

# ***Tax Matters***

*The Newsletter of the New Mexico Tax Research Institute*

Issue No. 2011-4

February 13, 2011

New Mexico Tax Research Institute  
P.O. Box 91657  
Albuquerque, New Mexico 87199-1657

505-842-5833  
[Richard.Anklam@nmtri.org](mailto:Richard.Anklam@nmtri.org)  
[www.nmtri.org](http://www.nmtri.org)

Views expressed in this publication are those of the editorial staff unless otherwise indicated. They do not necessarily reflect the views of any member or members of the New Mexico Tax Research Institute. Nothing in this publication is intended to be nor should be construed as offering tax advice. No tax planning decision should be made without consulting your professional tax advisor. All rights reserved. No material in this publication may be reproduced or redistributed without the express written permission of the New Mexico Tax Research Institute.

© 2011 NMTRI

## **IN THIS “VALENTINE’S DAY” ISSUE OF *TAX MATTERS*:**

- **Again, Don’t Forget the Principles**
- **Into the Legislative Session**
- **List of Tax Related Legislation**
- **Happenings Leading Up to the Legislative Session**
- **Knick Knacks**
  - **Tax Season issues at the NMTRD**
  - **Amazon Leaving Texas**
- **Tax Quotable**



## AGAIN, DON'T FORGET THE PRINCIPLES



It is important, particularly when dealing with tough economies, tough budget decisions, and the emotionally charged subject of tax increases, to view the world from the framework of sound principles. Taxes serve an important purpose in that they raise the money to pay for the government services we need. But taxes can also create inefficiencies, distortions, and sometimes inequities. It is a better approach to look at our entire tax system rather than getting lost in the weeds focusing only on a particular rate or some item we choose to tax or not tax. Apart from the debate about how much money our state government should spend and on what, the state has to raise that money in ways which harm the economy least, don't get in the way of job creation and that are seen as fair and equitable. Accordingly, we've taken the opportunity to reprint our principles of good tax policy here:

- State and local taxes should be adequate to provide an appropriate level of those goods and services best provided by the public sector, such as education, public safety, law enforcement, streets and highways, and the courts.
- State and local tax policy should do the least harm to the private economy. Therefore, tax bases should be as broad as possible so that tax rates can be as low as possible in order to raise the necessary revenues.
- State and local tax policy should be fair and equitable towards individuals and businesses similarly situated. Individuals with the same income level should be taxed the same. Businesses engaged in similar commercial activities should be subject to the same level of taxation.
- State and local tax policy should not be costly to administer and should be easily understood by taxpayers so as to minimize taxpayer compliance costs.
- The state and local tax burden should be evaluated on the basis of the impact of all taxes levied on a given taxpayer, not just a single tax or tax rate.
- Deviations from established tax policy in pursuit of economic development, social or other goals should be well-reasoned and pursued only when established tax policies are not significantly undermined and the results of such deviations can subsequently be measured and evaluated.

## INTO THE LEGISLATIVE SESSION



The 2011 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 18, and ends at noon on March 19. The deadline for bill introduction is 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 are fair game and not limited by the call of the Governor. It is expected to be a very busy session, given the state’s ongoing fiscal crisis, as high

profile, contentious and painful budget and revenue issues are center stage along with 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.

### **And the beat still goes on...**

So far, 473 House and 483 Senate bills have been introduced (the larger House got off to a much slower start, but is catching up...). This Thursday is the last day to introduce new legislation. Our expectations regarding fewer tax proposals, plenty of accountability oriented bills, as well as similar but differently referenced “loophole” closures or “fairness” proposals continue to be met. Also met are continued expectations of less legislation in general, relative to other recent 60-day sessions. Still, we’re tracking around 83 tax and significant revenue related bills introduced thus far (let us know if you notice a bill not on the list that should be).

The newly revised consensus revenue forecast will be released later this week. No significant changes are expected, and there will be few excuses not to finish up a budget. Senate Finance Committee Chair John Arthur Smith has said he’s not inclined to hear spending measure until a budget is passed and they know what they’re working with in that regard.

In the meantime, bills continue to get heard in their first committees, and committees that tend to be a last stop for tax related matters (e.g. House Taxation and Revenue (“HTRC”) and Senate Finance Committee (“SFC”)) are hearing proposals as well. The HTRC is hearing bills and temporarily tabling all proposals with fiscal impacts per committee policy. As previously mentioned, Senate Finance has not been entertaining much in the way of spending proposals, and no tax increase proposals have been passed to the SFC thus far.

Representative Strickler’s proposal to reduce corporate income tax rates to that of the lowest current bracket, 4.8% ([House Bill 200](#)), passed through the House Business and Industry Committee and is now in HTRC, where it will likely get tabled when heard. New Mexico’s corporate income tax rates are the highest regionally, but closer to average nationally.

*[NMTRI note: While there are policy arguments in favor of rate reduction and other real reforms, the revenue loss of such a measure would have to be made up somewhere. We expect any “tax cuts” that pass this year will be narrowly targeted and not broad in effect or policy.]*

## **Film Continues to Garner Attention**



The film industry continues to be the focus of interest and debate in New Mexico. Interested people pack committee rooms when the related bills are heard. The Rio Grande Foundation and the New Mexico Motion Picture Association hosted a film debate at the Hispano Cultural Center. KNME focused on the issues in their February 3 New Mexico InFocus program (on the KNME website [here](#), which included NMTRI). The Albuquerque Journal’s Winthrop Quigley has penned a couple of recent articles on the subject (e.g. [January 30, 2011](#)). Doug Turner is addressing the Economic Forum on the subject this Thursday. Why the debate? To recall, no one can say what the real fiscal impact of the subsidy program is, positive or negative. Two New Mexico specific studies were done, with differing goals, objectives and results. The most critical study was performed by the Arrowhead Institute at New Mexico State University ([here](#)). The more favorable and industry funded study was conducted by Ernst & Young, LLP ([here](#)).

*[NMTRI note: Full disclosure, Arrowhead economist and former NMSU economics department chair Tony Popp is on the NMTRI board, and the principle author of the E&Y study is a friend and has presented at NMTRI conferences. The latter study required local government revenue to get over the hump and have a positive fiscal impact – perhaps the foundation for Senator Jennings proposal below. Legislative Finance Committee reviews of the studies have taken a “split the baby” approach to the differing reports. Read them and see what you think]*

Meanwhile, President Pro Tempore Tim Jennings has introduced a measure that would cap film credit expenditures at \$75 million, and require local governments to pay 40% of the credit cost via reductions in their hold harmless food and medical distributions ([Senate Bill 455](#)). Meanwhile, Phil Griego passed two film related memorials out of his committee and to the Senate floor. [SJM 15](#) requests the “New Mexico legislative council be requested to appoint an interim film investment committee to review and analyze evidence of the advantages and disadvantages of the state's film tax credits and film investments and make recommendations to the governor and the legislature by December 1, 2011 for revisions to existing policy”. [SJM 16](#) makes a similar request of the State Investment Council that it “evaluate the performance of the New Mexico film incentive program, with particular emphasis on the loan component, and make recommendations for improvements and accountability measures to the appropriate legislative interim committee by December 2011.”

*[NMTRI note: neither memorial provides funding to conduct studies. The Economic Development Department in responding to SJM 15 indicated a proper evaluation of the film incentive program could cost \$100K or more. That’s likely true, and means no one should hold their breath for meaningful insightful studies that answer the questions about the return on investment of the film program to be conducted.]*

Senator Keller's [Senate Bill 44](#) would attempt to impose greater accountability and control over the incentive program, as well as requiring greater study. It was amended in Senate Corporations ("SCORC") and moved on to the Senate Finance Committee. Senator Smith's [Senate Bill 169](#) caps credit amounts per production to \$2 million and has not yet been scheduled for hearing in Senate Corporations, its first committee assignment. Governor Martinez has gone on record supporting a reduction in the film subsidy from 25% of expenses to 15%. However, no legislation limiting the credit percentage has yet to be introduced. Representative Kintigh's [House Bill 19](#) repeals the credit entirely, but was tabled early in the session by the House Labor and Human Resources Committee.

### **New "raiser" proposals still coming**

Since last week, we've only seen two new significant tax increase proposals. Representative Vigil's [House Bill 421](#) provides for the largest increases in the liquor excise tax thus far seen. It increases the tax across all beverage categories (i.e. beer from \$.41 to \$1.85/gal, and spirits from \$1.60 to \$4.98/liter). Small wineries and local microbreweries are held harmless under this proposal, and distributions of the tax revenues remain the same as present law.

In the Senate, Bernadette Sanchez introduced [Senate Bill 472](#), which imposes an income tax surtax of 1% on taxable income in excess of \$100,000 for individuals, and \$160,000 for married filing joint returns.

In an attempt to undo expensive mistakes of the past, Senate Finance Committee Chairman John Arthur Smith has introduced [Senate Bill 452](#), a proposal to phase out the food and medical gross receipts tax deductions while simultaneously phasing out the associated local government hold harmless provisions. The proposal does not restore the municipal credit or add money to LICTR.

### **Bills that cost money**

Tax proposals that will carry negative fiscal impacts continue to be proposed. Another proposal to expand a gross receipts tax deduction can be found in 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 of the deduction from the year qualifying expenditures begin from 10 to 25 years. Senator Leavell's [Senate Bill 409](#) is identical.

Senator Harden wants to further expand gross receipts tax deduction for certain medical services (Section 7-9-93) to include services performed by persons licensed by CYFD to provide round-the-clock services for the treatment of persons with autism ([Senate Bill 416](#)).

To the long list of veteran friendly proposals one can add Representative Thomas Garcia's [House Bill 437](#), which would create a property tax exemption for certain veteran's organization's property. In an apparent attempt to indirectly create a tribal exemption, Representative Richard Martinez wants to narrow the definition of "received" for purposes of special fuel ([House Bill 465](#)). In [House Bill 448](#), Representative David Chavez is apparently attempting to provide an enhanced state benefit beyond federal Section 179 treatment of asset purchases (expensing rather than capitalization and depreciation) for assets otherwise precluded from being expensed by Section 179. It requires the inclusion of the expense in "base income" in the same year.

Senator Sapien has introduced an economic development oriented proposal in [Senate Bill 443](#), which is co-sponsored by Speaker Lujan. It provides for single sales factor elections based on qualified investments by manufacturers in a tax year (e.g. \$250M investment in year one would provide a two-year single sale factor election for years 2 and 3, a \$500M investment would allow a four year singles sales factor election, \$750M would provide a six year election, and \$1000M would provide an eight year single sales factor election. Investments in otherwise qualified equipment cannot be taken for purposes of the Investment Tax Credit under this proposal.

*[NMTRI note: Mandatory or elective single sales factor is an increasingly popular apportionment approach designed to benefit exporters while not favoring those exploiting a state's markets. Many of New Mexico's "competitors" offer or require the approach. For exporting manufacturers, that approach is much more attractive than New Mexico's current structure which offers a double weighted sales factor election (with strings), a regionally high rate, and throwback rule. Lack of such an option was recently cited by a very large green manufacturer that would have been new to the state, as one of their reasons for not selecting New Mexico for operations. This proposal is narrowly crafted and should yield a relatively small fiscal impact when analyzed.]*

### **Oil and Gas Proposals**

Speaker Lujan has introduced an oil and gas severance tax credit for producers in his [House Bill 444](#), in an amount equal to 50% of the expenditures on a closed loop drilling circulation system, not to exceed \$100K per well, the credit would be effective 1/1/2011 – 12/31/2016 and cannot be carried forward.

[Senate Bill 436](#) by Minority Leader Stuart Ingle 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. Senator Ingle initiated the oil and gas withholding in 2003 in an attempt to fund the legislative retirement system, and the effort garnered much more revenue than originally anticipated.

### **And other stuff**

Speaker Lujan introduced [House Bill 429](#), which closes a perceived loophole in the compensating tax imposition statute (Section 7-9-7), and raises the compensating tax on services to 5.125% in order to match the other compensating and statewide gross receipts tax rates.

*[NMTRI note: The bill is essentially a technical correction. The compensating tax rate on services wasn't changed when the others were last year – and almost no one is subject to that particular part of the compensating tax. The other change "fixes" last year's "fix" that didn't completely close the hole in the compensating tax that it attempted to.]*

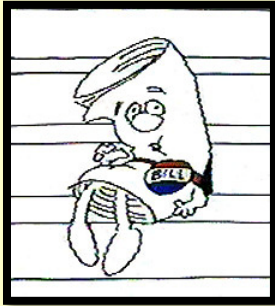
Senator Munoz has introduced [Senate Bill 483](#), a duplicate of Speaker Lujan's [House Bill 343](#), a measure declaring the legislative intent with respect to taxes imposed by political subdivisions (cities, counties, universities, school districts, other) authorized by virtue of area, population, net taxable base for rate-setting purposes or other criteria not be assumed to be automatically precluded 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.

Stay tuned... there's still more to come...

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.

**Bills with significant tax or revenue implications introduced in 2011 Legislative Session:**



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 19 D.Kintgh	<b>No Film Tax Credit &amp; Limit film Investments <a href="#">HB 19</a></b> Repeals the Film Production Tax Credit and limits the film related investment that can be made from the severance tax permanent fund (no more that 3% of the fund in total), requires market rates, and SIC approval with substantial NM presence.	HLC/HTRC- HLC (tblD)
HB 23 M.H. Garcia	<b>Liquor Excise Tax Distribution to Schools: <a href="#">HB 23</a></b> Increases the liquor excise tax across all beverage categories (i.e. beer from \$.41to \$1.48/gal, and spirits from \$1.60 to \$3.85/liter) and changes distributions in an effort to distribute the additional increase to the public school fund and hold the DWI grant fund to current distributions. Small wineries and local microbreweries are held harmless under this proposal.	HBIC/HTRC -HBIC
HB 25 Rehm	<b>Reduce Hospital Tax Levy For Hospital Funding: <a href="#">HB 25</a></b> Effectively phases-out the property tax mill levy for UNMH in Bernalillo county to 10% of 2011 mill rates over four years.	HHGAC/HT RC-HHGAC
HB 39 Trujillo/P. Griego	<b>Plug-in Electric Car Exemption: <a href="#">HB 39</a></b> Exempts qualified electric plug-in vehicles from the Motor Vehicle Excise Tax, changes the exemption from the GRT and compensating tax from vehicles held for sale or lease to plug-ins instead, and include it in the definition of “alternative energy vehicle” for purpose of the Alternative Energy Products Manufacturers Tax Credit. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	HBIC/HTRC -HBIC-DP/a- HTRC
HB 44 Williams Stapleton	<b>Severance Tax Fund Investment in Energy: <a href="#">HB44</a></b> Provides for the investment of up to 10% of the severance tax permanent fund in “New Mexico renewable energy” only if the investment is in a “New Mexico renewable energy private equity fund”.	HENRC/HT RC-HENRC
HB 61 Rehm	<b>“Net Income” Definition For Income Taxes: <a href="#">HB 61</a></b> Eliminates the requirement to add back state and local taxes itemized for federal purposes. The proposal essentially undoes the prior year’s change to require the add back, but fails to require taxpayers to include in income refunds of taxes previously deducted.	HCPAC/HT RC-HCPAC
HB 75 Gonzales	<b>Geothermal Pump Tax Credit Refundability: <a href="#">HB 75</a></b> Makes the credit refundable above and beyond any existing taxpayer	HBIC/HTRC -HBIC-DP-

	income tax liability, requires taxpayers to obtain certificates of eligibility, and requires an annual report on the credit be prepared jointly by the EMNRD and TRD.	HTRC
HB 89 Sandoval/UI ibarra	<b>Veteran Owned Business Gross Receipts: <a href="#">HB 89</a></b> Creates an exorbitantly expensive gross receipts tax deduction for sales of services pursuant to a contract or sub-contract with the federal government, if the seller is a veteran-owned business. This bill was endorsed by the Military and Veterans' Affairs committee.	HBIC/HTRC -HBIC-DP- HTRC
HB 102 E. Chavez	<b>Internet Sales Gross Receipts: <a href="#">HB 102</a></b> Eliminates the exception from "engaging in business" for third party content owners on a world wide web site located in NM for purposes of imposition of the GRT. Also creates a presumption of taxability of non-New Mexico businesses that are referred by potential customers to the seller via agreement with a NM resident and has cumulative gross receipts tax from such referrers in excess of \$10,000 (so-called "Amazon" proposal).	HBIC/HTRC -HBIC
HB 119 D. Chavez	<b>Income Tax Exemption For People Over 65: <a href="#">HB 119</a></b> Exempts from New Mexico personal income tax the income of <u>individuals</u> with adjusted gross income of \$70,000 or less, who are 65 years of age or older.	HCPAC/HT RC-HCPAC
HB 156 E. Chavez	<b>Budget and Corporate Transparency: <a href="#">HB 156</a></b> Requires a tax expenditure budget of sorts, beginning with an incorrect definition of tax expenditure. Makes certain reporting requirements for "corporations" but not other business or non-business entities or individuals similarly situated. Adds agency reporting requirements regarding procurement of services.	HBIC/HHG AC/HTRC- HBIC
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.	HHGAC/HT RC- HHGAC- DP-HTRC
HB 165 Crook	<b>Define "Modified Combined Tax Liability: <a href="#">HB 165</a></b> Makes a consistent definition of "Modified Combined Tax Liability" across tax credit programs (narrows some to gross receipts, compensating, and withholding taxes only... a change with little or no taxpayer impact). The proposal also makes clear that "modified combined tax liability" does not include local option taxes. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	HBIC/HTRC -HBIC
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	HBIC/HTRC -HBIC-DP- HTRC

	Committee endorsed bill.	
HB 198 B. Lujan	<b>Tax Credits for Natural Gas as Vehicle Fuel: <a href="#">HB 198</a></b> Creates personal and corporate income tax credits of 70% of the cost of conversion of a motor vehicle to natural gas use, 50% of the installation cost of natural gas dispensing equipment (all after applicable federal credits), and an exemption from the Motor Vehicle Excise Tax for the one-time purchase of vehicles that can use natural gas. Conversion credit would expire 6/30/17, with the other credits and exemption expiring 6/30/16. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	HBIC/HTRC -HBIC-DP/a- HTRC
HB 200 Strickler	<b>Reducing Corporate Income Tax Rates: <a href="#">HB 200</a></b> Phases in rate/bracket reduction by eliminating resulting in a single and top rate of 4.8% for tax years beginning on or after January 1, 2014.	HBIC/HTRC -HBIC-DP- HTRC
HB 222 Egolf	<b>Reduce Unequal Treatment of Taxes &amp; Credits: <a href="#">HB 222</a></b> Reduces the statewide gross receipts and compensating tax rate to 4 7/8% from 5 1/8% and increases severance tax rates on oil, natural gas, molybdenum, potash, and coal.	HBIC/HTRC -HBIC
HB 239 Garcia	<b>Veteran Employment Tax Credit: <a href="#">HB 239</a></b> Creates a personal and corporate income tax credit for taxpayers who hire “qualified veterans” (discharged within the last eight months) and employ them for eight or more months.	HBIC/HTRC -HBIC-DP- HTRC
HB 250 Stewart	<b>Define “Tobacco Products” &amp; Enact Minimum Tax: <a href="#">HB 250</a></b> Expands the definition of “tobacco products” to include cigars and any product containing tobacco that is consumed without combustion. The proposal also more than doubles the rate of tax from 25% to 57% of the product value. Also creates a new category of tobacco product (“retail unit”) and provides for a minimum tax of \$1.66/retail unit.	HBIC/HTRC -HBIC
HB 265 McMillan	<b>Military Retirement Income Tax Exemption: <a href="#">HB 265</a></b> Creates an exemption in the amount of 100% of military retirement or retainer pay otherwise included in income, for a military retiree or surviving spouse.	HHGAC/HT RC-HHGAC
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).	HBIC/HTRC -HBIC
HB 281 Spence- Ezzell	<b>TRD Secretary Approve Certain Evidence: <a href="#">HB 281</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.	HBIC/HTRC -HBIC
HB 287 Jeff	<b>Special Fuel Tax Deduction on Indian Land: <a href="#">HB 287</a></b> Creates a “special fuel” (aka diesel) tax deduction for retail sales of fuel on tribal reservation, pueblo grant or trust lands, provided the tribe impose a same or similar tax and the seller is in compliance with those tribal tax laws.	HBIC/HTRC -HBIC

HB 288 Jeff	<b>Teacher Income Tax Deduction on Indian Land:</b> <a href="#">HB 288</a> Provide a personal income tax deduction in the amount of income earned by teaching full time at an Indian school if the teacher lived “full time” on the reservation. The deduction is effective tax years beginning 1/1/2011	HEC/HTRC- HEC
HB 304 Powdrell- Culbert	<b>Angel Investment Tax Credit Extension:</b> <a href="#">HB 304</a> Extends the availability of the Angel Investment Credit Act to investments made prior to 12/31/2015.	HBIC/HTRC -HBIC
HB 327 Gonzales	<b>Property Value, Certain Tax Credits Accepted:</b> <a href="#">HB 327</a> Precludes the use of federal tax credits when determining the value of certain “low-income” properties for purposes of property tax valuation and assessment.	HHGAC/HT RC-HHGAC
HB 328 Gonzales	<b>Surcharges Imposed on Communication Services:</b> <a href="#">HB 328</a> Amends the Enhanced 911 Act to add and modify definitions providing authority to impose surcharges on Voice Over Internet Protocol (VOIP) communications	HBIC/HTRC -HBIC
HB 335 Rehm	<b>Reduce Mill Levy to Pay for County Hospital:</b> <a href="#">HB 335</a> Repeals the UNMH mill levy imposed in Bernalillo County effective 1/01/2012. In exchange, the proposal authorizes a voter approved mill levy of up to 65 cents/\$1000 of net taxable value, requires periodic reauthorization, and provides for limits and reductions based on need.	HHGAC/HT RC-HHGAC
HB 343 Lujan	<b>Political Subdivision Qualification to Tax:</b> <a href="#">HB 343</a> 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.	HHGAC/HT RC-HHGAC
HB 361 Egolf	<b>Point-of-Sale Surtax on Retail Alcohol Sales:</b> <a href="#">HB 362</a> Essentially imposes an additional retail sales tax at the rate of 2.5% on the sale of alcoholic beverages	HBIC/HTRC -HBIC
HB 421 Vigil	<b>Increase Liquor Excise Tax:</b> <a href="#">HB 421</a> Increases the liquor excise tax across all beverage categories (i.e. beer from \$.41to \$1.85/gal, and spirits from \$1.60 to \$4.98/liter) Small wineries and local microbreweries are held harmless under this proposal, and distributions of the tax revenues remain the same.	HBIC/HTRC -HBIC
HB 429 Lujan	<b>Compensating Tax Transaction Requirements:</b> <a href="#">HB 429</a> Closes a perceived loophole in the compensating tax imposition statute (7-9-7), and raises the compensating tax on services to 5.125% to match the other compensating and statewide gross receipts tax rates.	HBIC/HTRC -HBIC
HB 437 T.A. Garcia	<b>Veteran’s Property Tax Exemption:</b> <a href="#">HB 437</a> Creates a property tax exemption for certain veteran’s organizations property.	HTRC
HB 440 M.H. Garcia	<b>Advanced Energy Tax Deductions for Some Leases:</b> <a href="#">HB 440</a> Adds “leasing” of tangible personal property to the gross receipts tax deduction for certain eligible generation plant costs under Section 7-9-	HBIC/HTRC -HBIC

	114, and extends the applicable period of the deduction from the year qualifying expenditures begin from 10 to 25 years.	
HB 444 Ben Lujan	<b>Tax Credit for Certain Oil &amp; Gas Wells: <a href="#">HB 444</a></b> Creates a oil and gas severance tax credit in an amount equal to 50% of the expenditures on a closed loop drilling circulation system, not to exceed \$100K per well. The credit would be effective 1/1/2011 – 12/31/2016 and cannot be carried forward.	HENRC/HT RC-HENRC
HB 448 D. Chavez	<b>Tax Deduction for Certain Depreciable Assets: <a href="#">HB 448</a></b> Provides for state level Section 179 treatment of asset purchases (expensing rather than capitalization and depreciation) for assets otherwise precluded from being expensed by Section 179. Requires the inclusion of the expense in “base income” in the same year.	HBIC/HTRC -HBIC
HB 465 Martinez	<b>Tax on Special Fuel Shipments: <a href="#">HB 465</a></b> Changes definitions such that diesel fuel that is loaded at a refinery or terminal of into tanks, cars, etc. for purposes of transportation to another rack, terminal, or facility that produces, blends, refines or compounds diesel fuel is not “received” (which is what subjects the fuel to taxation).	HENRC/HT RC-HENRC
SB 6 Wirth	<b>Combined Tax Reporting for Some Corporations: <a href="#">SB 6</a></b> Mandates that all unitary corporations report as a combined group for corporate income tax purposes, but provides an exception – an election to file separately for manufactures. Repeals the option for a corporation to report on a federal consolidated basis.	SCORC/SFC -SCORC
SB 7 Wirth	<b>Net Taxable Income Determination <a href="#">SB 7</a></b> Imposes requirements to “add back” certain related party expenses separate company filers for purposes of determining taxable income for corporate income tax purposes.	SCORC/SFC -SCORC
SB 39 Keller	<b>Tax Forms Itemizing Gross Receipts Exemptions: <a href="#">SB 39</a></b> Requires taxpayers with gross receipts to report most exemptions and all but one deduction separately by category, requiring substantially more effort on the part of taxpayers and the TRD in an effort to garner more detailed information from taxpayers. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	SCORC/SFC -SCORC
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.	SCORC/SFC -SCORC- DP/a-SFC
SB 46 Griego	<b>Extend Jet Fuel Gross Receipts Tax Credit: <a href="#">SB 46</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.	SCORC/SFC -SCORC
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	SCORC/SFC -SCORC- w/o rec-SFC

	primary tax programs. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	
SB 81 Feldman	<b>Tobacco Products Tax &amp; Definitions:</b> <a href="#">SB 81</a> Expands the definition of “tobacco products” to include cigars and any product containing tobacco that is consumed without combustion. The proposal also more than doubles the rate of tax from 25% to 57% of the product value. Also creates a new category of tobacco product (“retail unit”) and provides for a minimum tax of \$1.66/retail unit.	SCORC/SFC -SCORC
SB 84 P. Griego	<b>Jet Fuel Gross Receipts Credit:</b> <a href="#">SB 84</a> 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.	SCORC/SFC -SCORC- DP-SFC
SB 94 E. Griego	<b>Income Surtax, Distribution, &amp; School Funds:</b> <a href="#">SB 94</a> Creates a personal income tax “surtax” for taxable years 2011 through 2013, and distributes the proceeds to the public school fund and Medicaid program. The surtax is 3.3% of taxable income in excess of \$100K for singles and \$150K for married, head of household and surviving spouse filer. Married individual filing separately would pay the surtax on taxable incomes above \$75K.	SCORC/SFC -SCORC
SB 95 E. Griego	<b>Internet Sales Gross Receipts:</b> <a href="#">SB 95</a> Eliminates the exception from “engaging in business” for third party content owners on a world wide web site located in NM for purposes of imposition of the GRT. Also creates a presumption of taxability of non-New Mexico businesses that are referred by potential customers to the seller via agreement with a NM resident and has cumulative gross receipts tax from such referrers in excess of \$10,000 (so-called “Amazon” proposal).	SCORC/SJC/ SFC – SCORC-DP- SJC
SB 108 Eichenberg	<b>Extend Annual Property Valuation Increases:</b> <a href="#">SB 108</a> Limits the applicability of the 3% valuation limitation to owner occupied residences, eliminates the revaluation upon change in ownership, and provides for revaluation if owner-occupation ends.	SCORC/SFC -SCORC
SB 113 Boitano	<b>Tax Credit for Certain Scholarship Donations:</b> <a href="#">SB 113</a> Creates a personal income tax credit for donations to private school scholarship fund of up to \$500/yr. The TRD must analyze the effectiveness of the credit and report to the Revenue Stabilization and Tax Policy Committee on their findings every 4 years.	SEC/SFC- SEC
SB 135 Beffort	<b>Family Assistance Employer Tax Credits:</b> <a href="#">SB 135</a> Updates names and references of the former welfare-to-work personal and corporate income tax credits, and creates additional accountability and reporting requirements on the part of the TRD.	SCORC/SFC -SCORC- DP-SFC
SB 149 Ulibarri	<b>Veteran Owned Business Preference:</b> <a href="#">SB 149</a> Amends procurement code to creates new preference categories (“veteran-owned business”, “veteran owned-manufacturer”), and changes preference factors to favor the new veteran categories relative to resident non-veteran businesses, who in turn maintain a preference to nonresident businesses.	SPAC/SJS- SPAC-DP- SJC

SB 160 Ingle	<b>Military Construction Service gross Receipts: <a href="#">SB 160</a></b> Reinstates the deduction for construction services performed on Cannon AFB from 7/1/11 – 12/31/14.	SCORC/SFC -SCORC
SB 169 Smith	<b>Film Production Tax Credit Cap: <a href="#">SB 169</a></b> Limits allowable film tax credits for production and post production recipients to \$2 million dollars.	SCORC/SFC -SCORC
SB 170 Smith	<b>Tax Itemization &amp; Return Filing: <a href="#">SB 170</a></b> Requires taxpayers with gross receipts to report most exemptions and all but one deduction separately by category, requiring substantially more effort on the part of taxpayers and the TRD in an effort to garner more detailed information from taxpayers like SB39. Also requires more detailed reporting on the part of gasoline retailers, wholesalers, distributors, and rack operators as well as interstate telecommunications gross receipts taxpayers.	SCORC/SFC -SCORC
SB 178 Cisneros	<b>Dialysis Facility Service Gross Receipts: <a href="#">SB 178</a></b> Adds and defines “dialysis facilities” to the ever-growing list of medical related professions and operations deductible when sold to Medicare or Tricare pursuant to Section 7-9-77.1	SCORC/SFC -SCORC- DP/a-SFC
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. The exemptions are contingent on certification by the Economic Development Department 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)	SCORC/SFC -SCORC- DNP-CS/DP- SFC
SB 189 Neville	<b>Property Tax Increases &amp; Revaluations: <a href="#">SB 189</a></b> Provides for a phased-in return to current and correct value for residential properties for purposes of tax valuation and assessment. The proposal would limit property tax increases, regardless of change in ownership, to 3% per year for years following 2016.	SJC/SFC- SJC
SB 194 Smith	<b>Repeal Venture Capital Investment Act: <a href="#">SB 194</a></b> Repeals a never used tax credit found in Article 2D of Chapter &, NMSA 1978. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	SCORC/SFC -SCORC
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.	SCORC/SFC -SCORC
SB 217 Sharer	<b>Military Retirement Pay Tax Exemption: <a href="#">SB 217</a></b> Creates an exemption in the amount of 100% of military retirement or retainer pay otherwise included in income, for a military retiree or surviving spouse.	SCORC/SFC -SCORC- DP-SFC
SB 234 Leavell	<b>Solar Energy Gross Receipts: <a href="#">SB 243</a></b> Expands the GRT deduction for sales of solar energy systems to include	SCONC/SC ORC/SFC-

	the lease of such systems. It also expands the definition of solar energy system to one that supplies public utilities in addition to the property it's on.	SCONC
SB 243 Fischmann	<b>Tax Increment District Requirements: <a href="#">SB 243</a></b> Limits Tax Increment District authorizations to only those districts that include at least twenty private property owners without business or family interests in the district, is limited to redevelopment of public improvements to existing infrastructure for urban renewal ("brown field redevelopment"). Improvements must remain owned by the local government or state, approved by the board of finance, and authorized by law.	SCORC/SFC -SCORC
SB 244 Fischmann	<b>Motor Excise Tax Increase &amp; Offset: <a href="#">SB 244</a></b> Increases the Motor Vehicle Excise Tax from 3% to 3% of the first \$10K of value and 5% on any excess. The proposal also phases-out the trade-in deduction over time, to zero beginning 7/1/2013.	SCORC/SFC -SCORC
SB 256 Ortiz y Pino	<b>Soft Drink Sales Gross Receipts: <a href="#">SB 256</a></b> Amends the gross receipts tax deduction for food (Section 7-9-93) to exclude the "soft drinks." The proposal also creates a new distribution in the amount of the additional tax to the county-supported Medicaid fund. Implicit implications are more detailed and complicated reporting will likely be required to implement the distribution requirements of the bill.	SPAC/SCOR C/SFC- SPAC
SB 258 B. Sanchez	<b>Adjust Liquor Tax Distribution: <a href="#">SB 258</a></b> Increases the liquor excise tax across all beverage categories (i.e. beer from \$.41 to \$1.48/gal, and spirits from \$1.60 to \$3.85/liter) and changes distributions in an effort to hold the DWI grant fund to current distributions. Small wineries and local microbreweries are held harmless under this proposal. A new "mental health and substance abuse treatment fund" is created with and distributes 25.26% of the receipts from the tax to the new fund.	SCORC/SFC -SCORC
SB 264 Harden	<b>Cigarette Taxes on Tribal Land: <a href="#">SB 264</a></b> Narrow's the tribal exemption of the cigarette tax to apply only to sales of cigarettes to a tribe or licensed tribal member for sale to a tribal member on that tribe's land. A "tax-credit stamp" is also created.	SIAC/SCOR C/SFC-SIAC
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.	SCORC/SFC -SCORC
SB 288 Ortiz y Pino	<b>Sweetened Beverage Excise Tax: <a href="#">SB 288</a></b> Creates an excise tax on distributors for the sale of certain sweetened beverages at the rate of .5cents/ounce. Sales to the federal government, to vendors on tribal or pueblos lands, and to other retailers would be exempt. The proposal also requires distributors to obtain surety bonds. 95% of the proceeds would be distributed to the county-supported Medicaid fund, with the remaining 5% going to the new child obesity prevention fund	SCORC/SFC -SCORC

	created by the proposal. The money distributed to the county-supported Medicaid fund would explicitly not be subject to appropriation and is required to be spent on Medicaid.	
SB 317 Lovejoy	<b>Native American Tax Settlement Approp:</b> <a href="#">SB 317</a> Creates an appropriation in the amount of \$500K fund payment of settlements with certain native American veterans who had state income tax withheld during their terms of service.	SIAC/SFC- SIAC-DP- SFC
SB 326 Ingle	<b>TRD Secretary Approve Certain Evidence:</b> <a href="#">SB 326</a> 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.	SCORC/SFC -SCORC
SB 342 Griego	<b>Tax Credit for Certain Radio Stations:</b> <a href="#">SB 342</a> Creates a gross receipts tax credit of 15% of the stations total gross receipts tax liability for a reporting period in which 20% of the music airtime is dedicated to “New Mexico musical acts.”	SCORC/SFC -SCORC
SB 409 Leavell	<b>Advanced Energy Deduction for Certain Leases:</b> <a href="#">SB 409</a> Adds “leasing” of tangible personal property to the gross receipts tax deduction for certain eligible generation plant costs under Section 7-9-114.	SCONC/SFC -SCONC
SB 416 Harden	<b>Autism Treatment Services Gross Receipts:</b> <a href="#">SB 416</a> Expands the gross receipts tax deduction for certain medical services (7-9-93) to include services performed by persons licensed by CYFD to provide round-the-clock services for the treatment of persons with autism.	SCORC/SFC -SCORC
SB 422 Rodriguez	<b>E911 Surcharge on Communications Services:</b> <a href="#">SB 422</a> Amends the Enhanced 911 Act to add and modify definitions providing authority to impose surcharges on Voice Over Internet Protocol (VOIP) communications.	SJC/SFC- SJC
SB 431 Munoz	<b>County Enviro Gross Receipts on energy:</b> <a href="#">SB 431</a> Expands the 1/8 cent GRT county local option tax increment for county environmental services to include renewable energy facilities and systems (in addition to the current water, wastewater, and sewer systems).	SCONC/SFC -SCONC
SB 436 Ingle	<b>Oil &amp; Gas Withholding Info to Legislature:</b> <a href="#">SB 436</a> 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.	SCONC/SFC -SCONC
SB 437 Beffort	<b>Cigarette Taxes for Early Childhood Programs:</b> <a href="#">SB 437</a> Requires a distribution from net receipts attributable to the cigarette tax in the amount of 5% each to the Public Education Department and Children, Youth and Families Department for purposes of early childhood development programs.	SCORC/SFC -SCORC
SB 443 Sapien/B. Lujan	<b>Weighted Sales Factor for Income Tax:</b> <a href="#">SB 443</a> Creates tiered single sales factor elections based on qualified investments by manufacturers in a tax year (e.g. \$250M investment in year one would	SCORC/SFC -SCORC

	provide a two year single sale factor election for years 2 and 3, a \$500M investment would allow a 4yr election, \$750M a 6yr election, and \$1000M producing an 8yr elections. Investments in otherwise qualified equipment cannot be taken for purposes of the Investment Tax Credit.	
SB 452 Smith	<b>Food &amp; Healthcare Tax Deduction Phase Out: <a href="#">SB 452</a></b> Phases out the gross receipts tax deductions for food and certain medical services (Section 7-9-93, 7-9-94) in ten percent increments over 10 years.	SCORC/SFC -SCORC
SB 455 Jennings	<b>Film Production Tax Credit Changes: <a href="#">SB 455</a></b> Caps the film production tax credit at \$75 million and reduces municipal and county hold harmless distributions proportionally, where the respective populations exceed 30,000 people, by 40% of the film credit.	SCORC/SFC -SCORC
SB 462 Lopez	<b>Manufacture Home Tax Amnesty: <a href="#">SB 462</a></b> Authorizes county treasurers to declare an amnesty period not to exceed three months in fiscal year 2012 for purposes of property taxes on manufactured homes. The amnesty is to be conducted in a manner consistent with those for managed audits in the Tax Administration Act (which applies to non-property state taxes).	SCORC/SFC -SCORC
SB 472 Sanchez	<b>High-Income Taxpayer Surtax: <a href="#">SB 472</a></b> Imposes an income tax surtax of 1% on taxable income in excess of \$100K dollars for individuals, and \$160K for married filing joint returns.	SCORC/SFC -SCORC
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.	SCORC/SFC -SCORC



### Before the Sessions Started

In December and January, plenty of information was released. The consensus revenue forecast was revised for the last time in December. Some controversy and confusion was created prior to that when Governor Richardson's estimates of the cost of providing current services differed dramatically from the Legislatures (\$450M vs. \$250M). The difference was assumptions (i.e. Legislative

Finance Committee ("LFC") assumed continuation of the austerity measures already in place and the Governor did not). Good news followed with an optimistic revision to the revenue forecast, reducing the less daunting LFC budget shortfall to \$211M. Both the LFC and Martinez administration issued proposed budgets that manage towards the LFC shortfall number, and aren't really that far apart in terms of approach. The December consensus forecast can be found on the LFC website [here](#). The LFC budget recommendations can be found on the LFC website [here](#), and the Martinez administration's proposal can be found on the Department of Finance and

Administration website [here](#).

---

## **KNICK KNACKS**

### **Tax Season at the New Mexico Taxation and Revenue Department**

Tax and Rev is quicker on the draw than the IRS, accepting all e-filed returns as of January 19<sup>th</sup>. However, some issues have come up. In a recent Albuquerque Journal [article](#) by Jim Hamill, the question about what to do if adding back itemized state taxes (last year's law change) results in a benefit that's less than the standard deduction? The answer is you can report the greater of the two numbers as your deduction. However, the law change did not directly address the question, nor do current forms. While press releases and further instructions from the Department are forthcoming, the issue will cause some confusion. Tax preparation software companies are also likely to miss the issue, requiring over-rides on the data entry side.

Also, slow in development are the forms for the new pass through entity and oil and gas proceeds withholding provisions. The good news is penalties don't apply this year, thanks to a temporary provision added to the law in a Senate Finance Committee amendment last year.

### **Amazon Leaving Texas**

After being assessed \$269 million for unpaid sales taxes resulting from consumer sales to Texans, Amazon.com is picking up its ball and going home. It has announced it is closing its Texas facility as result of the tax assessment, which is on administrative appeal. Amazon maintained a distribution center in Texas and thereby apparently has nexus for purposes of collecting sales taxes. Governor Rick Perry has said he doesn't read the law the same as Comptroller Combs, and doesn't want to be viewed as not business friendly. In a recent "shoot the hostage" approach to negotiation, Amazon last year fired its internet referrers in Colorado because of a disclosure law they passed that was more recently overturned. However, they did not do the same thing in New York, the founder of the original "Amazon" or "click-through" nexus provision, as that state likely represents too large a market to avoid.

*[NMTRI note: The relatively uninformed public/political debate is amusing, but rather unproductive. The erosion of nexus standards, via case law, efforts like the Streamlined Sale Tax Project or others will eventually get us to a place where all major retailers are collecting similar taxes on similar sales. However, the ride may be a long and bumpy one.]*

---

## TAX QUOTABLE:

“I must be the only person in America that every time -- I pay the maximum tax rates -- every time I sign that tax form, I smile. I thank God I live in a country that gave me a chance to make the money I do.”

*-Bill Clinton, U.S. President*

“The more laws are enacted and taxes assessed, the greater the number of lawbreakers and tax evaders.”

*-Lao Tzu, Chinese Philosopher and Founder of Taoism*

---



**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!

---

"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.