those NAICS codes were used assuming that Miscellaneous Store Retailers and Gasoline Stations with Convenience Stores might apply for this deduction. TRD also assumed that 30% of convenience store sales represent food sales.[2] Considering most convenience stores and retail food stores are clustered in big cities and, therefore, likely lie within a radius of 35 miles of distance, TRD excluded Santa Fe city, Albuquerque, and Las Cruces from the analysis. The fiscal impact used the GRT revenue growth from the December 2023 Consensus Revenue Estimating Group (CREG) forecast and the effective statewide gross receipts tax rate. The fiscal impact also accounts for the impact to the hold harmless payments to municipalities and counties under Sections 7-1-6.46 and 7-1.6.47 NMSA 1978.

LFC defers to TRD for the estimate.

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store/#:~:text=What%20is%20the%20average%20turnover,is%20%241.72%20million%20a%20year.
[2] https://www.convenience.org/Media/Daily/2023/April/19/1-US-C-Store-Sales-Hit-New-Highs-in-2022_Research

## SIGNIFICANT ISSUES

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.

LFC staff note that the current definition of a SNAP eligible food store is that 50 percent of the turnover of an eligible retail food store be of staple food items. This bill reduces that 50 percent floor to 20 percent. Achieving the 20 percent floor would allow the establishment to claim the deduction but would not allow the establishment to qualify to accept EBT payments as a qualified SNAP store. It may be bad policy to confuse the two floor requirements, because SNAP recipients will try to use their SNAP benefits at a convenience store and this payment will fail. Any financial benefits of this expansion of the food deduction will not be received by SNAP recipients, but by the owners of the convenience store.

TRD explains several policy and administrative issues:

> Expanding this deduction aims to aid mainly rural communities where retail food stores are sparse, so residents purchase food at convenience stores to avoid long trips. However, while tax incentives may support particular industries or encourage specific social and economic behaviors, the proliferation of such incentives complicates the tax code. Adding more tax incentives: (1) creates special treatment and exceptions to the code, growing tax expenditures or narrowing the tax base, with a negative impact on the general fund; and (2) increases the burden of compliance on both taxpayers and TRD. Adding complexity and exceptions to the tax code does not comport generally with the best tax policy.
>
> TRD will have no straightforward way of determining whether an individual convenience store is located within 35 miles of a retail food store, and auditing taxpayers who claim this deduction will therefore be difficult. Furthermore, establishments open and close frequently; it is possible that during a tax year a convenience store's distance from a retail food establishment may change due to the opening or closing of a store within or outside of that proximity. The fact that entities may qualify or disqualify during different times of the year adds to administrative.
>
> This bill may result in convenience stores located nearby one another, but more or less than 35 miles from a retail food store, facing different tax regimes. Two convenience stores could be a very short distance from each other, with one eligible for the deduction and another having to pass GRT on to its consumers.

The New Mexico Municipal League comments as follows:

> This expanded GRT deductions for food sales in this bill would have a negative fiscal impact on local governments. The overall cost of the deduction is very uncertain, as is the impact on individual municipalities and counties, as it is unknown how many convenience stores would meet the bill's provision, or where those businesses are located.
>
> Revenue loss to municipalities would negatively impact revenue stability, affecting cities' ability to provide essential public services. public safety, and employee wage increases, among other needs.

The Municipal Leage opposes additional GRT deductions that erode the local gross receipts tax base of municipalities.

Municipalities have already suffered revenue losses due to the deduction on food sales enacted in 2005. While the deduction was offset by a hold harmless distribution, over time, the distributions have been reduced for many cities.

For many communities – especially small ones – exempting food from GRT significantly narrows the tax base. The food deduction also leads to more volatile GRT revenues, as groceries tend to be a fairly stable source of revenue, despite changes in economic conditions.

## PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is partially met with the bill's requirement 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. The problem will be that the convenience store deduction will be accumulated with the deductions claimed by supermarkets and specialty food stores in the reporting. TRD may have no viable means of separating out the convenience store food deductions.

## ADMINISTRATIVE IMPLICATIONS

TRD expects a small, non-recurring impact to implement the provisions of this bill:

TRD will update forms, instructions, and publications and make information system changes. TRD's Administrative Services Division (ASD) anticipates this bill will take approximately 60 and two existing full-time employees (FTE). TRD's Information Technology Division (ITD) estimates that implementing the bill will require approximately 220 hours or about a month and a half and $12,210 of staff workload costs.

| Estimated Additional Operating Budget Impact* | | | | R or NR** | Fund(s) or Agency Affected |
|---|---|---|---|---|---|
| FY24 | FY25 | FY26 | 3 Year Total Cost | | |
| -- | $3.6 | -- | $3.6 | NR | TRD – ASD – staff workload |
| $12.2 | -- | -- | $12.2 | NR | TRD – ITD – staff workload |

* In thousands of dollars. Parentheses ( ) indicate a cost saving. ** Recurring (R) or Non-Recurring (NR).

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Several bills of this session propose deductions or changes in gross receipts tax rates:

| | | |
|---|---|---|
| HB 219 | REDUCE GROSS RECEIPTS TAX RATE | Jason C. Harper |
| HB 257 | CONVENIENCE STORE FOOD GROSS RECEIPTS | Jenifer Jones |
| SB 36 | HEALTH CARE SERVICES GROSS RECEIPTS | Mark Moores |
| SB 54 | SCHOOL GROSS RECEIPTS WEEKEND DATES | Harold Pope |
| SB 174 | CALF CANYON FIRE LEGAL SVCS. GROSS RECEIPTS | Leo Jaramillo |

## TECHNICAL ISSUES

LFC staff note that 13 percent of convenience store deductions already are eligible for the food deduction. Providing a 20 percent floor for convenience store eligibility for the deduction, while retaining the 50 percent floor for SNAP EBT purchases will cause confusion, particularly for SNAP eligible patrons. LFC recommends retaining the 50 percent qualification floor.

TRD requests clarification on several technical points:

> The thirty-five-mile restriction to apply for the GRT deduction is confusing because there is no definition to clarify it. For instance, it is unclear whether the distance must be calculated based on proximity "as the crow flies" or traveling distance.
>
> The bill does not address the meaning of "establishment" as under the definition of "convenience store" in subsection B(1). TRD would have to determine whether separate businesses that operate under one roof and have commonalities (a single management structure, shared space, logistics, employees, and inventory) are a single establishment (e.g., gas stations with convenience stores), or the different businesses can be evaluated separately to determine the eligibility of each entity under this deduction. Adding this deduction would therefore also increase the burden and complexity of audits.
>
> Subsection B(1) uses the term "staple foods" without defining it. It appears that the reference may be to a defined term in federal law. If that is the case, the reference should be explicit. If not, a definition should be provided.
>
> The change to Section 7-9-92(A) NMSA 1978 includes a change referring to this section containing "deductions" rather than a single "deduction." The result is that each part of the deduction would have to be reported separately, though the rest of (A) reads as though the qualified convenience stores are simply an addition to the stores allowed to take the single deduction. TRD suggests changing that word back to "deduction" and allowing all qualified receipts to be reported under a singular special code.

## 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. | ✘ | While the food deduction has been in place since 2004, this expansion has not been vetted. |
| **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. | | The purpose and goals of the current food deduction are well known. However, the purpose and goals of this expansion are less clear. |
| 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 | ? | It is not clear if TRD will be able to separate the convenience stores from the current base. |
| **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. | | Without annual reporting of the impact of the expansion, the public and the legislature will be unable to determine costs and benefits. |
| 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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