

LFC Requester:	Brendon Gray
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AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/3/2026 *Check all that apply:*
Bill Number: HB 264 Original Correction
 Amendment Substitute

Sponsor: Mark Duncan
Mark B. Murphy
Jonathan A. Henry
Rebecca Dow
William A. Hall II
Short Title: VARIOUS INCOME TAX
DEDUCTIONS

Agency Name and Code State Ethics Commission (410)
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 264 makes multiple changes to the state's income and gross receipts tax laws by creating new income tax deductions and credits, repealing and replacing an existing tax credit, expanding eligibility for a medical expense deduction, and extending and modifying a gross receipts tax deduction related to health care services.

The bill creates three new income tax deductions tied to federal law: a deduction for qualified tip income, a deduction for qualified overtime compensation, and a deduction for social security income deductible under the Internal Revenue Code (Sections 1–3). These deductions are available to taxpayers eligible to claim the corresponding federal deductions and are required to be reported to the taxation and revenue department and included in the state tax expenditure budget.

HB 264 repeals the Working Families Tax Credit and replaces it with a newly enacted Earned Income Tax Credit (EITC) (Section 4). The new EITC mirrors the structure of the federal earned income tax credit, establishes credit and phaseout percentages based on family size, provides a minimum refundable credit of \$100 in certain cases, and includes inflation adjustments beginning in tax year 2027. The credit is refundable and must be included in the tax expenditure budget.

The bill also creates a new Foster Parent and Guardian Income Tax Credit for taxable years ending prior to January 1, 2032 (Section 5). The credit provides \$250 per month, up to a maximum of \$3,000 per year, for eligible foster parents or guardians, is refundable, and requires certification of eligibility by the Children, Youth and Families Department.

In addition, HB 264 amends the existing unreimbursed or uncompensated medical care expense deduction to allow taxpayers of all income levels to deduct qualifying medical expenses, removing prior income-based limitations (Section 6).

Finally, the bill extends and amends a gross receipts tax deduction for health care practitioners by extending the sunset date to July 1, 2032, and expanding the deduction to include receipts from coinsurance paid by patients (Section 7). The bill applies most income tax provisions to taxable years beginning on or after January 1, 2026, and sets a July 1, 2026 effective date for the gross receipts tax changes (Sections 8–9).

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

HB 264 creates both new income tax deductions and new refundable income tax credits. Refundable tax credits warrant consideration under Anti-Donation Clause, Article IX, Section 14 of the New Mexico Constitution, which constrains the Legislature's exercise of the tax power, while tax deductions do not raise the same legal concerns.

The Legislature has plenary and inherent power to create tax exemptions and deductions. *See Asplund v. Alarid*, 1923-NMSC-079, ¶ 19 (“The power of taxation is inherent in the state, and may generally be exercised in the discretion of the Legislature, except in so far as limited by the Constitution, and the state likewise has the reciprocal power of exempting from taxation, except as limited by the Constitution. . . .”); N.M. Att’y Gen. Op. 91-14 n.2 (“Although tax exemptions are different from deductions ---- an exemption frees taxpayers ‘from the burden of enforced contribution to the expenses and maintenance of government,’ *Asplund v. Alarid*, 29 N.M. 129, 133, 219 P. 786 (1923), i.e., from the duty of reporting certain income at all, while a deduction subtracts certain receipts from total gross receipts subject to taxation ---- they both reduce tax obligations by removing receipts from taxation and so are interchangeable for purposes of this letter.”). So long as the tax exemption or deduction operates prospectively, it is not an unconstitutional remission of tax liability because it occurs during the calculation of a tax liability, before the tax liability accrues. *See Asplund*, 1923-NMSC-079, ¶ 20.

The Anti-Donation Clause constrains the Legislature’s exercise of the tax power, and it applies to prevent the enactment of certain kinds of tax credits. Courts have held that whether a tax credit implicates the Anti-Donation Clause depends on the credit’s specific attributes, including whether the credit is refundable, the degree to which it is conditioned on statutory eligibility requirements, and whether it operates as an unconditional subsidy or as a conditional statutory benefit. Tax credits may be *non-refundable*, such that where a credit in excess of a taxpayer’s *ex ante* tax liability is not refunded to the taxpayer, or *refundable*, where it is.

A *non-refundable* tax credit works similarly to a tax exemption or deduction, just at a later stage in the calculation of the tax liability: once the *ex ante* tax liability is determined, a non-refundable tax credit is applied and the tax liability reduced thereby—perhaps all the way to zero. If, as has been long-established, the Constitution does not prohibit an exemption (which is part of the calculation leading to a determination of tax liability), it would not make sense for the Constitution to prohibit a *non-refundable* tax credit (which is also part of the calculation leading to a determination of tax liability, just occurring at a later stage of the calculation). Nevertheless, the New Mexico Supreme Court has held that even a non-refundable tax credit violates the Anti-Donation Clause when it is a targeted subsidy to a particular, discrete industry. *Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, ¶ 30 (holding a non-refundable tax credit was “an unconstitutional subsidy to the liquor industry” in violation of the Anti-Donation Clause).

Turning to refundable tax credits, if a refundable tax credit is sufficiently large, the calculation might produce a negative tax liability—*i.e.*, an amount that the State will pay (or “refund”) to the person. Courts have held that where the State receives value in exchange for transferring public money, the transfer is not a “donation” implicating the Anti-Donation Clause.¹ This analysis

¹ *See Pierce v. State*, 1996-NMSC-001, ¶ 29 n.12 (rejecting challenge to statutorily conferred pension benefits because pension benefits are not a gratuity but value exchanged for work received by the public employer); *City of Gallup v. N.M. State Park & Recreation Comm’n*, 1974-NMSC-084, ¶ 9 (rejecting an anti-donation claim because, under agreement, state would receive title to 640 acres in Red Rock State Park, \$1.5M for construction, and maintenance and operation of the park for the life of lease contract with Gallup); *White v. Board of Educ. of Silver City*, 1938-NMSC-009, ¶ 31 (rejecting challenge because board of education “will get value received for every dollar put into the enterprise” of a bond issue to build a school to join state and local schools); *Treloar v. County of Chaves*, 2001-NMCA-074, ¶ 32 (rejecting challenge to severance benefits because “severance pay is deemed to be in the nature of wages that have been earned”); *State ex rel. Office of State Eng’r, et al. v. Lewis, et al.*, 2007-NMCA-008, ¶ 51 (rejecting challenge to Pecos River rights settlement because, in exchange for funds, State received land and water rights, as well as settlement of claims in suit); *cf. City of Raton v. Ark. River Power Auth.*, 600 F. Supp. 2d 1130, 1161 (D.N.M. 2008) (Browning, J.) (“The Court does not believe that the Anti-Donation Clause is implicated when there is true consideration—money exchanged for real product. . . . The Court does not

sounds in contract law, where the receipt of consideration separates binding contracts from non-binding, donative promises. In limiting the reach of the term “donation,” the courts have focused on whether the public-entity donor (e.g., the State, the county, the municipality) receives some commitment or performance in exchange for the transfer. The focus is *not* whether the transfer is generally in the public interest, and the Courts have never held that simply because a transfer of public funds is in the public interest, it is therefore exempt from the Anti-Donation Clause. To the contrary, the New Mexico Supreme Court has explicitly stated “[t]he constitution makes no distinction as between ‘donations’, whether they be for a good cause or a questionable one. It prohibits them all.” *State ex rel. Sena v. Trujillo*, 1942-NMSC-044, ¶ 22. In other words, a transfer is not exempt from the Anti-Donation Clause simply because the transfer does (or is said to) promote the public interest or welfare. The question of constitutional interpretation is whether the transfer is a “donation,” not whether it is in the public interest. And simply because a transfer is anticipated to create downstream benefits that redound to the public (as in the case of subsidies for technology-based industries that will add jobs and boost New Mexico’s economy), the anticipated benefit does not convert the transfer from a donation into a bargained-for exchange. However, if a tax credit is sufficiently conditional, such that the taxpayer has to satisfy a set of conditions that the State demands, then the credit might be more analogous to a unilateral contract that the State offers as opposed to an unconditional subsidy.

The refundable credits created by this bill are not transferable and are available only upon satisfaction of eligibility criteria set forth in statute. The earned income tax credit is tied to federal earned income tax credit eligibility, and the foster parent and guardian income tax credit requires certification by the Children, Youth and Families Department. It is unclear, however, whether either the Earned Income Tax Credit or the Foster Parent and Guardian Income Tax Credit fall under one of the exceptions enumerated in Sections A through H of the Anti-Donation Clause.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The Taxation and Revenue Department will need to update tax forms, instructions, and processing systems to implement multiple new deductions and credits and to reflect the repeal of the Working Families Tax Credit. Administration of the foster parent and guardian income tax credit will require coordination between the Children, Youth and Families Department and the Taxation and Revenue Department for certification, data transmission, and verification of eligibility.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

believe it should evaluate whether the agreement was a good or bad deal under the Anti-Donation Clause, but merely check for adequate consideration.”).

If HB 264 is not enacted, existing income tax deductions and credits, including the Working Families Tax Credit, will remain in effect. Taxpayers will not receive the proposed deductions for qualified tips, overtime compensation, or federally deductible social security income, and the foster parent and guardian income tax credit will not be created. Existing limitations on the unreimbursed medical expense deduction will remain, and the gross receipts tax deduction for health care practitioners will not be extended or expanded to include coinsurance paid by patients.

AMENDMENTS