FISCAL IMPACT REPORT

		LAST UPDATED	02/26/25
SPONSOR	Tobiassen	**ORIGINAL DATE**	02/14/25
SHORT TITLE	Foster Care Organization Tax Credit	**BILL NUMBER**	Senate Bill 304
		ANALYST	Graeser

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
PIT	$0	($330.0 to ($82,100.0)	(330.0 to ($85,300.0)	($330.0 to ($88,300.0)	($330.0 to ($91,900.0)	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.
*Amounts reflect the most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD	No fiscal impact	$19.9	No fiscal impact	$19.9	Nonrecurring	General Fund
TRD	No fiscal impact	$85.0	$85.0	$170.0	Recurring	General Fund
Total	No fiscal impact	$104.9	$85.0	$199.9		General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect the most recent analysis of this legislation.

Relates to House Bill 225; Duplicate of House Bill 437

Sources of Information
LFC Files

Agency Analysis Received From
Children, Youth and Families Department (CYFD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Senate Bill 304

Senate Bill 304 (SB304) creates the qualifying foster care organization income tax credit, which allows an income tax credit of $500 for a single or head of household taxpayer or $1,000 for a married taxpayer for any donation to a foster parent organization. Any tax credit in excess of the taxpayer’s liability may be carried forward for five years.

The bill defines "qualifying foster care organization" to mean an organization that (a) has been granted exemption from the federal income tax as an organization described in Section 501(c)(3) of the federal Internal Revenue Code and (b) each operating year, provides foster care services to at least 200 qualified individuals in New Mexico and spends at least 50 percent of its budget on foster care services to qualified individuals in New Mexico.

The bill defines "foster care services" to mean cash assistance, medical care, child care, behavioral health services, food, snacks at the qualifying foster care organization's foster youth events, clothing, shelter, character education programs, workforce development programs, secondary education student retention programs, housing or financial literacy services, activities to support, train and retain foster parents licensed or certified by the Children, Youth and Families Department (CYFD) or a child placement agency to provide care for children in the custody of the department or agency in their role as a foster parent and activities to support caregivers and guardians pursuant to the Kinship Guardianship Act or any other assistance that is reasonably necessary to meet basic needs or provide normalcy and that is provided and used in New Mexico.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or June 20, 2025, if enacted. The provisions of the bill are applicable to tax years beginning January 1, 2025. There is no sunset date.

FISCAL IMPLICATIONS

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

Of concern, the tax credit is granted to any individual who donates money to the foster care organization, but the size of the donation is not referenced in establishing the value of the credit for each donor. Because of this lack of specificity, a $1 donation could qualify a married couple for $1,000 of tax credit. The credits may be granted annually.

Because the proposed tax credit is not refundable, the donation would only be elected by taxpayers with more than $500 in liability annually. To get an idea of the potential impact of this bill, LFC extracted the number of taxpayers by filing status with greater than $1,000 liability from the Taxation and Revenue Department (TRD) *Tax Expenditure Report* data and then assumed that only 25 percent of this population would make a donation and claim the $500 or $1,000 credit. This $85.8 million general fund cost was then ratioed by the net amount from the Consensus Revenue Estimating Group's December estimate to arrive at the amounts in Table 1. If 100 percent of taxpayers with any liability elected to make this donation, the amounts would be those in Table 2.

Table 1. Estimated Tax impact For Different Filing Groups Assuming 25 Percent Participation

	Returns w/ >$1,000 Tax	25% Participation	Total Credit
Single Filers	190,101	47,530	$23,765,000
Head of Household Filers	48,415	12,100	$6,050,000
Married Filing Separate Filers	8,216	2,050	$1,025,000
Married Filing Joint & Surviving Spouse Filers	219,698	54,920	$54,920,000
Total	**466,430**	**116,600**	**$85,760,000**

Table 2. Estimated Tax impact For Different Filing Groups Assuming 100 Percent Participation

	Returns w/ any Liability Tax	100% Participation	Total Credit
Single Filers	532,022	532,020	$228,135,373
Head of Household Filers	95,749	95,750	$36,999,247
Married Filing Separate Filers	11,929	11,930	$5,822,458
Married Filing Joint & Surviving Spouse Filers	261,866	261,870	$61,157,966
Total	**901,566**	**901,570**	**$332,115,044**

TRD's approach to estimating the impact results in far lower costs but fails to recognize that a minimal donation can attract the full credit, an incentive to attract far more donors than is typical:

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		
--	($330)	($330)	($330)	($330)	R	General Fund

TRD used the National Taxonomy of Exempt Entities (NTEE) provided by the National Center for Charitable Statistics to estimate the number of qualified foster care charitable organizations in New Mexico. Currently, there are 15 503(c)(3) foster care organizations out of a total of 15,572 501(c)(3) organizations in New Mexico, or 0.096 percent of 501(c)(3) organizations in New Mexico are foster care organizations. TRD assumes each foster care organization qualifies under section 1(G)(2) on page 4.

Approximately 47 percent of U.S. households monetarily donated to a charitable cause in 2020[1]. Using 2023 tax year income tax returns and assuming each tax return is a household, TRD estimates approximately 516 thousand taxpayers donate to a charity on average each year. TRD calculates that approximately 500 taxpayers [would] donate to an eligible foster care organization. In tax year 2023, 32 percent of tax returns were filed as married, filing jointly and 78 percent for all other filing statuses. TRD applied this percentage to the number of eligible taxpayers and calculated the revenue impact by filing status. TRD cannot know if the number of eligible organizations or taxpayer contributions will change in the future, therefore, the number of each has been held constant.

The average charitable donor in the United States is 64 years old and makes two charitable donations a year, and for a middle-income earner, the average yearly charitable donation is approximately $3,296[2]. As such, eligible taxpayers are assumed to have personal income tax (PIT) liability amounts that can absorb their associated credit amounts ($1,000 or $500 depending on filing status) leaving a minimal amount to be carried over.

Although the TRD scenario seems less likely, the Revenue table on page 1 uses the agency's estimate as the low end of the end of the impact parameter.

[1] Indiana University Lilly Family School of Philanthropy, The Giving Environment, Giving During Times of Uncertainty, Oct 2024

[2] https://www.nptrust.org/philanthropic-resources/charitable-giving-statistics/

SIGNIFICANT ISSUES

The bill requires that a qualified foster care organization must demonstrate that it is planning to spend 50 percent of its budget on providing services to at least 200 foster children each year. This could be minimal benefits. Typical non-profit organizations spend over 85 percent on program costs and less than 15 percent on fund raising and administration costs.

It is unusual for donations to a 501(c)(3) organization to generate a tax credit without instructions on whether those donations that generate the tax credit can also be claimed as a federal and state charitable tax deduction for individuals that itemize deductions or the special New Mexico provisions that allow non-itemizers to deduct donations to non-profits.

The percentage of donation eligible for the proposed tax credit should be specified to align with typical state practice for tax credits, even if that percentage is 100 percent.

The bill does not contain usual guardrails, such as a not-to-exceed aggregate cap, contain a sunset date so that the effectiveness of the bill in accomplishing stated goals can be reviewed and a requirement that the costs, coverage and benefits of the tax credit be included in TRD's annual tax expenditure report.

TRD also has significant policy comments:

> Personal income tax (PIT) represents a consistent source of revenue for many states. For New Mexico, PIT is approximately 16 percent of the state's recurring general fund revenue. While this revenue source is susceptible to economic downturns, it is also positively responsive to economic expansions. New Mexico is one of 41 states, along with the District of Columbia, that impose a broad-based PIT (New Hampshire and Washington do not tax wage and salary income). Like several states, New Mexico computes its income tax based on the federal definition of taxable income and ties to other statues in the federal tax code. This is referred to as "conformity" to the federal tax code. PIT is an important tax policy tool that has the potential to further both horizontal equity by ensuring the same statutes apply to all taxpayers, and vertical equity, by ensuring the tax burden is based on taxpayers' ability to pay. This tax incentive erodes both horizontal and vertical equity as taxpayers with middle and higher income have more disposable income and more likely to donate.
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> Foster youths are often exposed to multiple childhood adverse experiences (ACEs) before entering the foster care system[3]. ACEs can include violence, abuse, or neglect - in the home or community, parental or guardian substance abuse or mental health issues, or through parental separation, among others. The greater the number of ACEs a child experiences, the more likely the child will suffer from mental health or chronic health conditions[4]. Foster children are twice as likely to experience post-traumatic stress disorder (PTSD) compared to non-foster children[5]. Youths placed in foster group homes are 2.5

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[3] The Permanente Journal, Adverse Childhood Experiences and Psychosocial Well-Being of Women Who Were in Foster Care as Children, https://pmc.ncbi.nlm.nih.gov/articles/PMC3783064/

[4] https://www.cdc.gov/aces/about/index.html

[5] Child Abuse Neglect, The trajectory of PTSD among youth in foster care: A survival analysis examining

times more likely to be involved in the criminal justice system[6].

This bill may reduce the social, economic, and psychological impact on a foster child over the long-term by increasing the resources available to foster children via foster organizations. In this sense, the bill is expected to have a positive future social impact, and therefore a positive fiscal impact in the long term.

This bill does not have a sunset date with a delayed repeal. TRD supports sunset dates for policymakers to review the impact of a credit or other tax incentive before extending it if a sufficient timeframe is allotted for tax incentives to be measured. A delayed repeal promotes accuracy, brevity, and clarity in the tax code.

Because a foster care organization must have been granted an exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code for a taxpayer's donation to qualify for this credit, that taxpayer's donation will already be deductible from income for purposes of federal income taxation, and so also for purposes of New Mexico personal income taxation. Claiming a deduction for charitable donations does require that a taxpayer itemize deductions rather than claim the standard deduction. For a taxpayer that itemizes deductions, the same donation will therefore give the taxpayer both an income tax deduction to reduce taxable income and an income tax credit subtracted from net tax liability. Good tax policy avoids such "double dipping" of tax expenditures.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met because TRD is required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the credit and other information to determine whether the credit is meeting its purpose. This parallels the statutory requirement of 7-1-84 NMSA which requires TRD to prepare a comprehensive tax expenditure budget annually.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to House Bill 225, which would create a $100 a week tax credit for foster families. SB335 would create a $500 per month per foster child tax credit for foster families.
SB304 is a duplicate of House Bill 437.

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.

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maltreatment experiences prior to entry into care, 2021 Mar 12
[6] https://jlc.org/news/what-foster-care-prison-pipeline

- **Accountability**: Preferences should be easy to monitor and evaluate.

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	**Met?**	**Comments**
Vetted: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.	X	
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.		
Clearly stated purpose	X	
Long-term goals	X	
Measurable targets	X	
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✓	Required in the bill; TR will analyze annually pursuant to 7-1-84 NMSA 1978.
Accountable: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.		
Public analysis	X	
Expiration date	X	
Effective: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.		
Fulfills stated purpose	X	
Passes "but for" test	X	
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	X	
Key: ✓ Met ✗ Not Met ? Unclear		

LG/hj/hg/sgs