

# ***Tax Matters***

*The Newsletter of the New Mexico Tax Research Institute*

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## **IN THIS LAST LEGISLATIVE SESSION ISSUE OF *TAX MATTERS*:**

- ***8<sup>th</sup> Annual NMTRI Tax Policy Conference***
- ***Times Up – Governor’s Time to Act Over***
  - ***Legislative Post-Mortem***
- ***List of Tax Past Tax Related Legislation and Final Disposition***
- ***Knick Knacks***
  - ***Pay Your Taxes***
  - ***Tax Freedom Day is Coming***
  - ***Another Combined Reporting Study***
- ***Tax Quotable***



**EIGHTH ANNUAL NMTRI TAX POLICY CONFERENCE  
MAY 12-13, 2011  
Hotel La Fonda  
Santa Fe, New Mexico**



**REGISTER NOW for the Eighth Annual New Mexico Tax Research Institute Tax Policy Conference: May 12 - May 13 (Thursday and Friday), at the Hotel La Fonda on the plaza in Santa Fe.** Members of NMTRI may attend for \$170.00 per person. Interested government or academic folks may attend for \$175.00. Other non-members are welcome for \$205.00. Registration includes continental breakfasts both days as well as lunch and reception on Thursday. Reservations and payment should be received no later than May 10, 2011; however last minute decision makers can call (505) 842-5833. CPE and CLE are available (depending on the final state of the agenda and MCLE Board determination, we anticipate 9.3 hrs of CLE and 11+ hours of CPE). We now have ethics! The conference program includes a section on tax/business ethics, particularly useful for CPA's and attorneys and necessary for continuing education requirements.

The program will begin promptly at 9:00 a.m. Thursday. Registration begins at 8:00 and a Board of Directors and members meeting will be held at 8:15 – see below. The agenda is still evolving but the program is already spectacular. REGISTER NOW by clicking [HERE](#) or by going to our website ([www.nmtri.org](http://www.nmtri.org)) or calling the NMTRI at (505) 842-5833.

***Speakers will include:***

*David Abbey, Director, N.M. Legislative Finance Committee*

*Topic: Post Session Fiscal Review*

*Carolyn Bourdeaux, PhD., Associate Director, Fiscal Research Center, Andrew Young School of Policy Studies, Georgia State University*

*Topic: State Tax Reforms in the 21st Century: Issues and Trends*

*John Cmelak, Esq., VP - State Tax Policy, Verizon Wireless Inc.*

*Topic: Digital Goods, Services and Telecommunication Tax Trends*

*Robert J. Desiderio, Esq., Sanchez, Mowrer & Desiderio, P.C.*

*Topic: Business and Tax Ethics*

*Jim Hamill, PhD., CPA, Reynolds Hix & Associates*

*Topic: Business and Tax Ethics*

*Helen Hecht, Esq., Federation of Tax Administrators*

*Topic: State Tax Litigation Landscape*

*Joe Henschman, Esq., Tax Counsel and Director of State Projects, Tax Foundation*

*Topic: State Tax Trends and Landscape*

*Doug Lindholm, Esq., Executive Director, Council on State Taxation*

*Topic: Hot Topics in State Tax Policy*

*LeAnn Luna, PhD., CPA, Associate Professor - Department of Accounting and Information Management and the Center for Business and Economic Research, University of Tennessee*

*Topic: The Tax Gap Faced by States: Possible Solutions; and Results of the Latest Combined Reporting Study*

*Demesia Padilla, CPA, NM Cabinet Secretary, Taxation and Revenue Department*

*Topic: Taxation and Revenue Department Update*

*Scott Pattison, Executive Director, National Association of State Budget Officers*

*Topic: State Funding Crisis*

*Richard Prem, Vice President - Indirect Taxes and Tax Reporting, Amazon.com*

*Topic: The Digital Economy and State Approaches to Taxation*

*Warren Townshend, Director of Sales and Use Taxes, Wal-Mart Corporation*

*Topic: E-commerce From a Brick and Mortar Perspective*

**Hotel reservations need to be made individually and be sure and identify yourself as being a part of the NMTRI Annual Conference in order for the NMTRI discounted rate of \$189/night to apply.**

**Individual hotel reservations should be made by calling Hotel La Fonda's Reservations Department at  
1-800-523-5002 or 1-505-982-5511**

\* A meeting of the NMTRI Board of Directors and members will precede the event. Telephonic participation will be allowed.

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## **TIME'S UP – GOVERNOR'S TIME TO ACT ENDS**

### **Legislative Post-Mortem – What did the Governor Do?**



The 2011 Regular Session of the New Mexico Legislature ended at noon on Saturday, March 19. It convened at noon on Tuesday, January 18. The deadline for bill introduction was February 17. Legislation not acted on by the governor is pocket vetoed on April 8. The effective date of legislation without an emergency clause or effective date is June 17. Being a “long” or 60-day session, non-budgetary legislation and items not related to the budget were fair game and not limited by the call of the Governor. It was a somewhat session dark and dismal, given the

state's ongoing fiscal crisis, as high profile, contentious and painful budget and revenue issues were center stage along with other contentious issues, mostly surrounding education, drivers licenses for illegal aliens and anything else legislators wish to consider.

New Mexico has an uncompensated volunteer legislature comprised of a 70 member House of Representatives and a 42 member Senate. Legislative sessions alternate between 30-day budget related sessions in even numbered years, and unconstrained 60-day sessions in odd-numbered years.

## Legislative Post Mortem - What the Hell Just Happened?



A total of 655 House and 628 Senate bills were introduced in the 2011 legislative session. Our expectations regarding fewer tax proposals, plenty of accountability oriented bills, as well as “loophole” closures or “fairness” proposals were met. Also met were expectations of less legislation in general, relative to other recent 60-day sessions (almost twice as many bills were introduced in prior legislative sessions). Still, we tracked well over a hundred tax and significant revenue related bills this session. Governor Martinez had until April 8<sup>th</sup> to act. In the final days, she vetoed some tax related measures, signed some into law, and simply

didn't act on other, sometimes identical proposals, leaving them to die (“pocket veto”) through inaction. Here's how it breaks down:

### And the winners are...

When Governor Martinez dropped her pen on the 8<sup>th</sup>, several tax measures had been signed into law. As far as tax breaks, we batted a thousand from our last issue's handicapping of tax related bills that cost money that would get signed. Senator Nava's [Senate Bill 179](#), and its House companion, Representative Powdrell-Culbert's [House Bill 523](#) were both signed. They would create gross receipts and compensating tax deductions for locomotive fuel sold at the yet to be built Union Pacific fueling facility in the southern part of the state.

*[NMTRI note: the first “Union Pacific” bills created a gross receipts and compensating tax deduction for fuel sold to or used by locomotive engines, contingent on Union Pacific having begun construction of a fueling facility in the southern part of the state. The committee substitute limits the deduction to fuel loaded or used by a common carrier at the facility in which the \$100 million+ investment was made. It makes for an interesting conundrum. Good tax policy principles suggest that similarly situated taxpayers be treated similarly (fairness principle). On the other hand, extending a tax break to BNSF while attempting to encourage Union Pacific to build a fueling facility would have the effect of quadrupling the cost of the incentive, bringing greater concern and bigger questions regarding “return on investment” such an all inclusive effort presents. Of all the tax expenditure proposals that have made it to the Governor's desk, this of course is the one that we all expect her to sign since she publicly supported the effort.]*

Senator Griego's jet fuel bill, [Senate Bill 84](#) was also signed of course. It would extend the present deduction for jet fuel of 55% past FY13 to FY17, when it otherwise it falls to back to 40%. It doesn't cost general fund money THIS fiscal year. This proposal was never really debated or questioned at all through interim and regular session committee hearings. It was clear the tracks were greased from the beginning, and that the legislature certainly feels the love for Southwest Airlines, the bill's primary beneficiary.

Also signed into law was Representative Trujillo's [House Bill 273](#), which would reinstate the Research and Development Small Business Tax Credit for the periods 7/1/2011 – 6/30/2015, except for applicability to the compensating tax which was removed, and attempts to structurally roll forward credits that could have been earned in the period the credit was expired (7/09-6/11).

The credit is relatively inexpensive and ineffective and has been on the Economic Development Department's list of favorites since back into the Richardson administration when it was accidentally allowed to sunset, so the likelihood of the governor's signature was always high (plus, it invokes the words "small business", which is always good for a warm fuzzy). While this version no longer encourages out of state purchasing, it also has been made harder to manipulate the benefits through withholding, which makes it even less effective or valuable to taxpayers, and easier still to pass in a difficult budget environment.

Perhaps the most broadly applicable taxpayer friendly tax proposal to come out of the legislature is Representative Candy Spence-Ezell's [House Bill 470](#), which increases the threshold for the personal income tax estimated payment penalty exception from \$500 to \$1000 before underpayment penalties apply. The measure takes some burden off of taxpayers and the Department; however its quite generous since it essentially adds over \$10,000 of additional income that can be earned before being one would be subject to estimated reporting requirements, if the source of withholding is payroll or PTE withholding.

Chairman Sandoval's [House Bill 383](#) and its companion, Senator Leavell's [Senate Bill 233](#) both managed to escape the legislature. Those bills amend definitions of the Alternative Energy Product Manufacturers Tax Credit Act to include as an eligible alternative energy source the products directly secreted by a single cell photosynthetic organism. The credit provided is an amount equal to 5.0% of a taxpayer's expenditures on qualified manufacturing equipment. Earlier versions restricted the credit to corporations, but that restriction was amended out. Curiously, Sandoval's proposal wasn't signed, but Leavell's Senate Bill 233 was.

Similarly, Representative Mary Helen Garcia's [House Bill 440](#), which adds "leasing" of tangible personal property to the gross receipts tax deduction for certain eligible generation plant costs under Section 7-9-114, and extends the applicable period for the deduction of qualifying expenditures from 10 to 25 years, was signed also.

Senate President Pro Tem Jennings also managed to get his [Senate Bill 282](#) signed. It creates an income tax credit for *doctors* in the amount of \$1000/*patient* (up to 4) participating in cancer clinical trials. The purpose is to encourage physicians to participate as clinical trial investigators.

### **Other Winners...**

Signed bills that don't really come with material fiscal impacts were mostly administrative in nature. Senator Stuart Ingle managed to get his [Senate Bill 436](#) passed, a proposal requiring the Taxation and Revenue Department to report no later than December 1 of each year, the total amount of taxes withheld by remitters and paid to the Department during the previous calendar year, and the amounts credited against income taxes.

Senator Ingle's [Senate Bill 326](#) passed. It adds "other evidence acceptable to the Secretary" to nontaxable transaction certificates for purposes of supporting the deduction provided in Section 7-9-47 NMSA 1978 for sale of tangible property for resale. It originally limited the applicability of the provision to transactions for which a taxpayer's administrative or judicial remedies have not been exhausted, but was amended to apply "post-assessment" so long as the matter is protested by the end of the year).

*[NMTRI note: this proposal attempts to provide additional relief from the otherwise strictly "form over substance" rule NM has with many of its gross receipts tax deductions - requiring the possession of specific resale certificates (nontaxable transaction certificates or "NTTCs") within certain timeframes. Complaints about "gotcha" audits have been around for years, where taxpayers have been caught unaware and assessed tax as result of an otherwise allowable transaction but without timely possession of the NTTC. While NM has policy reasons for its relatively strict requirements, some reasonable allowance or safety valve makes sense. Purposefully targeted, the bill has an emergency clause because someone apparently needs relief right away. This proposal may not go far enough in that it does not address similar issues in other gross receipts tax deductions with the same requirements, nor will it preclude one of the more common and egregious "gotcha's" that occur with tape match notices that can result in fairly quick assessment on the basis of no NTTC with sometimes little taxpayer sensitivity.]*

Another tax related bill that doesn't cost general fund money and was signed into law by the Governor is [House Bill 437](#), which enacts a property tax exemption for certain veteran's organizations. The exemption was authorized by constitutional amendment and is likely to pass. Property tax measures are easier to pass as they have very little implication for the general fund, but the property tax is also controlled by certain constitutional provisions, which limit the legislature's ability to tinker. Although they do not cost the general fund, measures like this do cost some taxpayers money as they shift tax burden from one class of taxpayer to the others.

Senator Campos passed his [SB 552](#), hoping to clarify the meaning of "livestock" by adding examples of "livestock" for purposes of the gross receipts tax exemption for livestock found in Section 7-9-18, including horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids, and farmed cervidae (elk), as well as their carcasses, but not canines or felines.

*[NMTRI note: contrary to the proponents intention, this may be the best kind of bill in that we're not sure it actually changes the current state and administration of the GRT]*

Senator Keller's other measure intended to improve film industry accountability (see [Senate Bill 44](#)), was also signed by the Governor. It may contain some minor conflicts with compromise film bill, House Bill 607.

### **And those "maybe they are, maybe they aren't" tax increases?**

Representative Mimi Stewart's controversial [House Bill 59](#) proposed to reduce certain unemployment benefits while increasing unemployment insurance contributions to the tune of \$125 million dollars, by moving NM employers to contribution schedule 3, from contribution schedule 1, and was intended to stave off insolvency of the unemployment insurance trust funds (that means an increase from an average per employee contribution of \$214.50 to \$369.80. Proponents suggest that the alternative is would be a mandatory shift to schedule 6 (\$512.21/employee) once the funds are sufficiently depleted. The Governor partially vetoed the bill by line item vetoing the contribution increases while leaving the benefit reductions in place. The espoused intention of the executive is to monitor the fund and increase the contribution schedules, perhaps in a special session for redistricting, if the situation still requires it.

*[NMTRI note: We've seen several states draw down their state unemployment funds to the point of insolvency, only to be forced to essentially borrow and pay back money to the federal government, making their tough budgetary situations worse. No one wants to see that happen here in New Mexico. The line item veto performed by the government was somewhat controversial in that such authority can only be invoked on "appropriation" bills. However it isn't clear what an "appropriation" is. It's essentially the practice Governor Richardson adopted to deal with his vetoing of food tax proposals in conjunction with certain distributions, which he apparently intended to use to reduce the budgetary hemorrhaging that resulted from his vetos.]*

Governor Martinez signed Speaker Lujan's [House Bill 429](#), which corrects an unintended "loophole" in the compensating tax (created last year when another loophole was closed). It moved out of the House Taxation and Revenue Committee without recommendation, and then passed the House with a strong margin after compensating tax rate on services change from 5% instead of 5.125% was amended out of the bill.

*[NMTRI note: while technically a tax increase, the compensating tax bill is a no-brainer from a policy perspective, as there is no reason to have a tax structure that leaks in favor of out-of-state consumption. It makes no sense to not increase the compensating tax rate on services to make it equal to the rate on other purchases - since it's what was originally intended and makes sense - however this issue is not critical since few, if any, taxpayers are ever subject to the compensating tax on services. So, that can keep for another day, or perhaps we can bring the state rate back down to 5%]*

The controversial film credit compromise was signed into law by the Governor. ([HTRC Committee Substitute for House Bill 607/622](#)). In the final bill, the annual cap was moved from \$45 to \$50 million, and additional restrictions were added along with a refundable application fee for purposes of getting a placeholder in line with respect to the credit cap.

The two arguably tax-increase proposals seemingly popular bills that amend the Enhanced 911 Act, Representative Bobby Gonzalez's [House Bill 328](#) and Senator Rodriguez's [Senate Bill 422](#), both made it out of the legislature only to be vetoed but the Governor. The proposal added and modified definitions providing authority to impose surcharges on Voice Over Internet Protocol (VOIP) and pre-paid phone communications, which are the only voice communication charges that don't contribute to the funding of E911 emergency services, but also clarified that E911 charges would not be imposed on broadband Internet access charges. There wasn't much, if any, opposition, and the counties supported the measure. The bill presented some compliance burden for businesses and the Taxation and Revenue Department.

Senator Phil Griego's [Senate Bill 445](#) creates a new section of the Liquor Control Act providing for a direct wine shipment permit that allows the holder of a New Mexico winegrower's license or the holder of a winery license in a state other than New Mexico to obtain a permit that will allow up to two cases of wine per month to be shipped directly to a New Mexico resident. It further requires that applicants register and report liquor excise and gross receipts tax to the TRD. Its House companion bill, [House Bill 487](#) introduced by Ken Martinez, was not signed.

## **And the rest of the VETOS go to...**

In addition to the aforementioned E911 bills, transparency proposals such as Rep. Eleanor Chavez's [House Bill 161](#), which provides for a tax expenditure budget, was vetoed along with the identical Senate version introduced by Senator Tim Keller (see [Senate Bill 47](#)). Likewise, House Taxation and Revenue Committee ("HTRC") Chair Ed Sandoval's proposal to review certain tax credits, found in his [House Bill 166](#), was also vetoed.

*[NMTRI note: these and other well-intended proposals designed to enhance transparency or accountability, including provisions written into other tax bills and some non-tax proposals seem to abound in this "broke/post-corruption" phase of state government's recovery. No funding has been provided to fulfill these requirements, so they'll have to be accomplished through existing resources. Accordingly, they represent to some degree an illusion of oversight and accountability on the part of the legislature, but provide no tools to produce the answers to the questions they say they really want answered. In the veto messages, the Governor indicated she still wanted to fully review all credits and other tax expenditures. We suspect we'll get what we pay for, so manage your expectations since we're not likely to get answers to the hardest economic impact questions anytime soon. We will however continue to get lists of estimated costs of statutory tax exemptions and deductions, which aren't tax expenditure budgets at all, but will nevertheless be misunderstood and provide fodder and distraction for political purposes.]*

A couple of weeks ago the Governor vetoed Senator Keller and Representative Bandy's [Senate Bill 187](#). Senate Bill 187 formalized the Legislative Finance Committee's (LFC's) program evaluation function and broadened the LFC's ability to obtain and review information otherwise made confidential by state and federal law. Although we weren't tracking this bill, the Governor mentioned tax returns as one example of why she was vetoing the bill, as the proposal did not extend penalties for improper disclosure of confidential information to the new users (her veto message can be seen [here](#)).

Other administrative measures that passed both houses only to get vetoed include Speaker Lujan's [House Bill 343](#), which declares that it is the legislative intent that taxes imposed by political subdivisions (cities, counties, universities, school districts, other) authorized by virtue of criteria such as area, population, net taxable base, etc., are not automatically repealed just because the authorizing criteria cease to be met, provided that the tax has not been repealed or terminated. It appears the proposal is intended to allow local governments to "keep their deal" once they get it, and not be excluded because of future changes in population, etc. Senator Munoz's [Senate Bill 483](#), which was identical, was not vetoed, but was also not signed.

## **And what fell behind the desk...**

Senator Cisneros's passed his [Senate Bill 210](#), which would have created a personal and corporate income tax credit in an amount equal to generation costs, but not to exceed \$1/kilogram for the for the first 4 million kilograms of hydrogen sold by a qualified fuel generator or resource generator. It initially got out of the Senate Finance Committee only to fail on the floor of the Senate. However, it was later reconsidered, amended and passed by the Senate, made it through the House, and is now presumably somewhere under the Governor's desk, having not been signed or vetoed.

As previously mentioned, there were other proposals that were signed into law or vetoed by the Governor, where the House or Senate companion bill was left to die without the Governor's action. Senator Munoz's [Senate Bill 483](#) was not vetoed, while Speaker Lujan's [House Bill 343](#) was. Alternatively, while the Governor did sign Phil Griego's wine shipment proposal in [Senate Bill 445](#), she did not sign the identical [House Bill 487](#), introduced by Ken Martinez. Likewise for the bills expanding the Alternative Energy Product Manufacturers Tax Credit Act to include as an eligible alternative energy source the products directly secreted by a single cell photosynthetic organism. Chairman Sandoval's [House Bill 383](#) was not acted upon, whereas its companion, Senator Leavell's [Senate Bill 233](#), was signed into law.

## Now What?

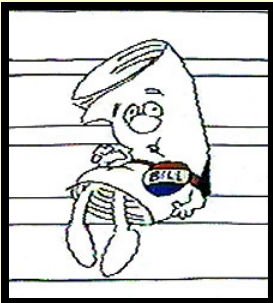
It's finally over folks and it is what it is. The Taxation and Revenue Department and other impacted agencies must now go to work implementing the new laws, and the rest of us must do what we can to comply. We may not need to worry about new tax proposals, good or bad, until next year's regular thirty-day session (recall, thirty day sessions are limited to matters of budget, but taxes generally meet that requirement and are germane without a special call of the Governor to be introduced). That said, another decade has passed and it's redistricting time again. Rumor has it we may see a special session called for that purpose in the fall (i.e. September), and that would provide opportunity for the Governor to add the discussion of certain tax issues to the agenda if she wants to. If she does so, the issues would likely be narrow and limited to things that are perceived as not being able to wait, such as matters involving the unemployment trust fund if intervention is deemed necessary, proposals to address tax lightning, "good bills" that didn't quite make it out of the legislature in time, or perhaps administrative economic development priorities.

Of course, fixing prior mistakes and addressing broad problems isn't as easy as it seems like it should be. We lamented earlier when Smith's [Senate Bill 194](#), an interim Revenue Stabilization and Tax Policy Committee endorsed bill, passed the Senate unanimously but never managed to finish the journey through the House, how ironic and unfortunate it is that in this era of austerity, the legislature could not pass one of the better Revenue Stabilization and Tax Policy Committee endorsed proposals eliminating a tax credit that has never been used. If you can't get past that sort of history and constituency (read: no-one), we're in real trouble when it comes time to do material tax reform.

Ditto for Senator Eichenberg's proposal to address "tax lightning" got really close to passing, having escaped the Senate Finance Committee for a Senate floor vote. His [Senate Bill 108](#) would revalue properties sold from 2004 through present, limit the increase in value of residential property at 3% per year and cap them at current and correct values, and provide for a sales ratio approach for valuing new construction. Although not a perfect solution (current and correct is tax nirvana), politically this proposal was palatable and was a workable solution. Some argued that we should wait for the courts to decide the issue (three district court decisions in two different districts have already ruled the current law unconstitutional), but no one ever likes what the courts do, and now was the time to dispense with the politics and misinformation, and fix a problem while low property values make it the least painful. That opportunity may remain with a bit longer.

The Legislative Council Service maintains copies of bills, compiles locators, and publishes lists of bill conflicts during the course of the session. Most information is available in a timely and electronic fashion from their rather robust website, which can be reached at <http://legis.state.nm.us/lcs/>. The New Mexico Taxation and Revenue Department publishes their fiscal impact reports (“FIR’s”) and provides access to proposed legislation [here](#) on their website. The TRD’s FIR’s are the primary source relied upon by the LFC’s for their tax related FIR’s.

**FINAL DISPOSITION OF BILLS with significant tax or revenue implications introduced in 2011 Legislative Session and Passing BOTH Houses:**



If no effective date is mentioned, the bill lacks one and would take effect upon enactment, June 17, 2010. Effective date for GRT bills is July 1, 2011 unless otherwise noted. Income Tax bills are effective tax years beginning on or after January 1, 2011 unless otherwise noted. “TYBA” = Tax years beginning on or after. Other notes: “CS” indicates committee substitute; “a” indicates amended

<b>Bill Number/ Sponsor:</b>	<b>Title: Link to bill language: Description</b>	<b>Assignments -Location:</b>
HB 59 Stewart	<b>Unemployment Contribution Temporary Schedule: <a href="#">HB 59</a></b> Implements employer contribution schedule 3 in the second quarter of 2012 for purposes of unemployment insurance contributions.	<a href="#">Partial Veto</a>
HB 161 E. Chavez	<b>Tax Expenditure Budget Development and Report: <a href="#">HB 161</a></b> Requires the TRD to prepare an annual “tax expenditure budget” by October 15 of every year for the three preceding years, the current and upcoming fiscal years. Included are all tax expenditures in excess of \$5 million in the for all “significant general fund revenue sources” – meaning the primary tax programs.	Veto <a href="#">HEM34</a>
HB 166 Sandoval	<b>Review Certain Tax Credits: <a href="#">HB 166</a></b> Inserts language into most business tax credits requiring the credits be reviewed every six years, usually by the Taxation and Revenue Department and other applicable agencies such as the Economic Development Department. Credits. Such reviews are intended to be evaluate the effectiveness of the credits relative to their cost, and intent, current circumstances with the notion that ineffective credits be amended or repealed. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	Veto <a href="#">HEM35</a>
HB 273 Trujillo	<b>Small Business Tax Credit Eligibility Period: <a href="#">HB 273</a></b> Reinstates the Research and Development Small Business Tax Credit for the periods 7/1/2011 – 6/30/2015, except for applicability to the compensating tax, and attempts to structurally roll forward credits that could have been earned in the period the credit was expired (7/09-6/11).	Signed

HB 328 Gonzales	<b>Surcharges Imposed on Communication Services: <a href="#">HB 328</a></b> Amends the Enhanced 911 Act to add and modify definitions providing authority to impose surcharges on Voice Over Internet Protocol (VOIP) and pre-paid phone communications.	Veto <a href="#">HEM16</a>
HB 343 Lujan	<b>Political Subdivision Qualification to Tax: <a href="#">HB 343</a></b> Declares legislative intent with respect to taxes imposed by political subdivisions (cities, counties, universities, school districts, other) authorized by virtue of area, population, net taxable base for rate-setting purposes or other criteria to not be viewed as automatically precluding a subdivision from continuing to impose or re-impose that tax even though it may no longer meet one or more of the criteria that qualified it, provided that the tax has not been repealed or terminated.	Veto <a href="#">HEM23</a>
HB 382 Sandoval	<b>Photosynthetic Energy Tax Credit: <a href="#">HB 382</a></b> Amends definitions of the Alternative Energy Product Manufacturers Tax Credit Act to include as an eligible alternative energy source, products directly secreted by a single cell photosynthetic organism. The credit provided is an amount equal to 5.0% of a taxpayer's expenditures on qualified manufacturing equipment.	Passed/Died
HB 429 Lujan	<b>Compensating Tax Transaction Requirements: <a href="#">HB 429</a></b> Closes a perceived loophole in the compensating tax imposition statute (7-9-7), amendment removed the compensating tax rate on services change to 5.125%, which would have matched the other compensating and statewide gross receipts tax rates.	Signed
HB 437 T.A. Garcia	<b>Veteran's Property Tax Exemption: <a href="#">HB 437</a></b> Creates a property tax exemption for certain veteran's organizations property.	Signed
HB 440 M.H. Garcia	<b>Advanced Energy Tax Deductions for Some Leases: <a href="#">HB 440</a></b> Adds "leasing" of tangible personal property to the gross receipts tax deduction for certain eligible generation plant costs under Section 7-9-114, and extends the applicable period of the deduction from the year qualifying expenditures begin from 10 to 25 years.	Signed
HB 470 Ezell	<b>Underpayment of Estimated Tax Penalty Changes: <a href="#">HB 470</a></b> Increases the threshold for the personal income tax estimated payment penalty exception from \$500 to \$1000 before underpayment penalties apply.	Signed
HB 487 Martinez	<b>Create Direct Wine Shipment Permit: <a href="#">HB 487</a></b> Creates a new section of the Liquor Control Act providing for a direct wine shipment permit that allows the holder of a New Mexico winegrower's license or the holder of a winery license in a state other than New Mexico to obtain a permit that will allow up to two cases of wine per month to be shipped directly to a New Mexico resident. Requires that applicants register and report liquor excise and gross receipts tax to the TRD.	Passed/Died
HB 523 Powdrell- Culbert	<b>Locomotive Fuel Tax Gross Receipts Deduction: <a href="#">HB 523</a></b> The proposal would provide an exemption from the compensating and gross receipts tax (GRT) on fuel used by locomotives. The exemptions are contingent on certification by the Economic Development Department	Signed

	certification that the construction of a locomotive refueling facility in Dona Ana County has commenced by July 1, 2012. (Note: essentially represents the third extension of this exemption, apparently resulting from construction delays).	
HB 607 Ben Lujan	<b>Film Production Tax Credit Act: <a href="#">HB 607</a></b> Caps the film credit at \$45, requires two and three year installments for credits in excess of \$1 and 5 million, respectively; narrows and limits certain qualified expenditures, precludes interest on installment payments of credits, requires audits of credits in excess of \$5 million.	Signed
SB 44 Keller	<b>Film Production Tax Credit Tracking &amp; Review: <a href="#">SB 44</a></b> Requires additional information be disclosed and reported by film production companies utilizing film production tax credits. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	Signed
SB 47 Keller	<b>Tax &amp; Rev Dept. Tax Expenditure Budget: <a href="#">SB 47</a></b> Requires the TRD to prepare an annual “tax expenditure budget” by October 15 of every year for the three preceding years, the current and upcoming fiscal years. Included are all tax expenditures in excess of \$5 million for all “significant general fund revenue sources” – meaning the primary tax programs. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	Veto <a href="#">HEM48</a>
SB 84 P. Griego	<b>Jet Fuel Gross Receipts Credit: <a href="#">SB 84</a></b> Extends the present law deductions of 55% for jet fuel from the gross receipts and compensating tax from 6/2012 to 6/2017, and reduces the deduction to 40% in years thereafter. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	Signed
SB 179 Nava	<b>Locomotive Fuel Gross Receipts: <a href="#">SB 179</a></b> The proposal would provide an exemption from the compensating and gross receipts tax (GRT) on fuel used by locomotives at certain fueling locations. The exemptions are contingent on certification by the Economic Development Department certification that the construction of the locomotive refueling facility receiving the deductions in Dona Ana County has commenced by July 1, 2012. (Note: essentially represents the third extension of this exemption, apparently resulting from construction delays, however it was narrowed on amendment such that the tax preference only extends to the facility and not to others)	Signed
SB 210 Cisneros	<b>Hydrogen Fuel Production Tax Credits: <a href="#">SB 210</a></b> Creates a personal and corporate income tax credit in an amount equal to generation costs, but not to exceed \$1/kilogram for the for the first 4 million kilograms of hydrogen sold by a qualified fuel generator or resource generator. The credit can be carried forward for ten years and creates reporting requirements for the TRD.	Passed/Died
SB 233 Leavell	<b>Plant Photosynthesis As Alternative Energy: <a href="#">SB 233</a></b> Amends definitions of the Alternative Energy Product Manufacturers Tax Credit Act to include as an eligible alternative energy source, products directly secreted by a single cell photosynthetic organism. The credit provided is an amount equal to 5.0% of a taxpayer’s	Signed

	expenditures on qualified manufacturing equipment.	
SB 282 Jennings	<b>Tax Liability For Certain Physician Services: <a href="#">SB 282</a></b> Creates a credit for <i>doctors</i> in the amount of \$1000/ <i>patient</i> (up to 4) participating in cancer clinical trials. The purpose is to encourage physicians to participate as clinical trial investigators. The department is required to track the credit, along with all new credits, and report on its use and effectiveness annually.	Signed
SB 326 Ingle	<b>TRD Secretary Approve Certain Evidence: <a href="#">SB 326</a></b> Adds “other evidence acceptable to the Secretary” to nontaxable transaction certificates for purposes of supporting the deduction provided in Section 7-9-47 NMSA 1978 (sale of tangible property for resale). Limits applicability to transactions for which a taxpayer’s administrative or judicial remedies have not been exhausted.	Signed
SB 422 Rodriguez	<b>E911 Surcharge on Communications Services: <a href="#">SB 422</a></b> Amends the Enhanced 911 Act to add and modify definitions providing authority to impose surcharges on Voice Over Internet Protocol (VOIP) communications.	Veto <a href="#">SEM422</a>
SB 436 Ingle	<b>Oil &amp; Gas Withholding Info to Legislature: <a href="#">SB 436</a></b> Requires the Taxation and Revenue Department to report no later than December 1 of each year, the total amount of taxes withheld by remitters and paid to the Department during the previous calendar year, and the amounts credited against income taxes.	Signed
SB 445 Phil Griego	<b>Direct Wine Shipment Permits: <a href="#">SB 445</a></b> Creates a new section of the Liquor Control Act providing for a direct wine shipment permit that allows the holder of a New Mexico winegrower’s license or the holder of a winery license in a state other than New Mexico to obtain a permit that will allow up to two cases of wine per month to be shipped directly to a New Mexico resident. Requires that applicants register and report liquor excise and gross receipts tax to the TRD.	Signed
SB 483 Munoz	<b>Taxation of Political Subdivisions: <a href="#">SB 483</a></b> Declares legislative intent with respect to taxes imposed by political subdivisions (cities, counties, universities, school districts, other) authorized by virtue of area, population, net taxable base for rate-setting purposes or other criteria to not be viewed as automatically precluding a subdivision from continuing to impose or re-impose that tax even though it may no longer meet one or more of the criteria that qualified it, provided that the tax has not been repealed or terminated.	Passed/Died
SB 552 Campos	<b>Tax Definition of Livestock: <a href="#">SB 552</a></b> Adds examples of “livestock” for purposes of the gross receipts tax exemption for livestock found in Section 7-9-18, including horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids, and farmed cervidae (elk), as well as their carcasses, but not canines or felines.	Signed

## KNICK KNACKS

### Pay your taxes

It's April, and you know what that means. It's time to get those returns done and send in any money you owe. The deadline this year is April 18<sup>th</sup>, thanks to a somewhat obscure federal holiday, Emancipation Day, falling on Saturday, and therefore being observed on Friday, April 15<sup>th</sup>. The result – your returns are officially due on the next business day – Monday, April 18<sup>th</sup>.

### Tax Freedom Day

The Tax Foundation has run their numbers and tells us that Tax Freedom Day, that is, the day we earn enough to stop paying taxes for the year and presumably begin making money for ourselves, is just around the corner. According to the Tax Foundation and not including deficit spending:

*“[Tax Freedom Day](#)® will arrive on April 12 this year, the 102nd day of 2011. That means Americans will work well over three months of the year, from January 1 to April 12, before they have earned enough money to pay this year's tax obligations at the federal, state and local levels.*

*Tax Freedom Day arrives three day later in 2011 than it did in 2010, but nearly two weeks earlier than in 2007. This shift toward a lower tax burden since 2007 has been driven by three factors:*

- *The Great Recession has reduced tax collections even faster than it has reduced income.*
- *President Obama and the Congress, after a long debate, extended the Bush-era tax cuts for two additional years.*
- *As part of the extension agreement, the Making Work Pay tax credit was replaced with the 2 percent reduction in the payroll tax.*

*Despite these tax reductions, Americans will pay more in taxes in 2011 than they will spend on groceries, clothing and shelter combined.”*

It's already too late to celebrate in New Mexico, since we saw Tax Freedom Day on March 30. Thanks in part to New Mexico's relatively low taxes and the fact that New Mexico is a very poor state, contributing relatively low per capita amounts of federal income tax, results in New Mexico having the 6<sup>th</sup> earliest Tax Freedom Day. The earliest was Mississippi, followed by Tennessee, South Carolina, Louisiana, and South Dakota. Higher income states tend to pay a higher share of federal income tax, and often impose greater state and local level tax burdens. Not surprisingly, Connecticut has the latest Tax Freedom Day on May 2, followed by New Jersey, New York, and Maryland. More on Tax Freedom Day can be found on the Tax Foundation website [here](#).

### Another Combined Reporting Study

The National Council on State Legislatures (“NCSL”) commissioned the University of Tennessee to study the effects of mandatory combined reporting on corporate tax revenues and

state economic performance. The study, authored by Bill Fox and LeAnn Luna, attempts to statistically isolate and analyze the impacts of combined reporting outside the context of other economic factors. The study, given data constraints and the need to look and jurisdictions that changed reporting requirements dictated the focus to be on New York and Vermont. The authors suggest that the report is best understood within the context of existing literature that finds that higher corporate income taxes reduce economic activity. The report found that combined reporting had no effect on the economies of the states when measured separately, but when interacted with the corporate income tax rate, the report suggest that combined reporting hurts state economies when imposed at rates above the national median rate of 7.4%. The authors suggest that further study over time and with additional state experience would be advisable. The report can be found [here](#).

*{NMTRI note: the study was somewhat limited by lack of experience and data necessary to perform the statistical analysis required, and is therefore moderately inconclusive, suggesting more study. New Mexico's corporate income tax rate is just a little higher than the national median rate of 7.4%, at 7.6%. However, it is the highest in the southwest area, eclipsed only by California as you move west.}*

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#### **TAX QUOTABLE:**

“I am thankful for the taxes I pay because it means that I'm employed.”

~ Nancie J. Carmody

“It is a good thing that we do not get as much government as we pay for.”

~ Will Rogers

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**COMMENTS:** Your suggestions and comments on this newsletter, the conferences (past or future), the Distinguished Lectures Series, our research or any aspect of NMTRI's operation and programs are welcome. Please send them to [richard.anklam@nmtri.org](mailto:richard.anklam@nmtri.org), call 505-269-6791 or mail them to P.O. Box 91657, Albuquerque, New Mexico 87199-1657. We genuinely solicit your input and thank you for your support.



Join NMTRI today!

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"The power to tax involves the power to destroy" - McCulloch v. Maryland, 17 U.S. 316 (1819), Chief Justice John Marshall.

“Taxes are what we pay for civilized society” *Campanía General de Tabacos v. Collector*, 275 U.S. 87, 100 (1927), Justice Oliver Wendell Holmes, dissenting.