

BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

January 30, 2024

Bill: SB-174

Sponsor: Senator Leo Jaramillo

Short Title: Calf Canyon Fire Legal Svcs. Gross Receipts

Description: This bill creates a deduction from gross receipts tax (GRT) for the sale of legal services directly related to recovering compensation for individuals who were eligible to receive compensation from the Federal Hermit’s Peak/Calf Canyon Fire Assistance Act (the Federal Act).

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 but up to \$7,000)	(Unknown but up to \$9,000)	(Unknown but up to \$9,000)	--	NR	General Fund
--	(Unknown but up to \$4,700)	(Unknown but up to \$6,000)	(Unknown but up to \$6,000)	--	NR	Local Governments

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

Methodology for Estimated Revenue Impact: The Federal Act provides \$3.95 billion to compensate claimants impacted by the Hermit’s Peak/Calf Canyon Fire. Without knowing the dollar amount of claims that will be filed employing legal assistance, it is challenging to estimate the amount of the revenue loss with precision. However, the experience of the Fire Victim Trust in California indicates that around 90% of claimants hire lawyers to receive compensation. The Act recognizes that claimants may seek legal assistance and caps attorney fees at 20%. Furthermore, per information released by the Federal Emergency Management Agency (FEMA) on the amount of payments to claimants, the Taxation and Revenue Department (Tax & Rev) determined that \$311 million has been paid in compensation as of Jan. 11, 2024. FEMA has announced they expect to pay at least \$1 billion by Jan. 1, 2025, and the Act establishes that claimants must submit their claims no later than November 14, 2024, and November 14, 2025, for amended claims. The Act also stipulates that FEMA has an overall 180-day timeline to make a compensation determination. Using this information, and assuming that all funds awarded by the Act will be expended, the fiscal analysis prorated the remaining funds during the periods of revenue impact and used the statewide effective GRT rate to estimate a ceiling for the fiscal impact. Based on the timelines specified by the Act, it was determined that there would be no fiscal impact beyond fiscal year 2027.

Policy Issues: Considering that the Act does not reimburse claimants for any legal fees incurred in pursuing a claim, the bill seeks to aid claimants responsible for paying their attorney fees and expenses. This deduction though erodes horizontal equity in GRT taxes as it treats claimants of the Hermit’s Peak/Calf Canyon Fire as unique from other taxpayers who have suffered losses from fires, flooding, or other natural disasters. 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 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.

A key policy issue is that tax deductions may not be applied retroactively. As payments under the Act have already started, legal fees incurred prior to the effective date of this bill would have been subject to GRT. Because gross receipts taxes are due on a monthly basis, in most cases, the tax would already have been paid. Under the New Mexico Constitution, and applicable case law, a tax deduction may not be retroactive. Therefore, the proposed tax deduction for the sale of legal services directly related to recovering compensation for individuals who were eligible to receive compensation from the Act can only apply to receipts received on or after the effective date of this bill.

Taxpayers choose which deductions to claim and are not required to claim a deduction just because it is available to them. For example, after recent enactment of a new GRT deduction for feminine hygiene products, Tax & Rev received complaints that some retailers were still charging GRT on those products. It is possible that some lawyers will not claim the deduction and will continue to pass GRT along to their clients on the services rendered.

GRT rests upon the general presumption that all receipts of a person engaged in business in New Mexico are subject to the GRT and that this rate represents the rate upon which the State collects taxes on transactions.¹ GRT represents the largest recurring revenue source for the state General Fund at around 34% , about 80% of municipal revenue, and 30% of county revenue.

Technical Issues: None.

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. 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).

¹ Section 7-9-3.5(A)(1) NMSA 1978.
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