

Tax Matters

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IN THIS “30-DAY SESSION” AND “VALENTINE’S DAY” ISSUE OF *TAX MATTERS*:

- **The Legislative Session Moves On...**
 - **Ongoing Tax Activity**
 - **List of Tax Related Legislation**
- **Knick Knacks**
- **Tax Quotable**
- **Don’t Forget the Principles-Again!**



INTO THE LEGISLATIVE SESSION



The 2010 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 19, and ends at noon on February 18. The deadline for bill introduction passed last Wednesday, February 3. Legislation not acted on by the governor is pocket vetoed on March 10. Being a “short” or 30-day session, non-budgetary legislation and items not related to the budget are not fair game and are limited by the call of the Governor. It is turning out 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.

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.

Into the last week-

With three and a half days left (the session ends at noon on Thursday), and the bill introduction deadline long passed, there are still no great surprises in terms of tax bills. Many are now on the table in Senate Corporation and Transportation Committee (SCORC) or the House Business and Industry Committee (HTRC), or are moving slowly through the committee process with little chance of passage. That said, virtually any existing proposal could be brought off a table or existing or new language amended into existing bills.

The Senate did pass their version of the budget last night and sent it back to the House for concurrence ([House Bill 2](#)). It does not keep all of the tax recommendations of the House (Speaker Lujan’s .5% gross receipts tax increase ([House Bill 119](#)) and Ed Sandoval’s 1.5% personal income tax surcharge ([House Bill 9](#))). The Senate did however return tax recommendations for funding the budget in the form of narrowing a GRT deduction for foods allowing only “staple foods” in the form of Senator Bernadette Sanchez’s [Senate Bill 10](#). They also passed a one year, one dollar per pack increase in the cigarette tax in the form of Senator’s Feldman and Representative Picraux’s [Senate Bill 30](#). This was done in an apparent effort to avoid cuts to state workers salaries. The Senate did however expand and extend the increase in employee pension contributions in lieu of the state’s contribution. The cigarette proposal does not include a corresponding increase in the tobacco products tax (everything but cigarettes – cigars, snuff, pipe tobacco, etc.) that was part of the initial proposal. It also does not address the serious “leakage” problem – the shifting of purchases to non-taxed sellers like tribes and internet retailers. The Senate amended Speaker Lujan’s pass-through entity and oil and gas proceeds withholding expansion. That proposal raises revenue by requiring quarterly withholding and limits exceptions to both types of withholding to resident individuals ([House Bill 120](#)). Also of note, the tabled income tax proposal introduced by Representative Stewart ([HB 270](#)), requiring itemizers to add back state and local taxes deducted for federal purposes, was brought back to the Speaker’s table for reconsideration after it had died on the floor of the House by one vote. No other action has yet been taken.

On the subject of tribal issues, Senator Griego's proposal, [Senate Bill 59](#) has gotten out of the Senate and is now in the House - no small feat for revenue losers in this economic environment. The bill would add ten years to the original ten year agreement to pay the Santo Domingo and Nambe' pueblos to no longer engage in the "bumb and run" tactic of taking advantage of the present law tribal exemption from the gasoline tax. The practice entailed the shipment of non-taxable tribal gasoline from the rack, to the tribe, and back to non-tribal retailers to avoid the gasoline tax, the state's largest road fund revenue source. If passed, this subsidy will likely become permanent since the revenue stream will be used for bonding or other long-term commitments by the pueblos.

On the subject of revenue losers moving more quickly than one might expect, the tax credit for the transportation of manure to biomass energy generators, in the form of Speaker Lujan's [House Bill 171](#) and Senator Ingle's [Senate Bill 222](#), continues to move, as does the now combined credit for alternative energy found in [House Bill 261](#), and also now includes the provisions from House Bill 277. Also moving is a proposal to ease the gaming tax at Ruidoso Downs ([HB 203](#)), as well as proposals to give local governments expanded authority with respect to certain local option gross receipts taxes.

On the property tax front, Senators Eichenberg and Neville have each managed to get a property tax proposal out of the Senate. Both proposals eliminate the feature found to be unconstitutional by two non-precedential district court decisions. Senator Neville's proposal, [Senate Bill 160](#), has the desirable feature of bringing residential property values up to "current and correct" value over five years, while Senator Eichenberg's proposal in [Senate Bill 46](#) has the desirable feature of limiting the benefit of limitation to "primary residences," reducing the impact of inequity and more closely tracking the intent of the constitutional amendment creating the limitation itself. Senator Boitano's proposals ([SB 139](#); [SB 217](#)) have moved more slowly as have representative Giannini's ([HB 132](#)) and Sandoval's ([HB 263](#)).

The corporate income tax proposals don't appear to be moving. There are three mandatory combined filing proposals in (Senator Wirth and Representative Begaye's [HB62](#) (HBIC) and [SB90](#) (SCORC), as well as Representative Miguel Garcia's broader combined reporting bill that also makes personal income tax and capital gain tax increases in [HB 215](#) (HTRC). The only other corporate income tax proposal is Senator Wirth's [SB 259](#), typically referred to as "add-back" legislation, which would require certain intercompany transactions be added back for purposes of determining separate company taxable income. It was tabled in SCORC. The intent of this sort of legislation is to eliminate tax planning that relies on the use of intercompany transactions that otherwise lack substance or business purpose. Most if not all states that require separate company filing have imposed some form of statutory add-back rules. The devil is in the detail however and some rules have been considered overly onerous.

One last note: the Legislative Finance Committee is now attempting to track revenue relative to the forecast on a more real-time basis, using prior experiences to adjust for monthly fluctuations in cash collections. While it is not a consensus forecast and it may take time to understand its strengths and weaknesses as a tracker and predictor of revenue, new and more current information is always welcome. Unfortunately, the most recent results do not bode well, furthering concern that the downside risk to the revenue forecast may still be alive and well.

A list of tax related bills is compiled for your information below. No new bills can come in, however existing bills can be re-written with amendments, and the majority and minority leadership get essentially “empty” bills, typically titled “for the public peace, safety and welfare...” introduced near the deadline. Often referred to as “dummy bills,” these bills are essentially vehicles for new legislation should the need arise. To see what we’re talking about, look at the end of the list of house and senate bills on the Legislative Council Service (“LCS”) bill locator [here](#).

The LCS 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 good news is that the key-word search function appears to be working again.

Bills with significant tax or revenue implications introduced in 2010 Legislative Session:



If no effective date is mentioned, the bill lacks one and would take effect upon enactment, May 19, 2010. Effective date for GRT bills is July 1, 2010 unless otherwise noted. Income Tax bills are essentially retroactive being effective tax years beginning on or after January 1, 2010 unless otherwise noted. “TYBA” = Tax years beginning on or after. Other notes: “CS” indicates committee substitute; “a” indicates amended

Bill Number/ Sponsor:	Title: Link to bill language: Description	Assignments -Location:
HB 8 B. Lujan	Development Training Funds HB 8 Appropriates \$5 million non-reverting funds for purposes of classroom and in-plant employee development training programs.	HLC/HAFC- HLC-DP- HAFC-DP- Passed/H- SCORC/SFC -SCORC
HB 9 Sandoval	Income Tax Surcharge: HB 9 Imposes a 1% surtax on taxable income in excess of \$133K in taxable income for single filers and in excess of \$200K for married filing joint returns. The provision is effective for tax years 2010-2012.	HTRC-DP/a- Passed/H- SCORC/SFC -SCORC
HB 29 Trujillo	Research and Development Business Tax Credit: HB 29 Reinstates sun-setted R&D Small Business Tax Credit until June 30, 2014.	HBIC/HTRC -HBIC-DP/a- HTRC-DP- Passed/H- SCORC/SFC -SCORC
HB 34 Egolf	Liquor Surtax to School Fun: HB 34 Imposes a new 2.5% retail “liquor surtax” on the retail price of alcoholic beverages sold, and distributes the net receipts to the public school fund.	HBIC/HTRC -HBIC
HB 35	Cigarette Tax Increase Distribution: HB35	HBIC/HTRC

Egolf	Increases cigarette and tobacco products taxes (\$1/pack; 40% of value respectively) and changes distribution percentages in order to distribute the additional increase to the public school fund.	-HBIC
HB 36 Martinez	Expand Rural Health Practitioner Tax Credit: HB 36 Would make occupational therapist, physical therapists, social workers and speech-language pathologists eligible for the credit. Effective 1/1/2010.	HBIC/HTRC -HBIC-DP- HTRC
HB 42 Martinez	Municipal Enviro Service Gross Receipts: HB 42 Expands a non-voter approved local option tax up to .5% in sixteenth cent increments for the purpose of acquiring, constructing, maintaining, repairing and operating water, wastewater, solid waste, sewer and related systems.	HHGAC/HT RC- HHGAC- DP/a-HTRC
HB 50 Chavez	Internet Sales Gross Receipts: HB 50 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 52 Kintigh	Repeal Film Production Incentives: HB 52 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/HBIC/ HTRC-HLC
HB 62 Begaye/Wirth	Corporate Tax Reporting & Distribution: HB 62 Earmarks to the public school fund 1/6 of net revenue attributable to the corporate income tax. Mandates that all unitary corporations (with an exception for manufacturers) report as a combined group for corporate income tax purposes. Repeals the option for a corporation to report on a federal consolidated basis.	HBIC/HTRC -HBIC
HB 82 Chavez	Develop Tax Expenditure Budget: HB 82 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.	HTRC/HAF C-HTRC- DP/a-HAFC- HTRC-DP/a- HAFC-DP/a- Passed/H- SCORC/SFC -SCORC
HB 112 A. Lujan	Las Cruces Tax Increment Project: HB 112 Authorizes the issuance of \$8 million for the Las Cruces main street downtown TIDD.	HBIC/HTRC -HBIC-DP/a- HTRC-DP- Passed/H- SFC
HB 117 Begaye	Drunk Person Transport Gross Receipts: HB 117 Creates a gross receipts tax deduction for receipts from transporting intoxicated persons a distance of not more than twenty miles for those	HCPAC/HT RC-HCPAC

	holding a commercial license to transport passengers.	
HB 119 B. Lujan	Temporary Gross Receipts Tax Increase: HB 119 Increases the gross receipt and compensating tax rate to 5.5% in 2010, and reduces the rate annually in eighth cent increments back to 5% in 2014. Also limits the imposition of certain local option taxes during the five year period if overall rate thresholds are exceeded, and creates and phases out a GRT credit for Medicaid providers providing pediatric dental services to Medicaid state children's health insurance program.	HBIC/HTRC -HBIC-DP- HTRC-DNP- CS/DP/a- Passed/H- SCORC/LFC -SCORC
HB 120 B. Lujan	Withholding Tax Changes: HB 120 Merges to some extent the pass through entity ("PTE") and oil and gas proceeds withholding requirements, and further requires quarterly withholding on oil and gas proceeds or share of a PTE owner's net income unless payments are made to a New Mexico resident. The new withholding requirements take effect January 1, 2011. Definitions and "safe harbor" provisions have been added to the prior year's proposal, and publicly traded partnerships are excluded.	HBIC/HTRC -HBIC-DP- HARK-DP- Passed/H- SCORC- SFC-SCORC
HB 132 Giannini	Property Values to 2004 Levels & Increases: HB 132 Eliminates the exception to the current 3% limitation on residential property valuation increases when a change of ownership occurs, limits valuations for residential properties to be the lesser of market value or the 2004 value increased by three percent per year. For properties first valued between 2002 and 2011 as well as new properties, creates a "pre-sales ratio" that is multiplied by current value to establish the initial tax value that would then be limited to increases of no more than 3% per year thereafter.	HTRC/HJC - HTRC
HB 133 Giannini	Disposable Carry-Out Bag Tax Act: HB 133 Creates a 5 cents/bag tax on grocery bags with exceptions for other sorts of bags such as those used for carry meals home in restaurants or nails in hardware stores. The tax is imposed on the "first purchaser" of the bags.	HBIC/HTRC -HBIC
HB 134 Giannini	Voltage Regulation Equipment Tax Credits: HB 134 Creates personal and corporate income tax credits at the rate of 30% of cost, not to exceed \$9,000, for taxpayers that purchase and install voltage regulation technology equipment (i.e. "smartgrid") between 1/1/2011 and 12/31/2021. The credit may be carried forward for up to 10 years and is limited in both tax programs two an aggregate of \$2 million.	HBIC/HTRC -HBIC-DP- HTRC
HB 143 Stewart	Deducted State Taxes as Income: HB 143 Requires the add-back of state taxes itemized and deducted for purposes of computing federal taxable income when computing New Mexico taxable income.	HBIC/HTRC -HBIC
HB 153 Barela	Property Tax Payment Requirements: HB 153 Amends the property tax code to require that property tax liabilities be satisfied before subdivision, rezoning or other requests are honored. Also provides for the collection of reasonable collection costs, places delinquent taxpayers on the delinquent property list more quickly, and provides authority for counties to collect delinquent taxes and enter into agreements to with the property tax division to work together on older delinquencies.	HHGAC/HT RC/HHGAC

HB 155 Sandoval	Income Tax Act Changes: HB 155 Narrower “simplification” bill creates “tax table income”, decouples from federal standard and personal deductions, and indexes the current tax brackets and benefits of the personal and standard deductions, LICTR, and working families credit – but in an amount of 1% less than the inflation rate.	HHGAC/HT RC/HHGAC -DP-HTRC- DP- Passed/H- SCORC/SFC -SCORC
HB 170 Begaye	Hospital Gross Receipts as Matching Funds: HB 170 Expands the local hospital gross receipts tax local option to provide up to .25% (in 1/8 th increments) which can used to match federal or state funds benefiting hospitals. The option would not be allowed in Bernalillo County.	HHGAC/HT RC/HHGAC -DP-HTRC- DP- Passed/H- SCORC/SFC -SCORC
HB 171 Lujan	Transport of Dairy Waste for Gas Tax Credit: HB 171 Creates transferrable personal and corporate income tax credits for feedlots and dairies in the amount of \$5 per wet ton of agricultural biomass (i.e. manure) transported to a facility that uses biomass to generate electricity or make biofuels. The credit is capped at \$5 million dollars per tax program on a first come first serve basis.	HBIC/HTRC -HBIC-DP- HTRC-DP- Passed/H- SCORC/SFC -SCORC- w/drn-SFC
HB 186 Rehm	Medical Marijuana Tax Act: HB 186 Creates the Medical Marijuana Tax Act and imposes a tax of 25% on the product value of medical marijuana produced or distributed by those licensed to do so in this state	HTRC/HJC- HTRC
HB 189 Trujillo	Restaurant Receipt Surtax & Tourism Fund: HB 189 Imposes a .25% “surtax” on the gross receipts of prepared food or alcoholic beverage retailers and distributes the net proceeds to the created tourism promotion fund.	HBIC/HTRC -HBIC
HB 202 T. Garcia	Municipal Enviro Service Gross Receipts Rate: HB 202 Expands a non-voter approved local option tax up to 1% in sixteenth cent increments for the purpose of acquiring, constructing, maintaining, repairing and operating water, wastewater, solid waste, sewer and related systems in class B counties with populations exceeding 1040 but under 1050 (Angel Fire).	HHGAC/HT RC/HHGAC
HB 203 T. Garcia	Business Retention Gross Tax & Gaming Tax: HB 203 Creates a new county local option tax subject to voter approval in an amount up to ¼% in 1/16% increments. The bill also creates a gaming tax credit for racetracks with takes under \$20 million not to exceed \$1 million per fiscal year if the county imposes the business retention gross receipts tax.	HBIC/HTRC -HBIC-DP/a- HTRC-DP- Passed/H- SCORCC/SF C-SCORC- w/drn-SFC
HB 214 R. Martinez	County Gross Receipts for County Purposes: HB 214 Provides for a 1/16% increment of the county gross receipts tax be allowed to be used for purposes of county infrastructure and bonding	HBIC/HTRC -HBIC-DP- HTRC
HB 215 M. Garcia	Tax Rate Changes & Combined Reporting: HB 215 Requires combined reporting for corporate income tax purposes, creates	HBIC/HTRC -HBIC

	new personal income tax brackets and rates up to 6.9% at relatively high income levels (6.9% over \$667K single/over \$1 million married filing joint), requires the add-back of itemized state taxes for purposes of determining NM taxable income, and eliminates the 50% capital gain deduction for those most likely to incur significant capital gains. Contains estimated penalty transition provision for income tax and add-back provisions – corporate and capital gains changes effective 1/1/2011.	
HB 233 Stewart	No Solar Panel as Property Tax Improvements: HB 233 Excepts “solar energy system installations” from the “improvements” which would other be exempt from the 3% limit on residential property valuation.	HHGAC/HT RC/HHGAC -DP-HTRC- DP
HB 234 Maestas	Higher Income Level Tax Brackets: HB 234 Creates new personal income tax brackets and rates up to 6.9% at relatively high income levels (6.9% over \$1M single/over \$1.5 million married filing joint). Contains estimated penalty transition provision.	HCPAC/HT RC/HCPAC- w/o rec/a- HTRC
HB 244 M. Garcia	Tax on Certain Untaxed Transactions HB 244 Changes compensating tax imposition to include tangible personal property that would have been subject to GRT had it been acquired “from a person with nexus with New Mexico”.	HBIC/HTRC -HBIC
HB 245 M. Garcia	Return Capital Gains to Pre-2003 Rates HB 245 Eliminates present law 50% income tax deduction for capital gains.	HBIC/HTRC -HBIC
HB 250 Giannini	Soft Drink, Candy & Pastry Gross Receipts HB 250 Narrows GRT food definition of food subject to deduction to eliminate certain soft drinks, candy and pastries, popped popcorn, cheese puffs, chewing gum, pork rinds or mixtures of the aforementioned from the present law definition.	HBIC/HTRC -HBIC
HB 261 M.H. Garcia	Solar & Wind Energy Equipment Gross Receipts HB 261 Expands present law GRT deduction for sale of wind energy nacelles and related equipment to governmental entities to include supporting structures (“construction”) and solar energy generation equipment and related equipment for generation and transmission.	HRC-w/drn- HHGAC/HA FC-HHGAC- w/drn- HENRC/HA FC-HENRC- DNP-CS- DP-HAFC- DP-fl/a- Passed/H- SCONC/SFC -SCONC
HB 262 Sandoval	Tax & Rev Dept Administrative Fee Increase HB 262 Increases the scope and rate of distributions for which administrative fees are collected by the TRD. The fee is increased from 3% to 3.25% and distributes .25% to the TRD for purposes of audit and compliance, with the remaining additional fees going to the general fund.	HTRC/HAF C-HARK- DP-HAFC- DP- Passed/H- SFC
HB 263 Sandoval	Property Tax Valuation Limit HB 263 Eliminates the exception to the current 3% limitation on residential property valuation increases when a change of ownership occurs, and	HCPAC/HT RC-HCPAC- w/o rec-

	increases the limitation on valuation increases to 5% for the 2011 tax year only, returning the limit to 3% in subsequent years.	HTRC
HB 270 Stewart	Add Back Certain Tax Deductions HB 270 Requires the add-back of state taxes itemized and deducted for purposes of computing federal taxable income when computing New Mexico taxable income.	HTRC-DP/a- Failed H- m/rcnsr adptd
HB 271 Gonzales	Motor Vehicle Tax Increase to Road Fund HB 271 Increases the motor vehicle excise tax to 4% from 3%, and makes an distributes 12.5% of the total proceeds including associated penalties and interest to the state road fund.	HTPWC/HT RC- HTPWC- DP/a-HTRC- DP/a
HB 277 M.H. Garcia	Energy Generation Facility Gross Receipts HB 277 Creates a gross receipts and compensating tax deduction for the value of eligible generation plant costs from the sale of tangible personal property. The deduction requires nontaxable transaction certificates and certification from the department of environment.	HENRC/HT RC-HENRC- DNP-CS/DP See hb261
HB 281 Lujan	Untaxed Transaction Gross Receipts HB 281 Changes compensating tax imposition to include tangible personal property that would have been subject to GRT had it been acquired “from a person with nexus with New Mexico”.	HCPAC/HT RC-HCPAC- DP-HTRC- DP
HB 282 Lujan	Natural Gas Vehicles Tax Credits HB 282 Creates 70% corporate and personal income tax credits for the cost associated with converting automobiles from the use of gasoline to diesel. The applies to calendar years 2010 to 2017, can be taken only in the year of conversion, and is subject to a \$2 million annual aggregate cap. Also creates a personal and corporate income tax credit for purchasing and installing natural gas dispensing equipment at a retail station from calendar years 2010 to 2016, also with a \$2 million aggregate cap.	HBIC/HTRC -HBIC-DP/a- HTRC-DP
HB 285 Lujan	Omnibus Tax Bill HB 285 Makes minor and inconsequential changes to the income, gross receipts, cigarette, gasoline, and motor vehicle excise taxes.	HHGAC/HT RC- HHGAC- DP-HTRC
HJR 12 Park	Property Tax Valuation Upon Owner Change, CA HJR 12 Proposes a constitutional amendment to preserve the status quo and provides for a process to apply statewide or multi-jurisdictional rates in some proportion to current and correct values.	HVEC/HTR C-HVEC- w/o rec- HTRC
SB 8 Sharer	No Severance Tax in Certain Counties: SB 8 Precludes issuance of severance tax bonds for purposes of benefiting a project in municipalities or counties that have imposed ordinances that have an onerous effect on the extractive industries.	SCC/SCON C/SFC-SCC
SB 10 B. Sanchez	Narrow Food Tax Deduction to Staple Foods: SB 10 Narrows the scope of the deduction for food by defining “staple foods”	SCC/SCORC /SFC-SCC-

	more narrowly than “food” under current law, with the former meaning poultry, fish, bread, cereal, vegetables, fruit and dairy products as defined in the federal supplemental nutrition assistance program, rather the present definition which looks to the federal food stamp program definition.	grmn-SCORC-w/o rec/a-SFC-DP-Passed/S
SB 23 Keller	Tax & Rev Dept. Tax Expenditure Budget: SB 23 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.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 25 Ortiz Y Pino	Federal Deduction as State Taxable Income: SB 25 Requires the add-back of state taxes itemized and deducted for purposes of computing federal taxable income when computing New Mexico taxable income.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 29 Feldman	Untaxed Insurance Service Gross Receipts: SB 29 Amends the gross receipts tax act and insurance code to make currently nontaxable receipts from “administrative services only contracts” taxable gross receipts.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 30 Feldman/Picraux	Cigarette Tax Increase & Distribution: SB 30 Increases cigarette and tobacco products taxes (\$1/pack; 40% of value respectively) and changes distribution percentages in order to distribute the additional increase to the county-supported Medicaid fund.	SCC/SCORC /SFC-SCC-grmn-SCORC-w/drn-SFC-DNP-CS/DP-Passed S
SB 31 Feldman/Picraux	No Soft Drink Gross Receipts Tax: SB 31 Narrows the current food deduction by excluding from the food stamp definition of “food” soft drinks or other sweetened beverages and distributes the additional revenue to the county supported Medicaid fund.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 38 Cisneros	Renewable Energy Tax Credit Generators: SB 38 Expands definitions and increases the cap on credits eligibility for solar-light-derived or solar-heat-derived qualified energy resources from 500K megawatt hours to \$1 million megawatt hours.	SCC/SCORC /SFC-grmn-SCORC-DP-SFC
SB 39 Cisneros	Change Gaming tax on Certain Racetracks: SB 39 Reduces the gaming tax on gaming operators with a net take in the prior year under \$14 million (\$10 million in subsequent years) from 26% to 10% (phased-in over three years).	SCC/SCORC /SFC-SCC-grmn-SCORC-DNP-CS-DP-SFC
SB 45 Eichenberg	Property Tax Limit on Certain Homes: SB 45 Creates a new means for valuing newly acquired residential property of those over 65 who sold a home within the same year by creating a sales ratio of the old and new property and applying that ratio to the real value of the new property.	SCC/SJC/SFC-SCC-grmn-SJC

SB 46 Eichenberg	Property Tax Valuation Limit on Some Homes: SB 46 Eliminates the exception to the current 3% limitation on residential property valuation increases when a change of ownership occurs.	SCC/SJC/SF C-SCC- grmn-SJC- DP/a-SFC- DP-Passed/S
SB 47 Keller	Economic Development Tax Incentive Changes: SB 47 Creates guidelines for the creation and review of economic development incentives.	SCC/SCORC /SFC-SCC- grmn- SCORC-DP- SFC-DP/a- Passed/S- HBIC/HTRC -HBIC
SB 50 E. Griego	Create Tax Expenditure Study Commission: SB 50 Creates a seventeen-member commission to quantify and study the benefit of tax expenditures in New Mexico.	SCC/SPAC/ SFC-SCC- grmn-SPAC- DP-SFC
SB 54 Cravens	Taxpayer Protection & Expenditure Formula: SB 54 Creates an expenditure limitation formula for future state budgets by limiting future year budgets to prior year plus an allowance for population growth and 3.6% inflation or growth factor.	SCC/SJC/SF C-SCC
SB 56 Sapien	Medical Marijuana Tax Act: SB 56 Creates the Medical Marijuana Tax Act and imposes a tax of 25% on the product value of medical marijuana produced or distributed by those licensed to do so in this state.	SCC/SJC/SF C-SCC- grmn-SJC
SB 57 Sapien	Medical Marijuana Gross Receipts: SB 57 Amends GRT exemption for 501(c)(3)'s and the prescription drug deduction to exclude medical marijuana.	SCC/SCORC /SFC-SCC- grmn- SCORC
SB 59 P. Griego	Extend Gas Tax Sharing Agreement Terms: SB 59 Increases the 10 year "buy-out", or payments made equal to 40% of the gasoline tax revenue associated with the sale of 250K gallons of gasoline per year to Nambe and Santo Domingo pueblos from ten to twenty years.	SCC/SCORC /SFC-SCC- grmn- SCORC-DP- SFC-DP/a- Passed/S- HTRC
SB 64 Keller	Tax Refund Deposits to Multiple Accounts: SB 64 Provides that taxpayers may request on their personal income tax return that their refund be split in up to three direct deposits in different accounts.	SCC/SPAC/ SFC-SCC
SB 65 Ortiz y Pino	Adjust Income Tax Rates: SB 65 Restores 2002 income rates (up to 8.2%) but expands the brackets significantly (8.2% bracket kicks in at \$667K in taxable income for individuals and over \$1million for heads of household and married filing joint returns).	SCC/SCORC /SFC-SCC- grmn- SCORC
SB 81 Neville	Food Tax Retail Food Store Definition: SB 81 Changes the deduction for eligible food from that of federal food stamp	SCC/SCORC /SFC-SCC-

	program to that of the federal supplement nutritional assistance program and expands the definition of eligible food store to include coffee shops or others who make sales of coffee, bottled water or ice.	grmn-SCORC
SB 86 E. Griego	Property Tax Payment Requirements: SB 86 Amends the property tax code to require that property tax liabilities be satisfied before subdivision, rezoning or other requests are honored. Also provides for the collection of reasonable collection costs, places delinquent taxpayers on the delinquent property list more quickly, and provides authority for counties to collect delinquent taxes and enter into agreements to with the property tax division to work together on older delinquencies.	SCC/SCORC /SFC-SCC
SB 90 Wirth/Bega ye	Corporate Income Tax Reporting and Distribution: SB 90 Earmarks to the public school fund 1/6 of net revenue attributable to the corporate income tax. Mandates that all unitary corporations report as a combined group for corporate income tax purposes (with an exception for manufacturers). Repeals the option for a corporation to report on a federal consolidated basis.	SCC/SCORC /SFC-SCC- grmn- SCORC
SB 95 Papen	Las Cruces Tax Increment Project: SB 95 Authorizes the issuance of \$8 million for the Las Cruces main street downtown TIDD.	SCC/SCORC /SFC-SCC- grmn- SCORC-DP- SFC- DP_fl/a- Passed/S- HBIC/HTRC -HBIC
SB101 Munoz	Use of Liquor Tax for Drunk Transportation: SB101 Expands the allowable use of proceeds from the local liquor excise tax be used for a safe transportation shuttle system for transport of inebriated persons.	SCC/SCORC /SFC-SCC- grmn- SCORC
SB 121 B. Sanchez	Increase Cigarette Tax: SB 121 Increases the cigarette tax by 50 cents, alter distributions, and reduces cigarette stamp discounts. Carries an emergency clause which would make it effective upon signing, and a contingency clause making the provisions effective July 1 if the necessary favorable votes aren't obtained.	SCC/SCORC /SFC-SCC- grmn- SCORC
SB 122 B. Sanchez	High Income Taxpayer Surcharge: SB 122 Imposes an additional 1% surcharge on taxable income in excess of \$100K for single filers, and \$160K for head of household and married filing jointly returns. Includes a provision for protecting impacted individuals from running afoul of the estimated payment requirements resulting from the proposed change.	SCC/SCORC /SFC-SCC- grmn- SCORC
SB 125 Fischman	Review Tax Exemptions & Credits Every 5 Years: SB 125 Requires the Interim Revenue Stabilization and Tax Policy Committee to establish a schedule to provide for the review of all tax incentives, exemptions, deductions, credits or exclusions for their effectiveness.	SCC/SCORC /SFC-SCC
SB 126	Liquor Tax Increase & Distribution: SB 126	SCC/SCORC

Lovejoy	Increases the liquor excise tax across all beverage categories (i.e. beer from \$.41 to \$.95/gal, and spirits from \$1.60 to \$2.73/liter) and changes distributions in an effort to hold the DWI grant fund to current distributions. Small wineries and local microbreweries lose most of their tax benefit under this proposal.	/SFC-SCC-grmn-SCORC
SB 128 E. Griego	Higher Income Level Surtax & Distribution: SB 128 Imposes an additional 1% “income tax surtax” on taxable income in excess of \$100K for single filers, and \$150K for head of household and married filing jointly returns. The provision is effective for tax years 2010 – 2012.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 139 Boitano	Property Valuation Time & Increases: SB 139 Eliminates the revaluation on turnover and otherwise requires that property values not exceed 3% in excess of the prior year, or a little over twice that if on two year valuation cycles.	SCC/SJC/SF C-SCC-grmn-SJC
SB 142 B. Sanchez	Liquor Excise Tax Increase & Distribution: SB 142 Increases the liquor excise tax across most beverage categories (i.e. beer from \$.41 to \$.94/gal, and spirits from \$1.60 to \$2.73/liter, but wine is left at current rates) and changes distributions in an effort to hold the DWI grant fund to current distributions. Local microbreweries lose most of their tax benefit under this proposal. The proposal also creates the “mental health and substance abuse treatment fund” and distributes 24.33% of the liquor excise tax net receipts to that fund.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 144 Rodriguez	Affordable Housing Tax Credit Use & Vouchers: SB 144 Amends the affordable housing tax credit act by expanding the definition of “affordable housing project” to include counties with populations in excess of 100,000.	SCC/SPAC/ SFC-SCC-grmn-SPAC- DP-SFC-DP- Passed/S- HTRC/HAF C-HTRC- DP-HAFC
SB 153 Sapien	Local School District Gross Receipts: SB 153 Creates non-voter approved gross receipts taxing authority for school districts in an 1/8% increments not to exceed .5%.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 158 Harden	No Tribal Cigarette Tax Break for Non-Members: SB 158 Creates a specific presumption of taxability of cigarettes in New Mexico, removes the cigarette tax exemption for sales to tribes or tribal members, and requires the TRD in conjunction with the tribes to determine the number of stamps required for purposes of sales to tribal member.	SC/SCORC/ SFC-SCC-ref SIAC/SCOR C/SCC-grmn-SIAC
SB 160 Neville	Property Tax Revaluation Methods: SB 160 Creates a 5% limit in annual valuation growth for purposes of residential property taxation, provided that the county retains a sales ratio of 95%.	SCC/SJC/SF C-SCC-SJC- DNP-CS/DP- SFC-DP- Passed/S
SB162 Sapien	County Gross Receipts for Certain Projects: SB 162 Provides for a 1/16% increment of the county gross receipts tax be allowed to be used for purposes of county infrastructure and bonding	SCC/SCORC /SFC-SCC-grmn-

		SCORC-DP-SFC-DP-Passed/S-HHGAC/HT RC-HHGAC-DP-HTRC
SB 163 Sapien	Veteran Owned Business Gross Receipts: SB 163 Creates a gross receipts tax exemption for receipts of veteran owned businesses (51% or more owned by veterans) from the federal government.	SCC/SCORC /SFC-SCC-SCORC-DP-SFC
SB 180 Griego	Temporary Tax Amnesty Program: SB 180 Essentially provides for the expansion of the managed audit program for up to 90 days the consideration of the factors limiting the allowance of managed audits, appropriates \$500K for the purpose of the program, and requires reporting back to the legislature on the programs results.	SCC/SCORC /SFC-SCC-grmn-SCORC-DP/a-SFC
SB 198 Campos	Scholarship Donation Tax Credit: SB 198 Creates a personal income tax credit (up to \$500 for singles/\$1000 married-joint) and a corporate income tax credit (not to exceed \$50K) for contributions made to certain scholarship granting organizations for educational scholarships for eligible students at qualified schools. Credits under both tax programs are to be limited to \$10 million.	SCC/SEC/SF C-SCC
SB 210 Lopez	Increase Certain Income Tax Rates: SB 210 Creates a new personal income tax rate of 5.9% all filers with taxable income in excess of \$100K.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 214 Rodriguez	Small Winery Production Capacity: SB 217 Expands the allowable production of wine to be considered a “small winegrower” from 950K to 1.2M liters of wine per year. Also provides for the imposition of a voter approved local liquor excise tax at rates not to exceed specified rates (generally over 50% of current liquor excise tax rates.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 217 Boitano	Residential Property Tax Limits: SB 217 Eliminates the exception to the current 3% limitation on residential property valuation increases when a change of ownership occurs, limits valuations for residential properties to be the lesser of market value or the prior year value increased by three percent. Proposal also provides for a county ordinance which would allow rollback of property values to 2001 levels increased by no more than 3% year and use of a sales ratio method of valuation for new construction.	SCC/SJC/SF C-SCC-grmn-SJC
SB 222 Ingle	Transport of Dairy Waste for Gas Tax Credit: SB 222 Creates transferrable personal and corporate income tax credits for feedlots and dairies in the amount of \$5 per wet ton of agricultural biomass (i.e. manure) transported to a facility that uses biomass to generate electricity or make biofuels. The credit is capped at \$5 million dollars per tax program on a first come first serve basis.	SCC/SCORC /SFC-SCC-grmn-SCORC-DP-SFC
SB 234	County Hospital Gross Receipts Purposes SB 234	SCC/SCORC

Fischmann	Expands the allowed use of the local option tax increment for land or buildings as well as design and construction of county hospital facilities and provides for a non voter approved extension of the increment for 20 years.	/SFC-SCC-grmn-SCORC-DP-SFC-DP-Passed/S-HTRC
SB 235 Smith	Film Production Tax Credit Cap SB 235 Limits the credit for direct and post-production projects to \$2 million per project on eligible expenditures incurred on or after July1, 2001.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 236 Smith	Phase Out Food Tax Deduction SB 236 Reduces the present law GRT deduction for food over time by deduction by reducing it to 75% of receipts on and after July 1, 2010, 50% on and after July 1, 2011, and 25% on and after July 1, 2012. After that no deduction remains. Also prohibits the “passing-on” of tax in excess of what is actually owed.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 239 Munoz	Gas Surtax for Road Construction SB 239 Imposes a 6% per gallon surtax on gasoline and special fuels (diesel) received or used in NM, distributing 5/6 of the tax to a non-reverting fund intended to equally fund the state’s six transportation districts. The remaining sixth is distributed to county and municipal road funds based on relative fuel sales volume.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 240 Munoz	Motor Vehicle Tax for Highway Projects SB 240 Increases the motor vehicle excise tax to 4% from 3%, and makes an additional distribution in proceeds to the highway priority project fund in the amount of 25% of the total proceeds including associated penalties and interest.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 247 Jennings	Food Tax Distribution to Local Gov’t SB 247 Reduces local government “hold harmless” distributions associated with the food and medical practitioner GRT deductions in 20% increments/yr, beginning July 1, 2010, resulting in no distributions after July 1, 2014.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 248 Jennings	Limit Certain Tax Credits & Deductions SB 248 Places annual caps on energy production tax credits (\$5M), film production tax credit (\$50M), investment tax credit (\$7M), laboratory partnership with small business credit (\$1.2M), technology jobs tax credit (\$5M), and high wage jobs tax credit (\$10M), and provides that claims in excess are first in line in following year. Also delays the phase-in of GRT credit for receipts of hospitals to 7/1/2013.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 253 Sapien	Gas Storage Tank Upgrade Tax Credit SB 253 Creates a personal and corporate income tax credit for 50% of the annual cost of compliance with environment department above ground storage tank requirements.	SCC/SCORC /SFC-SCC-grmn-SCORC
SB 255 Nava	Oil & Gas Tax Changes for Emergency Fund SB 255 Increases oil and gas severance tax rates and decreases oil and gas emergency school taxes in an attempt to bolster general fund revenues at the expense of severance tax capital funds in a net revenue neutral “rate swap”.	SCC/SCORC /SFC-SCC-grmn-SCORC

SB 259 Wirth	Net Taxable Income Determination SB 259 Imposes requirements to “addback” certain related party expenses separate company filers for purposes of determining taxable income for corporate income tax purposes.	SCC/SCORC /SFC-SCC- grmn- SCORC
SB 261 Jennings	Nonprofit Entity Gross Receipts SB 261 Limits the GRT exemption for 501(c)(3) non-profits such that they must demonstrate that they had under \$10 million in receipts from commercial activities to be eligible for the exemption.	SCC/SCORC /SFC-SCC- grmn- SCORC
SB 271 Jennings	Nonprofit Organization Gross Receipts SB 271 Alters the GRT exemption for social organizations adding “donations” the language pertaining to exempt receipts, and requiring that the organization eligible for the exemption demonstrate that they’ve been granted exemption from federal income tax pursuant Section 501(c) of the IRC.	SCC/SCORC /SFC-SCC- grmn- SCORC

KNICK KNACKS

Arizona Economic Development Effort Unconstitutional

The Arizona Supreme Court issued its decision in *Turken v. Gordon, et al*, Ariz. S. Ct. No. CV-09-0042-PR, On January 25, 2010. The decision addresses the limits imposed by the Arizona Constitution’s “Gift Clause”, which is similar to New Mexico’s “anti-donation clause,” on public payments to private parties. In this case, the issue was the constitutionality of a development agreement that provided for a “tax reimbursement” payment to a private developer. The Court affirmed and clarified the parameters of an earlier legal test (the Wistuber test), under which governmental payments to private parties complies with the Gift Clause only if the payments both:

- (1) have a public purpose; and
- (2) are not grossly disproportionate to what is received in return.

With respect to the first part of the test, the Court continued to support a broad view of “public purpose.” Under this rule, courts wouldn’t disturb determinations by elected officials that a specific purpose constitutes a “public purpose” absent proof that the elected body’s discretion has been “unquestionably abused.” However, the Court also rejected the argument that indirect benefits such as increased projections of tax revenue can be regarded as consideration for a public payment. The Court instead held that only “the objective fair market value of what the private party has promised to provide in return for the public entity’s payment” can be taken into account. Since the developer in this case only committed to provide parking space use rights, the value of those rights was all that could be counted as consideration for the payment they received from the city, not the projected increase in tax revenues from the development. Given conflicting case law, the Court’s decision was made prospective.

[NMTRI note: this case was brought by a taxpayer group, but for a similar case in New Mexico to be brought in regards to the anti-donation clause, it would take someone with “standing,” most likely a legislator]

Tax and Rev Workshops

The New Mexico Taxation and Revenue Department holds business tax workshops around the state at various times of the year for purposes of providing new and existing businesses an overview of complying with the state's primary business tax return, the CRS-1, when reporting gross receipts, compensating and withholding taxes. The TRD's 2010 schedule of workshops can be accessed on their website [here](#).

TAX QUOTABLE:

"It will be of little avail to the people that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man who knows what the law is today can guess what it will be tomorrow."

Federalist No. 62

DON'T FORGET THE PRINCIPLES – AGAIN!



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 don't harm to the economy, 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 for you again:

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.



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.



"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.

Join NMTRI today!