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FISCAL IMPACT REPORT

BILL NUMBER: House Bill 291/aHTRC

SHORT TITLE: Tax Changes

SPONSOR: Lente/Silva

LAST ORIGINAL
UPDATE: 02/10/26 **DATE:** 02/07/26 **ANALYST:** Graeser/Torres/Gray

REVENUE* (dollars in thousands)

Type	FY26	FY27	FY28	FY29	FY30	Recurring or Nonrecurring	Fund Affected
Attorney's Fees		Likely less than (\$190.0)	Likely less than (\$190.0)	Likely less than (\$190.0)	Likely less than (\$190.0)	Recurring	General Fund/ Other
		Minimal to slight increases or decreases				Recurring	General Fund
		Minimal to slight increases or decreases				Recurring	Local Government
		Minimal to slight increases or decreases				Recurring	Other State Funds

Parentheses indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Taxation and Revenue Department

Indian Affairs Department

Agency or Agencies That Were Asked for Analysis but did not Respond

Department of Finance and Administration

Economic Development Department

SUMMARY

Synopsis of HTRC Amendment to House Bill 291

The House Taxation and Revenue Committee amendment to House Bill 291 (HB291) deletes the provision expanding film tax credits to non-taxable rents for productions on Native American tribe, pueblo, or pueblo land.

The amendment also deletes the tying of definitions for “qualified research” for the purpose of the Technical Jobs and Research and Development Tax Credit Act from the federal definitions previously proposed, instead restoring the current definition.

Synopsis of House Bill 291

House Bill 291 (HB291) makes a series of technical changes across the tax code along with some significant tax policy changes. The bill addresses multiple discrete issues related to tax administration, enforcement, compliance, and clarity, including the payment of attorney fees from revenue distributions, the accrual of interest when filing extensions are granted, rounding requirements, installment agreements and delinquency status for license and permit renewal, minimum civil penalties, definitions and procedures in the film production tax credit, tobacco products taxation, the application of excess property tax auction proceeds, and provisions related to tribal cooperative agreements. Those changes are described section by section below:

Section 1 allows the Taxation and Revenue Department (TRD) to pay attorney fees and costs awarded by a court or hearing officer from revenue distributions associated with the tax programs it administers, rather than from the agency’s operating budget. Currently, this authority is limited to oil and gas litigation.

Section 2 allows TRD to waive interest when the department grants a tax deadline extension for good cause. This change would allow taxpayers receiving an extension to avoid both penalties and interest. Under current law, interest continues to accrue even when penalties are waived.

Sections 3, 14, and 17 allow TRD, including the Motor Vehicle Division, and county treasurers to round tax amounts due to the nearest five cents in accordance with federal policy changes eliminating the penny.

Section 4 allows delinquent taxpayers to renew licenses or permits issued by other agencies if the taxpayer enters into an installment agreement with TRD, remains in compliance with the agreement, and pays at least 20 percent of the outstanding tax liability.

Section 5 removes the \$5 minimum late filing penalty for taxpayers subject to the Withholding Tax Act, the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, and the workers’ compensation fee.

Sections 6 through 9 include both technical and policy changes amending the Film Production Tax Credit. First, the sections expand the definition of “qualified expenditure” to include payments made to tribal entities or for expenditures incurred on tribal land. Credits are only allowed against expenditures with a return to the state because the credit intends to be an investment on behalf of the state. Including nontaxable spending expands the scope of the credit to expenditures not-taxable by the state and reducing the return on investment from the tax credit.

These sections also establish requirements for meaningful film partner involvement to qualify for the partner credit. These changes clarify that credit applications must be submitted within one year of when production expenditures are incurred (rather than paid) and codifies current administrative credit claim practices to strengthen anti-fraud provisions.

Section 10 corrects an incorrect statutory reference by replacing “60-1-10” with “60-1A-19.”

Section 11 amends the Technology Jobs and Research and Development Tax Credit by clarifying that qualified expenditures must be essential to conducting qualified research, capping

wages eligible for the credit at \$500 thousand per employee (currently uncapped), and aligning the definition of qualified research with Section 41(d) of the Internal Revenue Code.

Sections 12 and 13 amend the Tobacco Products Tax Act to clarify the tax treatment of closed-system cartridges. Cartridges containing more than five milliliters of e-liquid will be subject to the 12.5 percent tax on wholesale value, while cartridges containing 5 milliliters or less will continue to be taxed at 50 cents per cartridge.

Section 15 authorizes TRD to intercept proceeds from property auctions conducted by the Property Tax Division to offset other outstanding tax liabilities owed by delinquent taxpayers.

Section 16 requires tribal governments with cooperative revenue-sharing agreements with TRD to follow the same timelines for rate changes as local governments and adds the Navajo Nation to the list of tribes eligible to enter into such agreements.

All sections of the bill take effect July 1, 2026, except for the Film Production Tax Credit provisions, which apply to taxable years beginning January 1, 2027.

FISCAL IMPLICATIONS

This bill reduces the wage eligibility for the technology jobs and research and development tax credit, potentially reducing that tax expenditure's future liability over time should higher wages have applied. Because median wages are substantially below \$500 thousand, the change is not scored to have a noticeable impact on spending for this tax expenditure.

Detailed Fiscal Impacts by Section

TRD reports the impacts of the following provisions of the amended bill:

Section 1. Since FY22, TRD has been ordered to pay attorney fees in seven tax appeal cases totaling \$190,656, with individual awards ranging from \$4,375 to \$75 thousand. Although budget contingencies were established for additional potential awards that did not materialize, future litigation outcomes and associated costs remain uncertain. Based on historical experience, any impact to distributions to the general fund, other state funds, and local governments is expected to be minimal.

Section 2. TRD has historically extended tax deadlines by one to three months during public health emergencies or natural disasters. This provision allows interest to be waived during such extensions. Because interest accrues over a relatively short period in these cases, the resulting revenue reduction is expected to be minimal.

Sections 3, 14, and 17. Expanding rounding rules to allow taxes and fees to be rounded to the nearest five cents is expected to be revenue neutral. Over time, upward and downward rounding effects are expected to offset each other.

Section 4. Allowing delinquent taxpayers to renew licenses or permits on entering and complying with installment agreements may result in slightly higher revenues if additional taxpayers are able to remain in business and repay outstanding liabilities.

Section 5. Eliminating the \$5 minimum penalty for taxpayers with no tax liability under certain tax programs aligns treatment with other areas of the tax code. Any reduction in penalty revenue is expected to be negative but insignificant.

The HTRC amendment striking references to film production expenses on tribal land reduces the potential negative impact of the film tax credit. In combination with other provisions in these sections constraining co-production expenses of New Mexico Film Partners that have been retained, the overall impact of the film tax credit changes may be positive.

Section 11. Capping the amount of wages eligible for the technology jobs and research and development tax credit at \$500 thousand per employee may slightly increase general fund revenue.

Sections 12 and 13. Clarifications to the tobacco products tax are intended to reinforce existing tax treatment and prevent misclassification of large-capacity closed-system cartridges. These changes may result in a slight positive revenue impact by reducing successful taxpayer challenges.

Section 15. Authorizing TRD to intercept proceeds from property auctions conducted by the Property Tax Division to satisfy other outstanding tax liabilities may slightly increase state and local revenues, particularly from personal income tax and gross receipts tax collections.

SIGNIFICANT ISSUES

House Bill 291 (HB291) represents a significant number of technical amendments routinely required when taxpayers successfully protest assessments, appeal denied refunds or challenge ambiguous statutory language in court. Additional changes arise from the need to remove obsolete references, clarify ambiguous provisions identified through taxpayer requests for rulings, or update references to federal law.

In addition to the expansion, the bill clarifies the exception to the annual credit cap for New Mexico film partners when those partners own an interest in eligible productions. This prevents the incorrect use of projects claiming film partner credits when the film partner is not a real interest in the production.

Another significant change requested by TRD adopts new rounding rules consistent with federal practices following the effective elimination of the penny from circulation. While pennies remain legal tender, making rounding to the nearest nickel is a necessary administrative change.

TRD provides the following policy analysis by section:

Section 1. Section 7-1-25 NMSA 1978 requires courts to award reasonable attorney fees to taxpayers when TRD appeals a decision and the decision is upheld. Under current law, TRD may offset attorney fee awards against revenue distributions only in oil and gas litigation. This section expands that authority to all tax programs administered by TRD. Allowing attorney fees to be paid from revenue distributions rather than the agency's operating budget reduces the need to reserve operating funds for contingencies and allows TRD to evaluate appeals based on legal

merit rather than budgetary risk. The timing and magnitude of such awards remain uncertain but are expected to be small.

Section 2. TRD has historically extended tax deadlines for one to three months during public health emergencies or natural disasters. Current law allows penalty waivers during extensions but requires interest to accrue. This section allows interest to be waived when an extension is granted for good cause, providing relief to taxpayers affected by emergencies. Because interest would not accrue or be assessed, the provision does not violate the constitutional prohibition on forgiveness of debt.

Sections 3, 14, and 17. These sections authorize TRD, the Motor Vehicle Division, and county treasurers to round cash tax payments to the nearest five cents. The change addresses administrative challenges associated with the reduced circulation of pennies and applies only to cash transactions. Electronic transactions are unaffected.

Section 4. This section allows delinquent taxpayers to renew certain licenses or permits—including cannabis, liquor, cigarette distributor and manufacturer licenses, and weight distance permits—by entering into and remaining compliant with an installment agreement. To qualify, taxpayers must not have violated a payment plan within the prior five years and must make a 20 percent down payment. Allowing businesses to remain operational is expected to increase the likelihood of delinquent taxes being repaid.

Section 5. Current law imposes a \$5 minimum penalty on taxpayers subject to certain withholding and fee programs even when no tax liability exists and a zero return is not filed. This section eliminates the minimum penalty for zero-liability taxpayers, aligning treatment with other tax programs, reducing administrative burden, and allowing TRD to focus enforcement resources on cases involving actual tax due.

Sections 6 through 9. These sections amend the film production tax credit in 2 ways: (1) requiring film partners to have meaningful ownership or financial participation in a production to qualify for film partner benefits, and (2) codifying the existing administrative practice that credit applications must be submitted within one year of when the last production expenditure is incurred, rather than paid.

The bill also addresses a perceived loophole allowing film partners to extend partner benefits to unrelated productions without meaningful involvement, which TRD views as inconsistent with legislative intent.

Section 10. This section corrects an obsolete statutory reference by replacing a repealed citation with its successor provision.

Section 11. This section amends the technology jobs and research and development tax credit by capping eligible wages at \$500 thousand per employee, requiring expenditures to be essential to qualified research, and linking eligible wages to research conducted in New Mexico at a qualified facility. These changes are intended to reduce ambiguity, prevent unintended credit claims, and streamline administration.

Sections 12 and 13. These sections clarify the taxation of closed system vaping cartridges with capacities exceeding 5 milliliters. The amendments address ambiguity that has led to taxpayer

protests and are intended to ensure such products are subject to the tobacco products tax rather than the lower gross receipts tax rate.

Section 15. This section authorizes TRD to intercept excess proceeds from property tax auctions conducted by the Property Tax Division to satisfy other delinquent state tax liabilities. Under current law, excess proceeds are returned to former property owners even if they owe other state taxes.

Section 16. This section requires tribal governments with cooperative agreements to follow the same timelines as local governments for changes to gross receipts and compensating tax rates and adds the Navajo Nation to the list of tribes eligible to enter into such agreements. The provision improves notice, coordination, and administrative consistency for taxpayers, tribes, and TRD.

The Indian Affairs Department (IAD) comments:

Section 9-11-12.1 NMSA 1978 is amended to add the Navajo Nation to the tribal cooperative agreement partners and updates the legal name for Ohkay Owingeh. Sections E and F require advance notice and a standard effective date for tribal tax changes tied to tax programs, providing predictability ... while allowing tribes to implement tax changes in emergencies or hardship situations.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers. Accountability is required by 7-1-84 NMSA 1978. TRD accomplishes this mandate by publishing the annual Tax Expenditure Report.

ADMINISTRATIVE IMPLICATIONS

TRD 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, in the long term, TRD will experience savings and efficiencies.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Under Section 11 of this bill, amendments are proposed for the technology jobs readiness credit that will also be modified under HB27 and the duplicate bill SB97; Sections 12 and 13 of this bill propose amendments to the tobacco products tax that will also be modified under SB121.