

# ***Tax Matters***

*The Newsletter of the New Mexico Tax Research Institute*

Issue No. 2010-5

February 21, 2010

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## **IN THIS LAST “30-DAY SESSION” ISSUE OF *TAX MATTERS*:**

- **The Legislative Session Ends... But Not Really**
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  - **What Happens Next?**
- **Knick Knacks**
- **Welcome New Members**
- **Tax Quotable**

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## OUT OF THE LEGISLATIVE SESSION



The 2010 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 19, and ended at noon on February 18. 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 were not fair game and are limited by the call of the Governor. It was a very busy if not productive session, given the state’s

ongoing fiscal crisis.

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

### Legislative Post-Mortem

The session ended at noon on Thursday, with few tax bills going to the governor’s desk. Of greater note, no budget went to the Governor’s desk either. While the House introduced 337 bills and the Senate introduced 323 bills, only 67 House and 62 Senate bills passed. Only twelve tax related bills passed both houses and made our list below. Two bills so far have been signed into law, although neither are tax related (HB 1, or the “feed bill” authorizing payment of expenditures in connection with the legislative session, and HB 64, involving changes to the school equalization fund to allow federal stimulus money be used to replace money “clawed back” from the education fund in the last special session).

The House and Senate never reached an accord reconciling their budgets. The House was more inclined to look first to raising taxes of around \$300 million in combination with a very modest 1% budget reduction. Their intent was to raise gross receipts taxes statewide by .5%, a 10% increase in the state’s base rate (Speaker Lujan’s [House Bill 119](#)); and to impose a 1.5% personal income tax surcharge (House Taxation and Revenue Committee Chairman’s [House Bill 9](#)). The Senate proposed a somewhat more austere budget with around 3% reductions and a narrowing the GRT deduction to food “staple foods” with 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](#). The Senate also intended to expand and extend the increase in employee pension contributions in lieu of the state’s contribution. Other tax proposals such as the other income and corporate income proposals, not to mention higher taxes on cigarettes and alcohol, and proposals to increase the motor vehicle excise tax all failed. Also failing were several proposals to study or address the property tax “tax lightning” that has local governments and homeowners concerned. The House and Senate did pass 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 requirements to resident individuals and domiciled C-corporations ([House Bill 120](#)). It likely will result in some degree of over-withholding, and therefore additional “float” to the state in addition to enhanced tax compliance.

Since no budget was passed, few tax increases were passed either (yet). Representative Heaton passed a small increase in the Oil and Gas Conservation Tax and increased monies available to Oil and Gas Reclamation Fund, which is used for the remediation of facilities used for the storage, transportation or disposal of waste from oil and gas operations (i.e. sink holes near Carlsbad). New Mexico's tax burden on oil and gas leans to the high side in the region, but the increase was a modest change from .19% to .24% on oil and only when the average price of West Texas Intermediate crude averages over \$70 in the prior quarter.

The House and Senate passed both passed bills authorizing bonds to be issued for purposes of a tax increment development district ("TIDD") in downtown Las Cruces (Senator Mary Kay Papan's [Senate Bill 95](#) and Representative Antonio Lujan's [House Bill 112](#)). Also passed was Senator Tim Keller's [Senate Bill 47](#), a measure that would place requirements of clarification of intent, oversight and evaluation of economic development incentives. Also making it to the Governor's desk is Senator John Sapien's proposal [Senate Bill 162](#), which would allow counties to pledge the last 1/16<sup>th</sup> increment of the county local option gross receipts tax to pay revenue bond obligations. Also passed was a proposal to ease the gaming tax at Ruidoso Downs ([HB 203](#)), which must be combined with a local option tax by the local residents. That proposal is intended to be revenue neutral to the general fund over time.

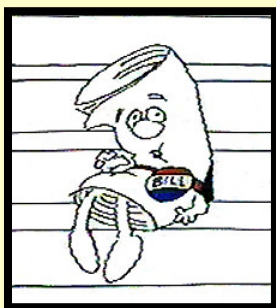
The remaining tax related proposals passing both houses presented negative fiscal impacts to the state and local governments. Senator Griego's proposal, [Senate Bill 59](#) would add ten years to the original ten year agreement to pay the Santo Domingo and Nambe' pueblos to no longer engage in the "bump and run" tactic under 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 tax expenditure will likely become permanent since the revenue stream will be used for bonding or other long-term commitments by the two pueblos, making subsequent repeal impossible. While the subsidy costs the road fund a little over \$4 million a year, it much more transparent and less distortive than the "bump and run" practices of the past, but does beg the question of the need for such a policy for two particular pueblos. Other revenue general fund money losers include the tax credit for the transportation of manure to biomass energy generators (costing up to \$2.5 million in the out-years), in the form of Speaker Lujan's [House Bill 171](#), as well the now combined credit for alternative energy found in [House Bill 261](#), and also now includes the provisions from House Bill 277, costing up to \$14 million per year. Also passing was an appropriation of \$5 million dollars in job training funds ("JTIP") from Speaker Lujan's [House Bill 8](#). Although less than prior years, the \$5 million would be welcome new to the economic development community who highly value the program, which is currently over-extended by \$400K.

*[NMTRI note: given its balanced budget requirements, NM must "pay" for tax expenditures like those above with further tax increases or budget cuts. Accordingly, in economic times like these, lawmakers must be particularly judicious with respect to picking such winners and losers. They apparently realize this given the small number of such proposal introduced and even smaller number passed.]*

A list of tax related bills passing both houses is compiled for your information below. We'll be doing it all again soon. The entire list of bill passing both houses can be found in a locator report on the Legislative Council Service ("LCS") website [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/>.

**Bills with significant tax or revenue implications introduced in 2010 Legislative Session and passing both houses:**



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	<b>Development Training Funds <a href="#">HB 8</a></b> Appropriates \$5 million non-reverting funds for purposes of classroom and in-plant employee development training programs.	Passed
HB 112 A. Lujan	<b>Las Cruces Tax Increment Project: <a href="#">HB 112</a></b> Authorizes the issuance of \$8 million for the Las Cruces main street downtown TIDD.	Passed
HB 120 B. Lujan	<b>Withholding Tax Changes: <a href="#">HB 120</a></b> 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.	Passed
HB 171 Lujan	<b>Transport of Dairy Waste for Gas Tax Credit: <a href="#">HB 171</a></b> 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.	Passed
HB 203 T. Garcia	<b>Business Retention Gross Tax &amp; Gaming Tax: <a href="#">HB 203</a></b> 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	Passed

	per fiscal year if the county imposes the business retention gross receipts tax.	
HB 208 Heaton	<b>Oil and Gas Tax Reclamation Fund: <a href="#">HB 208</a></b> Increases the maximum rate of the Oil and Gas Conservation Tax on oil from .19% to .24% when the average price of West Texas Intermediate crude is above to \$70 for the prior quarter. The increase is distributed to the Oil and Gas Conservation Fund, which can be used to remediate facilities used for the storage, transportations, or disposal of waste from oil and gas operations.	Passed
HB 261 M.H. Garcia	<b>Solar &amp; Wind Energy Equipment Gross Receipts: <a href="#">HB 261</a></b> 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. 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.	Passed
SB 47 Keller	<b>Economic Development Tax Incentive Changes: <a href="#">SB 47</a></b> Creates guidelines for the creation and review of economic development incentives.	Passed
SB 59 P. Griego	<b>Extend Gas Tax Sharing Agreement Terms: <a href="#">SB 59</a></b> 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.	Passed
SB 95 Papen	<b>Las Cruces Tax Increment Project: <a href="#">SB 95</a></b> Authorizes the issuance of \$8 million for the Las Cruces main street downtown TIDD.	Passed
SB 144 Rodriguez	<b>Affordable Housing Tax Credit Use &amp; Vouchers: <a href="#">SB 144</a></b> 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.	Passed
SB162 Sapien	<b>County Gross Receipts for Certain Projects: <a href="#">SB 162</a></b> Provides for a 1/16% increment of the county gross receipts tax be allowed to be used for purposes of county infrastructure and bonding	Passed

## So What Happens Next?

Governor Richardson has indicated he will call a legislative session for Wednesday, February 24. Matters germane to the session would be limited to the governor’s discretion (“call”). There has been rumor of an adjournment and a subsequent call by the legislature of an “extraordinary” session, which requires a two-thirds vote of both houses. The agenda of an extraordinary session is completely open as it is not limited by the governor in any way. Such an outcome is unlikely as such sessions are exceptionally rare.

One of the things that made the legislators squeamish was concern that the revised revenue forecast from December was perhaps optimistic, meaning the necessary spending cuts or tax increases may need to be larger. This concern appears borne out by the Legislative Finance Committee, which is now attempting to track revenues 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 tracking tool and indicator of forecast accuracy, 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. The tracking reports on the Legislative Finance Committee's website can be found [here](#) (click on "monthly revenue tracking"). Some question the wisdom of the governor calling for a special session so soon, when waiting a month or two would allow for the revenue forecast to be revised and thus more certain, reducing the likelihood that yet another special session, costing taxpayers \$50,000 per day, would be necessary.

While the failed budget and tax recommendations of the House and Senate in the recently ended 30-day session are not at all controlling of what may come up, or result, in a special session, they do offer an insight as to the starting position of both groups. The Senate appears to want more cuts and doesn't like the gross receipts tax option, whereas the House will only accept a "candy" tax where the GRT food deduction is involved, and certainly wants to see personal income taxes increased. They may decide to "split the baby," where current proposals are modified and compromised, or it may be that other cuts and tax increases could come up as well. GRT on food continues to get attention, with Allen Sanchez, speaking for the Catholic Bishops offering this [opinion](#) to the Albuquerque Journal, opposing narrowing of the food tax deduction (except candy and sodas, etc, presumably), and former BBER Director and NMTRI Board Chairman Dr. Brian McDonald responding, pointing out the irony that the poorest are not benefiting from the current food deduction in his [opinion](#) piece. NMTRI Executive Director Richard Anklam was asked to weigh in and did so in this New Mexico Independent [blog](#), along with many of the other usual suspects.

*[NMTRI note: the food "debate" for years had been predicated more on emotional and populist feelings rather than sound economic or tax policy facts and fundamentals. The cost of feel good economics resulting in poorly targeted expensive benefits weighs heavy in tough economic times, where such policies require further and harmful spending reductions and tax increases.]*

Still, there will be plenty of wailing and gnashing of teeth as legislators work themselves through this mess that is the current economic crisis.

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## KNICK KNACKS

### **Bureau of Labor Statistics Releases New Data**

The U.S. Bureau of Labor Statistics has issued its January Data Summary. It shows Albuquerque's unemployment rate for December 2009 (not seasonally adjusted) to have risen to 7.9%, up from 4.8% a year earlier. Their interesting tables and other information can be accessed at [http://www.bls.gov/xg\\_shells/ro6xg01a.htm](http://www.bls.gov/xg_shells/ro6xg01a.htm).

## **Tax Policy Center Looks at Obama's Tax Laws in 2011 Proposed Budget**

The Tax Policy Center, a joint venture of the Urban and Brookings Institutes, has created fiscal analyses and distributional tables as a guide to the provisions of President Obama's 2011 budget. Their interesting and relevant work can be found at [http://www.taxpolicycenter.org/taxtopics/2011\\_budget.cfm](http://www.taxpolicycenter.org/taxtopics/2011_budget.cfm).

## **Tax Foundation View Florida Film Credits and Sales Tax Holiday Skeptically**

In their *Fiscal Fact No. 210*, "Florida Sales Tax Holiday, Film Tax Credit Plans Won't Deliver on Exaggerated Promises," explains how two plans in Florida to implement a back-to-school sales tax holiday in August and expand its film tax credit program to \$75 million will fail to live up to promises of significant tax relief and economic growth. The report is available online at <http://www.taxfoundation.org/files/ff210.pdf>.

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**WELCOME NEW MEMBERS:** The New Mexico Tax Research Institute is delighted to welcome these new members and thank them for their support of good tax policy in New Mexico.



### **Fidelity Investments John Chavez**

A very special thank you goes to Leann Kravitz, Director of Public Affairs for Fidelity Investments, and John Chavez, Executive Director of the New Mexico Angels, for making the membership happen and for his help, support and interest in good New Mexico tax policy.

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## **TAX QUOTABLE:**

"There is an ancient belief that the gods love the obscure and hate the obvious. Without benefit of divinity, modern men of similar persuasion draft provisions of the Internal Revenue Code."  
~ *Martin D. Ginsburg*

"The nation should have a tax system that looks like someone designed it on purpose."  
~ *William Simon*

[NMTRI note: the same is true of the states...]



**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.



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

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