

**Bill Analysis and Fiscal Impact Report
Taxation and Revenue Department**

February 6, 2026

Bill:

HB-291

Sponsor:

Representative Derrick Lente

Short Title:

Tax Changes

Description:

HB 291 is a tax code clean-up bill sponsored on behalf of the Taxation & Revenue Department (Tax & Rev). The bill is summarized as follows:

[Section 1] This bill updates Section 7-1-6 NMSA 1978 to allow Tax & Rev to pay any attorney fees and costs awarded by a court or hearing officer out of revenue distributions for any tax programs it administers instead of the agency's operating budget. Currently, the ability to pay attorney fees and costs from revenue distributions is limited to oil and gas litigation.

[Section 2] This bill allows for interest to be waived when Tax & Rev has extended a tax deadline for good cause. This will allow taxpayers who have been granted an extension to take full advantage of the extension for tax, penalty, and interest allowed under Section 7-1-13 NMSA 1978. Currently, a taxpayer that avails themselves of an extension will face no penalty but will owe interest.

[Sections 3, 14, and 17] This bill amends allows rounding to the nearest \$0.05 for amounts due to Tax & Rev, including the Motor Vehicle Division (MVD), as well as property taxes owed to county treasurers.

[Section 4] This bill amends Section 7-1-16 NMSA 1978 to allow a taxpayer who is a delinquent taxpayer to renew their license or permit issued by another agency if they enter an installment agreement with Tax & Rev, remain in good standing with the installment agreement, and pay a minimum of 20% of the tax amount due.

[Section 5] This amendment to Section 7-1-69 NMSA 1978 removes the \$5 late filing penalty minimum for taxpayers subject to the Withholding Tax Act, Oil & Gas Proceeds and Pass-Through Entity Withholding Tax Act, and the workers' compensation fee.

[Sections 6 through 9] The new film production tax credit is amended by expanding the definition of a "qualified expenditure" for the credit all allow payments to a tribal entity or on tribal land to qualify for the credit. The bill also creates requirements for a film partner to have meaningful involvement in a production for the production to qualify as a film partner production. The bill also clarifies current practice that a credit application is due to the film office division within one year of the last production expenditure being incurred, not paid. Lastly it clarifies the administrative credit claim process.

[Section 10] This bill updates an incorrect statutory reference by changing "60-1-10" to "60-1A-19".

[Section 11] This amendment in the Technology Jobs and Research & Development Tax Credit clarifies that a qualified expenditure must be "essential for conducting qualified research" and caps wages of any single employee at \$500,000. This bill also points the definition of qualified research to Section 41(d) of the Internal Revenue Code (IRC).

[Sections 12 and 13] This bill amends language related to “closed system cartridges” in the Tobacco Products Tax to clarify that closed-system cartridges containing more than five milliliters of e-liquid are subject to the same 12.5% tobacco products tax applied to the wholesale value of e-liquids. Cartridges containing five milliliters of less will remain taxed at \$0.50 per cartridge.

[Section 15] This bill allows Tax & Rev to intercept money collected when the property of a delinquent taxpayer is auctioned by the Property Tax Division (PTD) to offset other tax debts owed to Tax & Rev.

[Section 16] This bill will require tribal governments with a cooperative revenue sharing agreement with Tax & Rev to follow the same timeline for rate changes as local governments. This bill also adds the Navajo Nation to the list of tribes with which Tax & Rev can enter into a cooperative agreement.

Effective Date, Applicability, and Contingency Language:

July 1, 2026: Section 1-5 and 10-17. January 1, 2027: Sections 6-9. Applicability – Sections 6-9 apply to taxable years beginning on or after January 1, 2027.

Taxation and Revenue Department Analyst:

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Estimated Revenue Impact*

FY26	FY27	FY28	FY29	FY30	Recurring or Non-Recurring	Fund(s) Affected
--	(minimally Negative)				R	Section 1: General Fund
--	(minimally Negative)				R	Section 1: Local Governments
--	(minimally Negative)				R	Section 1: Other State Funds
--	(minimally Negative)				R	Section 2: General Fund
--	(minimally Negative)				R	Section 2: Local Governments
--	(minimally Negative)				R	Section 2: Other State Funds
--	\$0	\$0	\$0	\$0	R	Sections 3, 14 & 17: General Fund
--	\$0	\$0	\$0	\$0	R	Sections 3, 14 & 17: Local Governments
--	\$0	\$0	\$0	\$0	R	Sections 3, 14 & 17: Other State Funds
--	Slightly Positive				R	Section 4: General Fund
--	Slightly Positive				R	Section 4: Local Governments
--	Slightly Positive				R	Section 4: Other State Funds
--	(Slightly Negative)				R	Section 5: General Fund

--	(Slightly Negative)	R	Section 5: Workers' Compensation Admin Fund
	Minimal impact (see narrative)	R	Sections 6 – 9: General Fund
--	Slightly Positive	R	Section 11: General Fund
--	Slightly Positive	R	Sections 12 & 13 – General Fund
--	Slightly Positive		Section 15: General Fund
--	Slightly Positive		Section 15: Local Governments

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

Methodology for Estimated Revenue Impact:

The following sections are expected to have minimal fiscal impacts as detailed below. Sections not listed do not have a revenue impact.

[Section 1] Since FY2022, Tax & Rev has been ordered to pay attorney fees on tax appeals seven times totaling \$190,656, ranging from \$4,375 to \$75,000. However, budget contingencies were established for many other potential awards that did not come due, and for larger maximum amounts on those that did become due. It is difficult to predict future cases which Tax & Rev will lose on appeal, the magnitude of such cases, what tax program may be impacted and if attorney fees will be awarded. Given the presented historical cases, the amount impacting distributions to the General fund, other state funds and local governments will be minimal.

[Section 2] Tax & Rev as historically extended tax deadlines for one to three months as a result of public health emergencies and natural disasters. Tax & Rev cannot determine when or where a public health emergency or natural disaster will occur or the magnitude of such events. This section only waives the interest associated with this tax liability. By waiving interest, there is likely to be a minimal but negative revenue impact as taxpayers do not generally incur significant interest charges for just one to three months.

[Sections 3, 14 & 17] Income taxes are currently rounded to the nearest whole dollar. The proposed rounding of all other tax programs, including property tax and motor vehicle excise tax and fees to the nearest five cents will result in a revenue neutral impact. On the whole, transactions will be rounded both upward and downward with equal probability of both, resulting in a net neutral revenue impact.

[Section 4] If more delinquent taxes are repaid as a result of taxpayers being relicensed and staying in business, this bill may slightly increase revenue to the general fund, local governments, tribes, and other state funds.

[Section 5] Currently, taxpayers that do not have a tax liability and do not file a timely return receive a \$5 minimum penalty if they are subject to the Withholding Tax Act, Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, or workers' compensation fee. This amendment removes the \$5 minimum penalty for taxpayers with no tax liability subject to these programs. This amendment is consistent with taxpayer treatment under many other tax programs. Any minor reduction in penalty revenue would be insignificant.

[Sections 6 through 9] The bill extends film credit eligibility to qualifying transactions occurring on tribal lands. This expansion is expected to have a negative impact on the General Fund due to increased payments

that may be eligible under the film production credits. While this may incentivize more film production on tribal lands, it is assumed to be only a shift from production on non-tribal lands and thus a minimal negative fiscal impact.

The bill also revises the definition of “film production partnership.” This change may have a slightly positive fiscal impact to the extent it excludes certain taxpayers or transactions that may have qualified as for film partner benefits under current law, thereby reducing credit claims relative to the baseline.

The impact between the two changes is expected to result in a minimal positive or negative impact depending on future film projects.

[Section 11] By capping the amount of a single employee’s wages for which the credit may be applied at \$500,000, the bill may slightly increase General Fund revenue.

[Sections 12 - 13] Proposed changes to the tobacco products tax are meant to clarify existing law and not to change the tax liability on any tobacco product. The changes might result in a slight positive revenue impact by ensuring taxpayers cannot successfully argue that closed system cartridges containing more than five milliliters should pay the 7.5% average statewide GRT rate rather than the 12.5% tobacco products tax.

[Section 15] To the extent that taxpayers whose properties are auctioned by PTD have other delinquent tax due for other tax programs, this proposed amendment may increase State and local revenue in particular from PIT and GRT.

Policy Issues:

[Section 1] Section 7-1-25 NMSA 1978 provides that if Tax & Rev appeals a decision and the decision is upheld, the court shall award reasonable attorney fees to the taxpayer. If the appellant decision upholds the hearing officer’s decision only in part, the award shall be limited to reasonable attorney fees associated with the portion upheld. Under current law, Tax & Rev may net attorney fees and costs awarded by a court or a hearing officer related only to oil and gas litigation. The Department is unaware of any instances of this occurring, as oil and gas litigation is fairly limited.

Allowing attorney fees and costs to be netted from distributions will help Tax & Rev better manage its annual operating budget without the need to set aside operating budget for contingencies in the event attorney fees are awarded. The amount and timing of attorney fees and costs awarded for this purpose is small but unknown each year.

Tax & Rev should decide whether to appeal a decision based on the merits and importance of the case, preserving the tax code, and preventing bad case law - not based on the risk that an unsuccessful appeal may deplete its operating budget and force vacancies higher. This bill would allow Tax & Rev to consider the merits of an appeal independently from its own self-interest in its budget and staffing levels. This would alleviate any conflict of interest to ensure that Tax & Rev is able to consider the merits of each appeal independently.

[Section 2] Tax & Rev has historically extended tax deadlines for one to three months due to public health emergencies or natural disasters. Current law allows Tax & Rev to not assess penalty during an extension period, but requires interest to accrue during the extension. This bill allows taxpayers dealing with a crisis or who may not have access to their records a grace period to comply without incurring interest. This provision does not violate the New Mexico Constitution, which prohibits forgiveness of any debt, because interest will not have accrued or been assessed.

[Sections 3, 14 & Section 17] With the U.S. Treasury’s decision to stop minting the penny, Tax & Rev will have difficulty making change for taxes paid in cash if not allowed to round to the nearest nickel. This language will ensure that Tax & Rev, MVD, and county treasurers have the flexibility to round cash transactions to the nearest \$0.05. Electronic transactions will not require rounding.

[Section 4] The bill allows a delinquent taxpayer to renew their license or permit if they enter an installment agreement with Tax & Rev. This applies to renewal of cannabis, liquor, cigarette distributor and manufacture licenses and weight distance permits. Currently, these businesses cannot qualify for license or permit renewal by entering an installment agreement with Tax & Rev.

Delinquent tax is more likely to be repaid if the taxpayer remains licensed/permitted and in business. This proposal would allow a delinquent taxpayer’s license or permit to be renewed by entering into an installment agreement in good standing. A taxpayer will only qualify for this option if they haven’t violated a payment plan with Tax & Rev in the last five years and if they provide a 20% down payment to secure the State’s interest.

[Section 5] Many taxpayers subject to the Withholding Tax Act, Oil & Gas Proceeds and Pass-Through Entity Withholding Tax Act, and the workers’ compensation fee often face situations where they have no tax liability for a given period. Current law requires them to be assessed a minimum \$5 penalty if they fail to file a “zero return” indicating they had \$0 taxable activity to report by the due date, even though no tax was due. This creates confusion and burden for taxpayers, who are unsure whether they must file when no obligation exists. Under Section 7-1-17 NMSA 1978, the department is not required to make an assessment unless the amount due is \$50 or more. Extending the exemption to the \$5 minimum penalty to these tax programs ensures that taxpayers without liability are not penalized for failing to file unnecessary \$0 returns. The change promotes fairness and efficiency in tax administration by aligning treatment across major tax programs and reducing confusion for businesses. Tax & Rev resources can be better focused where actual tax liability exists, rather than processing nominal \$5 penalties on zero-liability filings.

[Sections 6 through 9] This bill amends the new film production tax credit in three substantive ways: first, it expands the definition of a “qualified expenditure” for the credit to allow payments to a tribal entity to lease or rent facilities or equipment to be eligible for the credit; second, it creates requirements for a film partner to have meaningful involvement in a production for the production to qualify as a film partner production; and third, it clarifies current practice that a credit application is due to the film office division within one year of the last production expenditure being incurred, not paid.

Tribal entities have had a harder time benefitting from the economic development potential associated with the film tax credit because under current law, an expenditure must be “subject to taxation in New Mexico” to be eligible for the credit. Because expenditures on tribal land are not subject to taxation in New Mexico, they have not qualified. This bill would allow lease or rental payments to a tribe that are subject to taxation by that tribe to qualify for the film credit. This will allow tribal production facilities to participate in the credit.

Tax & Rev and EDD have recently grappled with a loophole that arguably allows a film partner to lend out its film partner status to unrelated entities that use the film partner’s facilities. Tax & Rev believes this is contrary to the intent of the film partner designation. This proposal would require a film partner to have a significant interest in a production for the production to qualify for the benefits of film partner status. The film partner would need to own at least 50% of the production for at least one year from the date of last production expenditure, own or control the underlying intellectual property for at least five years, or fund at least 50% of the production budget.

Tax & Rev has recently dealt with protests from film production companies that have turned in their applications beyond the deadline to apply for the credit within one year of the last production expenditure. This bill codifies existing practice, which is that the deadline is based on the date the last expenditure was incurred, not when it was paid by the production company. Tax & Rev believes this will allow Tax & Rev to follow the original intent of the one-year application deadline.

[Section 10] Section 60-1-10 NMSA 1978 was repealed effective July 1, 2007, and replaced with Section 60-1A-19 NMSA 1978. The GRT exemption in Section 7-9-40 NMSA 1978 has been incorrectly referencing the repealed section since 2007. This bill replaces the incorrect statutory reference.

[Section 11] This bill amends the definition of a “qualified expenditure” and “wages” for the Technology Jobs and Research and Development Tax Credit (TJRDTTC). Whereas “payroll” is currently a qualified expenditure, this proposal would limit employee payments to wages not exceeding \$500,000 per employee to avoid an unintended consequence of the credit being granted for owner profits that may far exceed traditional employee wages. It would also require that a qualified expenditure be “essential for conducting qualified research”. Finally, the amendment links “wages” and “qualified research” together by adding that wages must be paid to employees “conducting qualified research in New Mexico at a qualified facility.” These changes will streamline submissions, reduce ambiguity, and prevent protests between taxpayers and Tax & Rev. The bill also replaces the current definition of “qualified research” with a more detailed definition found in Section 41(d) of the Internal Revenue Code (IRC).

[Sections 12 & 13] There are two common types of vaping systems: open systems, which use refillable e-cigarettes, and closed systems, which use non-refillable cartridges. Most closed system cartridges contain less than five milliliters of e-liquid and are taxed at \$0.50 per cartridge. However, some closed-cell cartridges on the market contain over five milliliters of e-liquid. The way those larger-capacity cartridges are taxed is ambiguous, and this has led to protests between taxpayers and Tax & Rev.

Some taxpayers argue that closed-system cartridges with a capacity of more than five milliliters are not subject to any tobacco products tax. They argue that if the tobacco products tax is not paid, they are instead subject to the GRT at a rate averaging about 7.5% statewide (less than the 12.5% tobacco products tax on everything other than closed-system cartridges under 5 mL).

[Section 15] Under current law, if a property is auctioned by PTD to satisfy delinquent property tax, excess proceeds cannot be intercepted by Tax & Rev to offset tax debt under the Tax Administration Act (7-1-1 *et seq* NMSA 1978). The Tax Administration Act contains every other tax program administered by Tax & Rev – including PIT, GRT, and dozens of other tax programs.

Currently, property tax auction proceeds are distributed to 1) PTD for administration of its costs of auctioning the property; 2) to the county treasurer for distribution to appropriate governmental units to which the delinquent property tax is due; and 3) any balance to the former owner. Currently, the former owner of auctioned property receives the excess sale proceeds, even if they owe any other type of State tax debt such as PIT and GRT. This proposal allows Tax & Rev to intercept excess property tax auction proceeds to offset delinquent taxes owed to the State under the Tax Administration Act.

[Section 16] The bill requires tribal governments to follow the same timeline for changing tribal GRT rates as local governments follow. The bill also adds the Navajo Nation to the list of tribes with which Tax & Rev may enter into a cooperative agreement. The Navajo Nation would not be required to do so but would be eligible upon the Nation’s prerogative.

Local government GRT rate changes are to take effect on July 1, following three months' notice to Tax & Rev of the rate change. Local government rates can also change on January 1 in the case of a governor-declared disaster or an unforeseen occurrence impacting local reserves.

Currently, there is no similar language in statute providing Tax & Rev sufficient notice of tribal GRT and compensating tax rate changes. This proposal establishes a uniform effective date for GRT and compensating taxes for tribes and local governments. In recent months, Tax & Rev has worked through a handful of difficult issues involving tribal tax changes that were not communicated to Tax & Rev with sufficient advance notice. These caused difficulty and confusion for taxpayers, tribes, and Tax & Rev.

Technical Issues:

None.

Other Issues:

None.

Administrative & Compliance Impact:

Tax & Rev will update forms, instructions, publications, and implement required modifications to GenTax, the system of record for taxes and to Tapestry, the system of record for MVD. These changes will be incorporated into annual tax year implementation. There will be staff training to implement the changes in this bill. While these changes reflect one-time costs as summarized below, in the long-term, Tax & Rev will experience savings and efficiencies.

[Section 1] Tax & Rev budget projections must include contingencies for attorney fees that may need to be paid if an appeal is lost and attorney fees are awarded. These contingencies are established for many potential awards that never come due. As a result, Tax & Rev reverts general funding that could have been used for staffing. By paying attorney fees through the netting of revenue distributions, Tax & Rev can estimate more precisely its operating budget and assure that budget is put to beneficial use.

[Sections 3, 5, 14, & 17] This bill is expected to have a moderate impact on Tax & Rev's Administrative Services Division (ASD) impacting both Tapestry and GenTax, to test for the sections requiring the rounding and changes to penalty collection. ASD will update general ledger and reporting. It is anticipated this work will take approximately 130 hours split between three existing FTEs of a pay band C08 and a two at a pay band C10 at a cost of approximately \$13,100 of staff workload costs. Pay-band level C08 hours are estimated at time and 1/2.

[Sections 1-9, 13, 16, & 17] The required changes to GenTax and to Tapestry will cost \$13,842 in workload costs for the Tax & Rev's Information Technology Division (ITD) and \$349,000 in contractual resources. The work entailed for these sections will encompass 1,500 hours or 9 months.

[Section 17] Tax & Rev's Motor Vehicle Division (MVD) will train staff on rounding to ensure that accurate amounts due are collected from customers during cash transactions.

Estimated Additional Operating Budget Impact*

FY26	FY27	FY28	3 Year Total Cost	Recurring or Non-Recurring	Fund(s) or Agency Affected
--	\$8.6	--	\$8.6	NR	ASD – Staff workload
\$13.8	--	--	\$13.8	NR	ITD – Staff Workload
\$299	\$50	--	\$349.0	NR	ITD – Contractual Resources

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

Related Bills: Under Section 11 of this bill, amendments are proposed for the TJRDTC which will also be modified under HB-27 and the duplicate bill SB-97; Sections 12 and 13 of this bill propose amendments to the tobacco products tax which will also be modified under SB-121.