

LFC Requester:

Torres

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://agencyanalysis.nmlegis.gov) and email to billanalysis@dfa.nm.gov****(Analysis must be uploaded as a PDF)****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** 2/2/2026*Check all that apply:***Bill Number:** HB 265Original ☒ Correction ☐Amendment ☐ Substitute ☐**Sponsor:** Randall T. Pettigrew**Agency Name
and Code**

State Ethics

Commission 410

Number:**Short Title:** An Act creating the Taxpayer
Dividend Income Tax Rebate Fund**Person Writing** Zach Goodrich; Amelia Bierle**Phone:** 505-554-7196 **Email** Zach.goodrich@sec.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 265 creates the Taxpayer Dividend Income Tax Rebate Fund and establishes an annual, per-filer income tax rebate for eligible New Mexico residents. The bill redirects certain excess oil and gas-related revenues and excess federal mineral leasing revenues into the new nonreverting fund and distributes the fund balance evenly among eligible income tax filers.

HB 265 amends Section 6-4-27 NMSA 1978 to redirect remaining balances in the excess extraction taxes suspense fund, after required transfers to the tax stabilization reserve, to the Taxpayer Dividend Income Tax Rebate Fund. The bill also amends Section 22-8-34 NMSA 1978 to require that excess federal mineral leasing revenues, defined as amounts exceeding a five-year rolling average, be distributed to the same rebate fund.

Section 2 of the bill creates a new section of the Income Tax Act establishing the Taxpayer Dividend Income Tax Rebate Fund as a nonreverting fund administered by the Department of Finance and Administration and used to provide income tax rebates.

Under this section, a resident who files a New Mexico income tax return, is not claimed as a dependent, and files by May 31 is eligible for the rebate.

The rebate amount is calculated by dividing the balance of the rebate fund at the end of the previous calendar year by the number of eligible residents who filed income tax returns for that year, resulting in an equal per-filer payment. The rebate may be applied against a taxpayer's New Mexico income tax liability, and if the rebate exceeds the liability, the excess must be refunded to the taxpayer, making the rebate refundable.

The bill requires the department to report annually to the Legislative Finance Committee and other interim committees on the cost and administration of the rebates. Section 5 provides that the rebate applies to taxable years beginning on or after January 1, 2026

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

In public finance, tax credits and tax rebates serve distinct functions. A tax credit reduces tax liability dollar-for-dollar after taxes are calculated, directly lowering the amount of tax owed. Credits may be refundable or non-refundable and are typically administered through the tax system. By contrast, a tax rebate is generally understood as a lump-sum return of money to taxpayers, often associated with a retroactive tax reduction or surplus and sometimes delivered independently of tax liability, such as for economic stimulus or surplus distribution.

Although HB 265 refers to the payment as an "income tax rebate," the bill's structure aligns more closely with a refundable tax credit. Under Section 2 of the bill, the rebate may be applied against a taxpayer's New Mexico income tax liability, and if the rebate amount exceeds the tax owed, the excess must be refunded to the taxpayer. In addition, eligibility for the payment requires filing a New Mexico income tax return, and the rebate is administered through the

income tax system rather than as a standalone payment.

As a result, while HB 265 frames the payment as a rebate and funds it using surplus revenues, the mechanism by which it is delivered—offsetting tax liability with refundability—causes it to function operationally as a refundable, per-filer tax credit rather than a traditional rebate.

As the tax rebate would be refundable it would trigger scrutiny under the Anti-Donation Clause, Article IX, Section 14 of the New Mexico Constitution. The Anti-Donation Clause constrains the Legislature’s exercise of the tax power, and it applies to prevent the enactment of certain kinds of tax credits. How the Anti-Donation Clause applies to a tax credit, however, depends on the credit’s specific attributes. Tax credits may be *non-refundable*, such that where a credit in excess of a taxpayer’s *ex ante* tax liability is not refunded to the taxpayer, or *refundable*, where it is. Nevertheless, the New Mexico Supreme Court has held that even a non-refundable tax credit violates the Anti-Donation Clause when it is a targeted subsidy to a particular, discrete industry. *Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, ¶ 30 (holding a non-refundable tax credit was “an unconstitutional subsidy to the liquor industry” in violation of the Anti-Donation Clause).

If a refundable tax credit is sufficiently large, the calculation might produce a negative tax liability—*i.e.*, an amount that the State will pay (or “refund”) to the person. Courts have held that where the State receives value in exchange for transferring public money, the transfer is not a “donation” implicating the Anti-Donation Clause.¹ This analysis sounds in contract law, where the receipt of consideration separates binding contracts from non-binding, donative promises. In limiting the reach of the term “donation,” the courts have focused on whether the public-entity donor (e.g., the State, the county, the municipality) receives some commitment or performance in exchange for the transfer. The focus is *not* whether the transfer is generally in the public interest, and the Courts have never held that simply because a transfer of public funds is in the public interest, it is therefore exempt from the Anti-Donation Clause. To the contrary, the New Mexico Supreme Court has explicitly stated “[t]he constitution makes no distinction as between ‘donations’, whether they be for a good cause or a questionable one. It prohibits them all.” *State ex rel. Sena v. Trujillo*, 1942-NMSC-044, ¶ 22. In other words, a transfer is not exempt from the Anti-Donation Clause simply because the transfer does (or is said to) promote the public interest or welfare. The question of constitutional interpretation is whether the transfer is a “donation,” not whether it is in the public interest. And simply because a transfer is anticipated to create downstream benefits that redound to the public, the anticipated benefit does not convert the transfer from a donation into a bargained-for exchange. However, if a tax credit is sufficiently

¹ See *Pierce v. State*, 1996-NMSC-001, ¶ 29 n.12 (rejecting challenge to statutorily conferred pension benefits because pension benefits are not a gratuity but value exchanged for work received by the public employer); *City of Gallup v. N.M. State Park & Recreation Comm’n*, 1974-NMSC-084, ¶ 9 (rejecting an anti-donation claim because, under agreement, state would receive title to 640 acres in Red Rock State Park, \$1.5M for construction, and maintenance and operation of the park for the life of lease contract with Gallup); *White v. Board of Educ. of Silver City*, 1938-NMSC-009, ¶ 31 (rejecting challenge because board of education “will get value received for every dollar put into the enterprise” of a bond issue to build a school to join state and local schools); *Treloar v. County of Chaves*, 2001-NMCA-074, ¶ 32 (rejecting challenge to severance benefits because “severance pay is deemed to be in the nature of wages that have been earned”); *State ex rel. Office of State Eng’r, et al. v. Lewis, et al.*, 2007-NMCA-008, ¶ 51 (rejecting challenge to Pecos River rights settlement because, in exchange for funds, State received land and water rights, as well as settlement of claims in suit); cf. *City of Raton v. Ark. River Power Auth.*, 600 F. Supp. 2d 1130, 1161 (D.N.M. 2008) (Browning, J.) (“The Court does not believe that the Anti-Donation Clause is implicated when there is true consideration—money exchanged for real product. . . . The Court does not believe it should evaluate whether the agreement was a good or bad deal under the Anti-Donation Clause, but merely check for adequate consideration.”).

conditional, such that the taxpayer has to satisfy a set of conditions that the State demands, then the credit might be more analogous to a unilateral contract that the State offers as opposed to an unconditional subsidy.

Finally, any Anti-Donation Clause analysis must also consider the exceptions provided for in Subsections A through H. Those enumerated exceptions provide the categories of those subsidies that the people of New Mexico have deemed as sufficiently in the public's interest to remove them from the Clause's anti-subsidy scope. However, it is not clear that any of those exceptions would apply in this instance.

While the tax mechanism in House Bill 265 is identified as a "tax rebate," this analysis concerning refundable tax credits would apply because the rebate created by the bill would be applied against the taxpayer's liability and where the rebate exceeds the liability the excess would be refunded to the taxpayer.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS