

Tax Matters

The Newsletter of the New Mexico Tax Research Institute

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SPECIAL SESSION COMING - GOVERNOR'S GOT BIG AGENDA



The 2011 Special Session of the New Mexico Legislature begins at noon on Tuesday, September 5th and will last no more than 30 days. The primary purpose of the session is to redraw legislative and congressional boundaries in following the 2010 annual census. More information on redistricting can be found on the Legislative Council Service website [here](#). 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.

Other issues can be heard at the call of the Governor. Issues expected to added to the proclamation include proposals for eliminating driver's licenses for undocumented workers, eliminating "social promotion" for third graders who can't read at grade level, a cleaned-up in-state procurement preference for state purchases, and state and local government authority to restrict fireworks. A capital outlay bill as well as a measure to restore funding for a supplemental food stamp program is also expected to be debated. There's even some government restructuring to discuss.

There remaining item or items to be discussed are changes to unemployment insurance program and the High Wage Jobs Tax Credit. In the case of the former, some had sought to increase the contributions into the trust fund to prevent an even more costly insolvency resulting in the need to borrow federal money and dramatically increase employer contributions. The Governor line-item vetoed such a proposal in the last session, and her vetoes were subsequently tied up in court. The Governor's office maintains that there is no pending insolvency requiring tax increases at this time, but would like to see other changes made to the program.

The High Wage Jobs Tax Credit, one of the state's most lucrative business tax inducements, was found several years after the fact, to point indirectly to the Internal Revenue Code definition of Medicare "wages" found at IRC Sec. 3306(b). The problem was economic developers, taxpayers, as well as the NMTRD assumed the referenced "wage" definition in the credit act was "gross wages", simply because that made more sense. The former is reduced by certain pre-tax

deductions such as some cafeteria plan contributions, meaning marginal jobs could fall out of qualification based on an employee's plan participation. Using the statutory definition also reduced the benefit amount of the credit as that calculation also included "wages" as a starting point before adding benefits. The administration has indicated it wants to honor its commitments with respect to promises made about the credit by economic developers and others, and has indicated it would entertain a proposal to "fix" the current statute.

[NMTRI note: The New Mexico Taxation and Revenue Department has been faulted with "reinterpreting" the statute for the purpose of denying credit claims. In this case, the Department is not guilty of malice as their recent interpretation is quite correct, if not unfortunate. It makes no sense to benchmark credit eligibility against a subjective number determined after the fact by an employee. It makes sense to change the definition of "wages" for this purpose in the credit act. While doing that, consideration should be given to cleaning up other problem areas in the credit such as the lack of statute of limitations on claiming the credit, an export requirement that doesn't work, and the credits failure to address reorganizations. Also, as an aside, retroactive expansions of credits are potentially unconstitutional, but would have to be challenged by someone with standing to be undone.]

Stay tuned and we'll keep you updated on the events and non-events of the Special Session!



NMTRI Members Elect New Board

By majority vote, the members of the New Mexico Tax Research Institute elected the new slate of Directors and officers as recommended by the Nominating Committee, to one year terms having begun July 1, 2011. The current officers, Directors, and staff congratulate the incoming Directors and officers! Also, special thanks to retiring board members Ray Rossi, Gary Kilpatrick, David Griffiths, and Curt Schwartz (who left us too soon - may he rest in peace).

Brian McDonald	President
Anthony "Tony" Trujillo	Vice President
Steve Keene	Secretary-Treasurer

Suzanne Bruckner, Sutin, Thayer & Browne
Robert Chase, Mack Energy

Jay Collins, LES
Bill Fulginiti, New Mexico Municipal League
Sam Gregson, BP America
***Nancy King**, Montgomery and Andrews
Dennis Kinsey, Yates Petroleum
Brian McDonald, McDonald Consulting
Marcus Mims, Clifton Gunderson LLP
Robert S. Nichols, Salt River Project
Jim O'Neill, O'Neill Consulting
Steve Perry, Chevron
Tony Popp, New Mexico State University
Tom Sellers, Conoco Phillips
Leslie Simmons, Holly Corp.
* **David Slater**, Intel
Tracy Sprouls, Rodey, Dickason, Sloan Akin & Robb
Timothy Van Valen, Brownstein, Hyatt, Farber and Schreck
Chuck Wellborn, Wellborn Strategies
Robert Wenzel, IRS (retired)
Sayuri Yamada, PNM
* **John Wheir**, Modrall Sperling

* indicates new member

The Eight Annual NMTRI Tax Policy Conference was a big success and good time was had by all. The conference archive has been prepared and uploaded to the NMTRI website. The conference materials are available [here](#).

One of the highlights of the event was the annual presentation of the Franklin Jones Award for lifetime achievement in contributing to New Mexico tax policy. The award was obvious and not gratuitous given the fact that the recipient and founding member of the board, James P. O'Neill was named the recipient. A hearty and well deserved congratulations to Jim from the staff, members and board of the NMTRI.



The conference was dedicated to the recently departed founding member of the board, Curt Schwartz.



Curtis W. Schwartz
1945 - 2011

Curt Schwartz, our 2007 Franklin Jones Award winner, had influenced tax policy in New Mexico since the late 1960's when he served as an attorney and chief counsel for the New Mexico Taxation and Revenue Department. He left us too soon and will be greatly missed.

KNICK KNACKS

Tax and Rev's Loss is DFA's Gain



The Martinez administration has announced that former NMTRI Research Director and most recent Director of Tax Policy and Research for the New Mexico Taxation and Revenue Department Dr. Thomas E. Clifford has been nominated to be the new Cabinet Secretary for the Department of Finance and Administration ("DFA"), the state's mothership agency responsible for overseeing the finances and budgets of state government. Dr. Clifford has remarkable experience for the job, having also previously served as DFA Deputy Secretary and Chief Economist during the Johnson administration. Dr. Clifford has also previously service as the Taxation and Revenue Department's and Legislative Finance Committee's Chief Economist, and spent seven years working for Congress on the Joint Committee for Taxation. A hearty NMTRI congratulations to Tom, and condolences to the TRD who has experienced significant losses in experience through retirement and other movement of late. Tom will be missed their but valued at the DFA. Secretary Rick May is moving on to head up the New Mexico Finance Authority. The announcement can be found on the Governor's website [here](#).

Revenue Forecast is Up!

The July consensus revenue forecast suggests that new money may be available to the legislature for appropriation in the upcoming session. Having been presented to the interim Legislative Finance Committee as well as the Revenue Stabilization and Tax Policy Committee, there are significant risks to the forecast (i.e. more slowly recovering economy than expected, lower oil prices, etc.) and there may be unanticipated expenses such as federal money owed to CMS and a potential settlement regarding repayment of illegally distributed Sole Community Provider Act funds. Keith Gardner, Chief of Staff for the Martinez administration was quoted as saying they'd like to have used excess funds for tax reductions. The reason for the optimism was stronger than expected oil and gas revenues, not to mention stronger than anticipated gross receipts tax revenue in the service sector. The revenue forecast, which will be revised in October and again in December before the next regular session, can be found on the Legislative Finance Committee website [here](#).

TAX QUOTABLE:

"Did you ever notice that when you put the words "The" and "IRS" together, it spells "THEIRS?"

~ Author Unknown



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, 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!

"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" Campaña General de Tabacos v. Collector, 275 U.S. 87, 100 (1927), Justice Oliver Wendell Holmes, dissenting.