BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

February 2, 2024

Bill: SB-243 **Sponsor:** Senator Siah Correa Hemphill

Short Title: Hotel Renovation Tax Credits

Description: This bill creates a new credit called the "hotel renovation tax credit". Section 1 of the bill adds this credit to the Income Tax Act and Section 2 of the bill adds this credit to the Corporate Income and Franchise Tax Act. This credit would be effective for taxable years January 1, 2024, until December 31, 2027. This credit will have a calendar year cap of $25 million. To be eligible for the credit, a project must be completed on a hotel, which is defined as a building in New Mexico where, for consideration, lodging is regularly furnished to the general public; and that provides at least 15 guests rooms or suites for overnight guest use.

This credit will be in an amount equal to 20% of the qualifying costs incurred by a taxpayer for a hotel renovation project or 30% of qualifying costs for a hotel that receives a certification level of LEED-NC silver. The amount of the credit shall not exceed 5% of the aggregate amount of credits that may be certified for this credit.

The taxpayer will be required to pre-certify the project with the Tourism Department (TD), the preliminary certification shall be made in consultation with the Construction Industries Division of the Regulations and Licensing Department (RLD). Within one year of completion of the project, the taxpayer will be required to apply with TD for this credit and if approved TD will issue a certification of eligibility.

The taxpayer, if approved by TD, would then claim the credit against their tax liability. If the taxpayer is unable to use the full amount of credit during the first year the credit has a carry forward of 5 consecutive tax years. The personal income tax portion of this credit can be allocated to the owners of a taxpayer that is a business entity that is taxed as a limited liability company or partnership for federal income tax purposes based on the taxpayer's ownership interest.

Effective Date: Not specified; 90 days following adjournment (May 15, 2024). Applicability – The provisions of this act apply to taxable years beginning on or after January 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 $50,000)	(Unknown but up to $50,000)	(Unknown but up to $50,000)	(Unknown but up to $50,000)	R	General Fund

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

Methodology for Estimated Revenue Impact: Some unknown factors do not allow the Taxation and Revenue Department (Tax & Rev) to estimate a precise fiscal impact. First, it is unknown how many hotels will initiate renovation projects and the size of those projects. Second, Tax & Rev cannot anticipate how much taxpayers will invest in renovation projects and, therefore, how much credit they may potentially claim against either their income tax or corporate tax liability, since it depends on whether the process to claim a credit and the amount of the final credit will incentivize projects. Finally, the credit depends on the project's location and then either 30% or 20%, depending on the hotel LEED certification. Based on these limitations of information and ability to make assumptions, Tax & Rev determined the fiscal impact is negative but unknown. Per the bill, the maximum amount of the credits would not exceed $25 million each for credits claimed under Personal Income Tax (PIT) and Corporate Income Tax (CIT).

Policy Issues: The bill aims to stimulate hotel renovation and, therefore, the tourism industry by offsetting the GRT paid on these renovation projects through PIT and CIT credits. The economic impacts of these renovation projects will also be seen in the local construction industry. Thus, different sectors will help boost general economic activity and employment. New Mexico's tourism industry makes a sizable contribution to local income and tax revenue. However, the full extent of both the costs and benefits of this novel credit is unknown.

According to data from New Mexico Economic Development Department,[1] the Accommodation and Food Services sector has shown dynamic economic activity during the last year and contributed significantly to Matched Taxable Gross Receipts. For its part, the Bureau of Economic Analysis reports that during 2019-2021 this sector represented 4.3% of all private industry gross domestic product (GDP) in New Mexico.[2] However, the positive economic impact of these credits will be felt only if the proposed tax incentive is sufficient to trigger generalized renovation projects and if it is accompanied by other strategies.

The credit has a defined aggregate claim limit and an end date of tax year 2027. Tax & Rev supports fiscal limits and sunset dates for policymakers to review the impact of tax expenditures before extending them. This is critical to this bill as at the current moment the fiscal impact is unknown.

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.

Technical Issues: In Section 1, page 6, line 1 and Section 2, page 10, Line 16, the definition of "qualifying costs" states that the taxpayer has not received a federal credit for the same project pursuant to IRC Section 45(D). The bill does not detail what information will be provided to TD to verify this condition in determining final qualifying costs and therefore the amount of the credit. Additionally, Tax & Rev suggests a limitation on this credit for requestors receiving the federal credit pursuant to IRC Section 47 commonly referred to as the historic preservation or historic tax credit.

Other Issues: It may be appropriate for any taxpayer to be compliant with tax obligations under the gross receipts tax and the lodgers tax (paid to county and municipal governments) to be eligible for TD to certify these credits.

Administrative & Compliance Impact: Tax & Rev will update forms, instructions, and publications and make information system changes. This bill will have an impact on Tax & Rev's Information Technology Division (ITD) of approximately 640 hours or about four months for an estimated staff workload cost of $35,520. Tax & Rev's Administrative Services Division (ASD) will require approximately 40 hours, split between two existing full-time employees for staff workload costs of $2,900.

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[1] https://edd.newmexico.gov/wp-content/uploads/2023/10/September-2023-Economic-Summary-New-Mexico.pdf
[2] https://apps.bea.gov/regional/downloadzip.cfm

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY2024	FY2025	FY2026	3 Year Total Cost		
--	$2.9	--	$2.9	NR	Tax & Rev – ASD – staff workload
--	$35.5	--	$35.5	NR	Tax & Rev – ITD – staff workload

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

Related Bills: Similar to SB-403 (2023)