234692.1

Senator Joshua A. Sanchez

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR DYED DIESEL; REPEALING A GROSS RECEIPTS TAX CREDIT FOR DYED DIESEL USED FOR AGRICULTURAL PURPOSES.

SENATE BILL

58TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2027

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR DYED DIESEL; REPEALING A GROSS RECEIPTS TAX CREDIT FOR DYED DIESEL USED FOR AGRICULTURAL PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--DYED DIESEL.--

A. Prior to July 1, 2032, receipts from the sale of special fuel dyed in accordance with federal regulations may be deducted from gross receipts.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The deduction provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the deduction."

SECTION 2. REPEAL.--Section 7-9-58.1 NMSA 1978 (being Laws 2024, Chapter 67, Section 15) is repealed.

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2027.

underscored material = new
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NEW MEXICO LEGISLATURE

Revenue Stabilization and Tax Policy Committee

Revenue Proposal Analysis

Fiscal Year 2028

Assessing the Fiscal Impact of Tax and Revenue Proposals

September 15, 2026

Dyed Diesel GRT Deduction

Sponsor(s): Senator Sanchez

202#: 234267.1
April 10, 2026

One-Year Cost
$26.4 M to $41.6 M

Five-Year Cost
$137.5 M to $216.3 M

Impact by Fund (in millions)

Fund	1 Year	5 Year
General Fund	($16.8) to ($26.4)	($87.4) to ($137.5)
Local government	($9.6) to ($15.1)	($50.1) to ($78.8)
Total	($26.4) to ($41.6)	($137.5) to ($216.3)

Proposal Summary

The proposal creates a deduction from gross receipts tax from the sale of special fuel dyed in accordance with federal regulations, available prior to July 1, 2032, and repeals Section 7-9-58.1 NMSA 1978, the gross receipts tax credit for dyed diesel used for agricultural purposes. The deduction must be reported separately and is included in the tax expenditure budget.

No purpose statement or supporting analysis accompanied the draft, however sponsors have indicated the purpose is to increase the usability of the existing benefit by decreasing administrative burden to the Taxation and Revenue Department (TRD) and to taxpayers.

The change is a substitution of the current GRT credit application mechanism for a GRT deduction claim, removal of the $10 million annual cap (which is not possible with a deduction), removal of the limit to agricultural use (also not easily enforceable as a deduction), and removes the conditions restricting who may claim the benefit. Both provisions would take effect July 1, 2027.

Issues

Existing Dyed Diesel Tax Treatment. Dyed diesel is fuel colored under federal regulation to mark it as reserved for off-road use — agriculture, construction, mining, oil and gas operations and stationary equipment. Dyed diesel is already deductible from New Mexico's 21-cent special fuel excise tax under Section 7-16A-10(E) NMSA 1978, because that tax pays for roads and dyed fuel is not used on roads. Similarly, dyed diesel is exempt from the federal highway excise tax of 24.3 cents per gallon. Instead, dyed diesel is generally subject to the gross receipts tax or compensating tax, which is less than the 21-cent special fuel excise tax when diesel prices are less than $2.75 per gallon in an average GRT rate area.

Dyed and undyed diesel are the same fuel; the difference is a red dye added to a federal specification, which marks fuel sold without the tax that pays for roads. Because the two are physically interchangeable, enforcement is maintained with stiff penalties if found used in a road vehicle tank.

Legislative History of the Proposal. The current dyed diesel GRT deduction was enacted as part of the 2024 omnibus tax bill and took effect July 1, 2024. Its design reflects deliberated constraints: the benefit is limited to fuel documented as going primarily to agricultural use, the seller must certify the tax was not passed on to the purchaser, the aggregate is capped at $10 million a fiscal year with applications processed in the order received, excess credit is carried forward rather than refunded, and the provision sunsets July 1, 2029. The fiscal impact report scored it at $6 million a year to the general fund and $4 million to local governments.

This proposal closely mirrors Senate Bill 182 of the 2026 session, which contained the same deduction and the same repeal with dates one year earlier.

Observed Utilization. The 2025 Tax Expenditure Report lists the credit under highly specialized industry provisions and reports its FY2025 amount as redacted, because fewer than three taxpayers claimed it — the confidentiality threshold below which TRD may not publish a figure. The likely explanation is the design rather than the market: a credit requiring the seller to collect written use certifications and apply to TRD in a queue is a demanding instrument. That matters for the fiscal analysis, because low uptake of a burdensome credit says little about the size of the underlying tax base.

Considerations in Changing from a Credit to Deduction. A credit is claimed against tax due and can be capped, conditioned and queued; a deduction removes receipts from the taxable base and applies to every qualifying transaction automatically, with state exposure becoming more open-ended. The agricultural limitation is also difficult to impose and audit, extending the benefit from farms to every off-road user of dyed diesel, including construction, non-deductible railroads, mining, and oil and gas operations, which are large diesel consumers in New Mexico.

Comparison to Approved Guidelines

The proposal meets the committee's criteria on accountability and falls short on purpose, fiscal analysis and targeting.

Three criteria are met in the five-year sunset, separate reporting requirements, and inclusion in the tax expenditure budget. Eligibility is also defined with clarity, since federal dye standards make the qualifying class objectively verifiable.

The expenditure cap criterion is not possible in a GRT deduction and the proposal eliminates the currently legislated caps. Targeting is also difficult to achieve

1	Clearly Stated Purpose	Does the proposal identify the problem to be solved?	◍
		Does it explain why a tax policy change is the right solution?	✓
		If an economic development incentive, is the purpose included in the language of the proposal itself?	N/A
2	Theory of Change or Logic Model	Does the proposal explain how the tax change will achieve the intended outcome?	◍
		Does it identify the taxpayer behavior it is intended to influence?	✗
3	Measurable Goals and Targets	Does the proposal identify expected outcomes?	✗
		Does it identify affected populations or activities?	✓
		Does it explain how success will be measured?	◍
4	Fiscal Impact Analysis	Does the proposal estimate the impact on the general fund?	✗
		Does it estimate the impact on the local government and other funds?	✗
		Does it identify the impacts as recurring or nonrecurring?	✓
5	Expiration Date (Sunset)	Does the proposal include a delayed repeal?	✓
6	Expenditure Cap	If feasible, does the proposal include an annual or aggregate cap on total cost?	N/A
7	Effective Targeting	Does the proposal clearly identify eligible taxpayers or activities?	✓
		Does it limit benefits to those populations or activities necessary to achieve the state purpose?	✗
8	Reporting Requirements	Does the proposal require sufficient reporting on utilization, cost, and outcomes?	✓
		Does it provide for data collection, sharing, and analysis?	✓
		Does it identify performance measures and targets?	✗

as the original proposal targeted agricultural use, now expanded to all dyed diesel users. The new special tax treatment is far broader than the agricultural relief it replaces, with the largest benefits flowing to the largest fuel consumers, the minority of which is for agricultural use.

However, the committee's adopted tax policy principle of simplicity is advanced in reducing tax payer burden in applications, queuing, use certifications and carryforwards replaced by a single line on a return. Against that, the proposal narrows the gross receipts tax base, which raises rates for those who do not qualify, and creates a horizontal equity problem: two businesses with identical receipts would face different effective rates depending on their diesel vendor.

Fiscal Impacts

Staff estimates the deduction would reduce combined state and local gross receipts tax collections by $30.7 million to $48.5 million a year. State and local shares are apportioned at the 4.875 percent state rate against a 7.67 percent average combined rate. Actual distribution depends on the location of sales and on the distributions made to municipalities from state collections.

Volumes. No federal or state source reports dyed gallons directly. EIA Form EIA-821 reports distillate sales by end use at the state level, and non-highway end uses are the standard proxy for dyed fuel. That series was suspended following the 2020 data year, so staff scaled the 2020 end-use distribution forward using two drivers: special fuel gallons consumption growth reported by FHWA for all non-oil field use, and oil field production growth for oil production use.

Table 2. Estimated Dyed Special Fuel Volumes by End Use *(million gallons)*

End use	2020 actual	2025 estimate
Off-highway	20.5	22.9
Industrial	24.8	27.7
Oil Production Use	12.4	26.4
Commercial	9.7	10.9
Farm	8.3	9.3
Residential and electric power	0.2	0.2
Total off-road	**75.9**	**97.4**

Value and rate applied. Dyed fuel sells without the 24.4 cent federal and 21 cent state excise taxes, a 45.4 cent spread against posted on-highway prices. EIA reported a Rocky Mountain retail on-highway diesel price of $5.56 per gallon for the week ending August 31, 2026, implying roughly $5.10 on an untaxed basis. Because dyed fuel moves predominantly in bulk rather than at retail, staff applied a range of $3.40 to $5.35 per gallon and the fiscal impact range reflects those differing price assumptions.

Railroad fuel. Section 7-9-110.1 NMSA 1978 already allows a deduction for receipts from the sale of fuel to a common carrier to be loaded or used in a locomotive engine. Section 7-9-110.3 conditions eligibility on the carrier having invested at least $100 million after July 1, 2011 in construction or renovation of a railroad locomotive refueling facility, or at least $50 million on or after July 1, 2012 in new railroad infrastructure in New Mexico, and requires an eligibility certificate from the Economic Development Department and delivery of a nontaxable transaction certificate to the seller. The deduction took effect July 1, 2013 and has no sunset. Locomotive fuel is therefore already outside the gross receipts tax base, and the 66.1 million gallons of railroad distillate reported for 2020 are excluded from this estimate. The proposal would extend a deduction to dyed fuel sold to carriers that do not hold an eligibility certificate, principally short line railroads, which staff estimates do not include. The committee may wish to consider whether the two provisions should be reconciled to avoid overlapping deductions for the same receipts.

Local government impact. Approximately 36 percent of the estimated impact, or $11.1 million to $15.0 million, falls on municipal and county gross receipts tax collections. The incidence is concentrated in counties with significant off-road fuel consumption, likely Lea and Eddy counties, where oilfield and off-highway use may be highly concentrated. Because the deduction applies to the full combined rate, local governments cannot opt out of the revenue loss.

Other Considerations

Administrative Simplification. The effect on TRD is favorable and reduces administrative burden. The existing credit requires TRD to receive and queue applications, verify purchaser certifications of agricultural use, track an aggregate cap against a fiscal year and administer thirty-six-period carryforwards. The proposed replacement deduction requires none of that with compliance burden also reduced for sellers, who would no longer collect and retain use documentation.

Distributional Effects. Fuel consumption is roughly proportional to equipment hours, so a deduction on dyed diesel delivers benefit in proportion to diesel burned. In New Mexico that means the largest beneficiaries would be the largest users of dyed diesel with industrial users, mining companies, construction, and other non-agricultural users likely benefiting more as a share of total costs than agricultural users.

Potential Questions

Tax Policy Design

- What problem is the deduction intended to solve?
- The existing credit is limited to documented agricultural use; the new deduction reaches every off-road user. Is that broadening intended, and if so, for what purpose?
- Dyed diesel is already exempt from the road-use excise tax because it is not used on roads, and is instead subject to gross receipts tax. Is leaving it untaxed under both regimes the intended result, and what principle distinguishes this business input from others?