BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

January 29, 2024

Bill: HB-257 **Sponsor:** Representatives Jenifer Jones and Luis M. Terrazas

Short Title: Convenience Store Food Gross Receipts

Description: This bill amends Section 7-9-92 NMSA 1978 to include convenience stores located at least 35 miles from the nearest retail food store to the deduction from gross receipts tax (GRT) for the sale of food.

Effective Date: July 1, 2024

Taxation and Revenue Department Analyst: Pedro Clavijo

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2024	**FY2025**	**FY2026**	**FY2027**	**FY2028**		
--	($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).

Methodology for Estimated Revenue Impact: The Taxation and Revenue Department (Tax & Rev) 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. Tax & Rev also assumed that 30% of convenience store sales represent food sales.[1] Considering most convenience stores and retail food stores are clustered in big cities and, therefore, very likely lie within a radius of 35 miles of distance, Tax & Rev 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.

Policy 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

[1] https://www.convenience.org/Media/Daily/2023/April/19/1-US-C-Store-Sales-Hit-New-Highs-in-2022_Research

general fund; and (2) increases the burden of compliance on both taxpayers and Tax & Rev. Adding complexity and exceptions to the tax code does not comport generally with the best tax policy.

Tax & Rev 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.

Technical Issues: 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). Tax & Rev 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. Tax & Rev suggests changing that word back to "deduction" and allowing all qualified receipts to be reported under a singular special code.

Other Issues: None.

Administrative & Compliance Impact: Tax & Rev will update forms, instructions, and publications and make information system changes. Tax & Rev's Administrative Services Division (ASD) anticipates this bill will take approximately 60 and two existing full-time employees (FTE). Tax & Rev'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
FY2024	FY2025	FY2026	3 Year Total Cost		
--	$3.6	--	$3.6	NR	Tax & Rev – ASD – staff workload
$12.2	--	--	$12.2	NR	Tax & Rev – ITD – staff workload

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