

BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

February 14, 2025

Bill: HB-326

Sponsor: Representatives Anita Gonzales, Joseph L. Sanchez, Angelita Mejia, Harlan Vincent and Susan K. Herrera

Short Title: Small Business Disaster Relief Tax Credit

Description: This bill adds a new section to the Income Tax Act providing a small business disaster relief income tax credit for an owner of a small business in an area declared as a disaster area by the Governor. The credit is \$5,000. To be eligible, a business must in an area declared a disaster, must have been in operation for at least two years, must demonstrate a sustained 30% decline in gross revenue due to the disaster, and must have had annual gross revenue under \$2 million in the taxable year. Businesses must apply for certification from the Economic Development Department (EDD). Any portion of the credit that exceeds the taxpayer’s liability will be refunded to the taxpayer.

Effective Date: Not specified; 90 days following adjournment (June 20, 2025). Applicable to taxable years beginning on or after January 1, 2025.

Taxation and Revenue Department Analyst: Pedro Clavijo

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		
--	(Unknown. See narrative)				R	General Fund

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

Methodology for Estimated Revenue Impact: The bill provides tax relief for owners of small businesses impacted by disasters. The nature of those disasters can vary and affect different areas of the State with a distinct cluster of businesses. Tax & Rev cannot predict the nature of future disasters, their location, and the magnitude of their effects to calculate a fiscal impact.

Policy Issues: New Mexico has seen how the frequency and costs of natural disasters has increased recently. These disasters include droughts, severe storms, wildfires, floods in recently burned areas, and even a tropical cyclone.¹ Providing tax relief to those affected businesses might help them weather difficult economic times and make New Mexico’s disaster-stricken areas more resilient. However, the bill creates inequity between businesses based on how they organize their business. The proposed credit only applies to individual taxpayers under the Income Tax Act. This means businesses that file taxes as corporations under the Corporate Income and Franchise Tax Act will not be eligible for disaster relief credit under the current bill, while owners of pass-through entities will be. This excludes a significant number of businesses that do not file as individual taxpayers that may face similar challenges and financial hardships during a disaster.

Additionally, the requirement that the business has been in operation for at least two consecutive taxable years excludes fledgling businesses that may be the most harmed by the revenue loss during a disaster. In this regard, the flat credit of \$5,000 does not contemplate the varying degrees of impact that disasters can have on businesses. The losses after a disaster might keep a company out of business for just one week or disrupt business operations for months.

¹ <https://www.ncei.noaa.gov/access/billions/state-summary/NM>

As one numeric example, for a business with annual gross revenues of \$2 million, a 30% sustained revenue decline is equal to \$600,000 per year (see Technical Issues). This business would receive a \$5,000 credit, representing 0.8% of those revenue losses. The burden of demonstrating eligibility to claim the credit might exceed the benefit of obtaining the credit.

While tax incentives can support specific industries or promote desired social and economic behaviors, the growing number of such incentives complicate the tax code. Introducing more tax incentives has two main consequences: (1) it creates special treatment and exceptions within the code, leading to increased tax expenditures and a narrower tax base, which negatively impacts the general fund; and (2) it imposes a heavier compliance burden on both taxpayers and Tax & Rev. Increasing complexity and exceptions in the tax code is generally not in line with sound tax policy.

Technical Issues: On page 2, lines 12 and 14 Tax & Rev notes the bill does not define “gross revenue,” which can be confused with similar accounting concepts like “gross income,” “gross sales,” or “gross receipts”. Tax & Rev recommends defining “gross revenue” to avoid disputes between claimants and EDD, or using the term “gross receipts”, which is already defined in statute at Section 7-9-3.5 NMSA 1978.

On page 2, lines 11-13: the credit eligibility criteria state: “(3) can demonstrate that it has sustained a thirty percent decline in gross revenue due to the disaster;”. It is unclear whether the decline in gross revenue must be compared to the previous year, quarter, or month. Also, as written, the bill requires precisely a 30% decline in gross revenue, so taxpayers with higher or lower losses cannot claim the credit. Tax & Rev suggest changing the language to: “... at least a thirty percent decline in gross revenue due to the disaster;” and defining the time periods in which the decline must have occurred. In addition, any disaster declaration for any amount of time could render a failing business eligible for this credit.

Other Issues: A provision may be needed to allow EDD to promulgate rules.

Administrative & Compliance Impact: Tax & Rev will make information system changes and update forms, instructions, and publications. This will be completed during annual tax year implementation.

Tax & Rev’s Administrative Services Division (ASD) anticipates that implementing this credit will require two existing FTEs and 40 hours. Tax & Rev’s Information Technology Division (ITD) estimates that implementing this bill will take approximately 680 hours or about four months for an estimated staff workload cost of \$45,315.

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY2025	FY2026	FY2027	3 Year Total Cost		
--	\$2.5	--	\$2.5	NR	ASD - Operating
--	\$45.3	--	\$45.3	NR	ITD - staff workload costs

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