BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

February 8, 2024

Bill: SB-251 **Sponsor:** Senator Cliff R. Pirtle

Short Title: Adjust GRT Based on Sales

Description: This bill amends Section 7-9-4 NMSA 1978 to require the gross receipts tax due on each individual sale transaction to be rounded down to the nearest multiple of $0.05.

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**		
--	(Unknown - negative)	(Unknown - negative)	(Unknown - negative)	(Unknown - negative)	R	General Fund

* 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) cannot estimate a transaction-based fiscal impact. Per the bill's language in Subsection D on page 2, Tax & Rev assumes that there would be no impact on local governments' gross receipts tax (GRT).

Policy Issues: Because each taxpayer's gross receipts are currently reported to Tax & Rev as an aggregate sum without itemization by each individual sale, calculating the correct amount of tax due for each taxpayer without moving to a transaction-based return to run the rate on the individual sale and then round down on each transaction would be difficult. This would be time-consuming for the taxpayer, making the return long and complex.

It is unknown whether taxpayer software and point of sale payment machines can be programmed to implement the requirements of this bill. Taxpayer software would need to automatically round down any tax to a multiple of $0.05 for the State portion of gross receipts tax due, but not the local option tax due. Taxpayers point of sale systems and software likely combine the state and applicable local option tax rates, but this bill would require them to be calculated separately and one rounded down.

The only way the state could manage compliance accurately would be for taxpayers to report every individual sale and the adjustment for every sale. This would result in a high taxpayer and Tax & Rev administrative burden.

The concerns raised above burdening taxpayers and the administration of GRT counter three key tax policies: efficiency, simplicity and accountability. Efficiency and simplicity in that it does not burden taxpayers or the administration of taxes. Accountability relates to numerous factors including transparency for the consumer, but it also encompasses the ability to monitor and evaluate the tax code.

By adding complexity to taxpayer reporting, taxpayers are expected to make more errors. Taxpayer errors will lead to amended returns, triggering potentially large clawbacks of revenue from the General Fund and local governments. Taxpayer errors will also result in an increase in audit assessments, penalty and interest assessments, and protests.

Technical Issues: This bill language is currently not clear. However, this analysis assumes that the state rate will remain at 4.875%, except that if the gross receipts tax revenue falls as called for in Subsection C, the rate will go back to 5.125%. However, due to the "and" statement in Subsection A, the assumption is that under both rates Subsection D would apply. If an individual sale does not end in a multiple of $0.05 the bill would require the state gross receipts tax rate to fluctuate, always lower, to get that sale to a multiple of $0.05.

Subsection D presents complications for Tax & Rev to administer, manage and audit. The bill would require a look at each transaction individually to determine if a taxpayer lowered their rates correctly. This would be difficult for calculation purposes on a return as this does not change the definition of "gross receipts"; it would require Tax & Rev to remove the association between "gross receipts" reported and the amount of tax reported. This bill would also require more review as to the impact on locations such as water districts, Tax Increment Development Districts (TIDDs), and tribal areas, as the distributions for these areas are integrated with local government tax increments and distributions. There may be unintended consequences to these complex distributions as a result of the bill.

The way that this bill is written, the impact is only on the State's portion of gross receipts tax rates. It is important to note that the state gross receipts tax currently has many distribution points. This bill is unclear how those distributions that are programed in the system like Section 7-1-6.4 NMSA 1978 distribution to municipality from the state portion of gross receipts tax should be impacted based on the flexibility that this bill is requiring in the states gross receipts tax rate to get an individual sale to a multiple of $0.05. Section 7-1-6.4 NMSA 1978 has a calculation that is based upon the tax rate imposed by Section 7-9-4 NMSA 1978. With no changes, this calculation would have to be done based on each sale.

This bill would also add further complications to distributions like the hold harmless food and medical deductions under Section 7-1-6.46 and 7-1-6.47 NMSA 1978.

Subsection D also refers to GRT imposed on an individual sale made by a person engaging in business. Currently, gross receipts are reported as a total by location not by individual sale. The current GRT return does not support reporting by individual sale, would need to be amended, and could become extremely voluminous for many taxpayers.

This bill does not change the compensating tax rate. These two tax programs are seen as complementing tax programs. For tax policy, it is recommended to keep them at the same rate for fairness and equity in the tax code. GRT is for sales in New Mexico, and compensating tax is for purchases that take place out of state where the item or service is utilized in New Mexico in transactions where the seller does not have nexus or gross receipts tax responsibilities in New Mexico.

Other Issues: None.

Administrative & Compliance Impact: Tax & Rev will update forms, instructions, and publications and make information system changes. Tax & Rev will also need to plan for extensive outreach to taxpayers and the public for these changes so that sellers can understand what they have to do at the time of sale and how their reporting requirements would change. Internal training for Tax & Rev staff to implement the changes in the bill would have to take place.

Tax & Rev's Information Technology Division (ITD) estimates this bill would have an extremely high impact of at least 12 months and approximately $18,316,974 between contractual resources ($18,068,094) and staff workload ($230,880). New Mexico has one of the most complex distributions systems for gross receipts tax that the vendor has seen, and this change would only add to its complexity. After implementation is complete, one application developer, one business analyst and one database/system administrator full-time employees (FTE) will be needed by ITD for ongoing operations and support. Tax & Rev's Administrative Services Division (ASD) will require approximately 240 hours for an estimated staff workload cost of $14,000. The Local Government Liaison will also have to complete testing of the system and reports to make sure that they are performing properly.

Due to the complexity and timeline for implementing this bill, Tax & Rev recommends an effective date of July 1, 2025.

The implementation costs and time commitment of this bill are extensive for Tax & Rev. For context, the executive budget recommendation includes $3 million for Tax & Rev bill implementation for every bill enacted, and the LFC recommendation includes $0.

Estimated Additional Operating Budget Impact*				**R or NR****	**Fund(s) or Agency Affected**
FY2024	**FY2025**	**FY2026**	**3 Year Total Cost**		
--	$14.0	--	$14.0	NR	Tax & Rev – ASD – staff workload
--	$18,100	--	$18,100	NR	Tax & Rev – ITD - Contractual costs
--	$230.9	--	$230.9	NR	Tax & Rev – ITD – staff workload
--	--	$115.4	$115.4	R	Tax & Rev – ITD - staff workload

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