

Tax Matters

The Newsletter of the New Mexico Tax Research Institute

Issue No. 2010-6

February 28, 2010

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IN THIS “SPECIAL SESSION” ISSUE OF *TAX MATTERS*:

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HOLD THE DATE AND MARK YOUR CALENDARS NOW – 7TH ANNUAL NMTRI TAX POLICY CONFERENCE IS COMING!

The Seventh Annual NMTRI Tax Policy Conference and annual members meeting will be held at Sandia Resort and Casino north of Albuquerque on May 20-21st. You will be inundated with details following the end of the special session!

LEGISLATIVE DEJA' VU



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 a very 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.

The Hangover Continues

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. Only 67 House and 62 Senate bills passed both houses in the session. Only twelve tax related bills passed both houses and made our list below. Six bills so far have been signed into law, with only one being tax related. It was reported yesterday that one of the bills authorizing the Las Cruces tax increment development district (“TIDD”) was signed, although the state’s bill locators do not yet reflect the governor’s action and it’s clear whether the signed legislation was Senator Mary Kay Papen’s [Senate Bill 95](#) and Representative Antonio Lujan’s [House Bill 112](#).

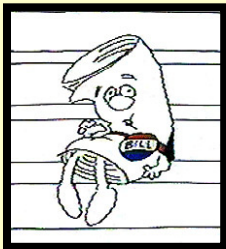
We expect Speaker Lujan’s pass-through entity and oil and gas proceeds withholding expansion to be signed by the Governor as it appears to already be a part of any revenue package under consideration. That proposal would require quarterly withholding and limit exceptions to both types of withholding to resident individuals and domiciled C-corporations ([HB 120](#)). Some of the other proposals that don’t cost money over time have a good chance of enactment (i.e. Senator Tim Keller’s [SB 47](#) creating incentive requirements; or is Senator John Sapien’s proposal in [SB 162](#), which would allow counties to pledge the last 1/16th increment of the county local option gross receipts tax to pay revenue bond obligations; or perhaps Representative Garcia’s proposal to ease the gaming tax at Ruidoso Downs ([HB 203](#)) if combined with a local option tax by the local residents--intended to be revenue neutral to the general fund over time). None of those proposals seemed to face strong opposition during the session.

Given the fact that New Mexico is attempting to balance the budget, the passed bills that have a negative general fund impact will likely face closer scrutiny.

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 No. 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.	Passed
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.	SIGNED (?)
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	Passed

	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.	
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.	Passed
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 1/4% in 1/16% increments. 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.	Passed
HB 208 Heaton	Oil and Gas Tax Reclamation Fund: HB 208 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	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. 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	Economic Development Tax Incentive Changes: SB 47 Creates guidelines for the creation and review of economic development incentives.	Passed
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.	Passed
SB 95 Papen	Las Cruces Tax Increment Project: SB 95 Authorizes the issuance of \$8 million for the Las Cruces main street downtown TIDD.	SIGNED (?)
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.	Passed
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	Passed

So What Happens Next? Special Session Tomorrow

Governor Richardson has indicated he [will call](#) a special legislative session tomorrow, Monday, March 1 (he was encouraged to change his mind by legislative leadership after originally announcing the date would be Wednesday, February 24). Matters germane to the session would be limited to the governor's discretion ("call"). The governor has indicated he will keep the agenda narrow and not request that ethics or other non-budget items be addressed. It has been recently reported in mainstream media that a budget "deal" has been made by House and Senate Democratic leadership (including a Saturday Albuquerque Journal article [here](#)). As many had surmised, the deal purportedly has more spending cuts than the 1% suggested by the House, but less than the 3% cuts requested by the Senate. Also, taxes are increase by more than \$230 million, but details have yet to be publicly released. Apparently cigarette taxes and gross receipts/compensating taxes are a part of the equation, but income tax increases are not. Now that the proverbial baby has apparently been split, the remaining questions are what exactly the details are, and will leadership hold ranks and get it quickly passed? Varying constituencies and election year politics add a special dynamic.

If the cigarette tax increase looks like that proposed in the Senate budget, it will be a one year one dollar per pack increase like that proposed by Senator Feldman and Representative Picraux, see [Senate Bill 30](#). That proposal did not address the serious policy defect high cigarette taxes create – that is the so-called "leakage" problem, the shifting of purchases to sellers who may not report taxes, like tribes and internet retailers. The \$1 per pack proposal was expected to raise around \$33 million.

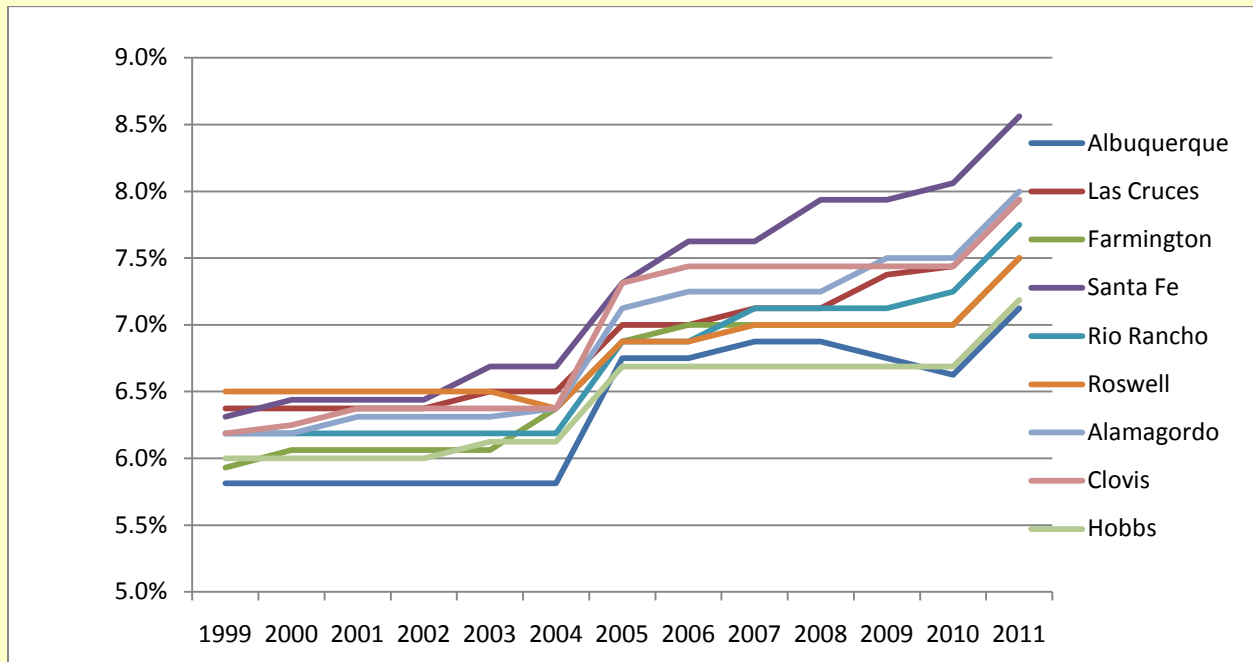
Gross receipts tax proposals varied and included the House-favored budget funding mechanism in the form of Speaker Lujan's [House Bill 119](#), a half-percent increase in the state rate. That bill was projected to raise almost \$240 million in 2011, before phasing back down to the original 5% rate in FY15.

If reports that the deal reached this weekend are true—that the increases agreed to would raise more than \$230 million--that's less than the cigarette and House GRT proposals together would raise. This suggests that further compromise was reached on GRT rate (i.e. .25 or .125% increase), and/or other gross receipts and compensating tax changes were made. These changes could include one of the proposals associated with changes to the breadth of the food tax deduction and/or the associated and costly "hold harmless" distribution made to local governments from the general fund to offset the cost of that deduction.

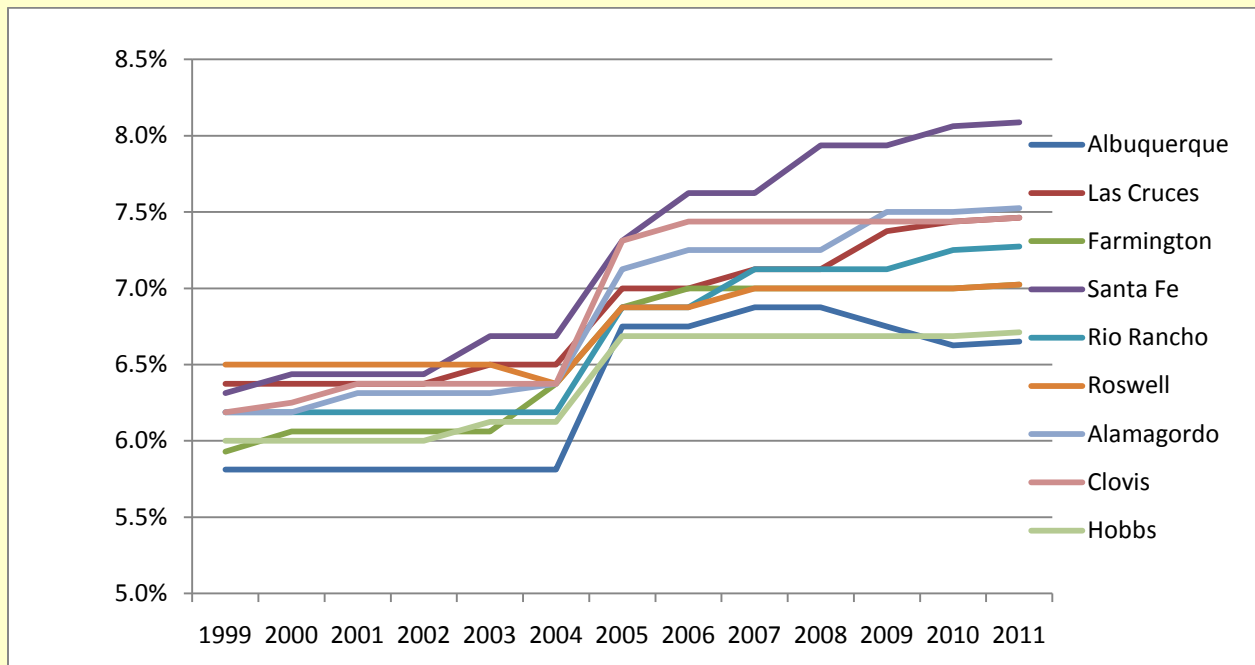
There is a rare "do-over" opportunity here, to correct mistakes of the past, putting food back into the tax base, reducing the rate back to where it was when food was removed, and bolstering the Low Income Comprehensive Tax Rebate (LICTR) to give low-income families the benefit that was promised, which because of the rate increase, they never received. As it turns out, this would also provide more money for government because higher income folks would go back to paying tax on food. So lawmakers could balance the budget, in part, by taking this approach – although the dollars in play suggest that may not be the case.

[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 policy, resulting in poorly targeted and expensive benefits, weighs heavy in tough economic times where such policies require further, potentially harmful, spending reductions and tax increases. Still, as with the likely future resolution of the “tax lightning” problem, the most likely outcome will be something perhaps better than the current state, but probably not as desirable as original law with more targeted relief.]

Upward pressure on gross receipts tax rates have been a constant concern of the NMTRI since its inception. The rate increase compound the pyramiding problem making the tax less transparent and more inefficient, leading to distortions and inequities, not to mention making New Mexico less attractive to business, and New Mexico businesses less competitive with other states’ businesses. Being a regressive tax, increases are borne more heavily by poorer New Mexican’s relative to their incomes, and the tax competes with local governments’ ability to raise revenue for the same reasons. Below are two charts plotting both the result of a .5% statewide gross receipts at increase as well as slightly less ugly .25% gross receipts tax increase.



Selected cities GRT assuming a 2011 .5% rate increase statewide with no other local option increases or decreases



Selected cities GRT assuming a 2011 .25% rate increase statewide with no other local option increases decreases

Another concern mentioned in our previous newsletter was that the revised revenue forecast from December was perhaps optimistic, meaning the necessary spending cuts or tax increases may need to be larger to really balance the budget. The Legislative Finance Committee has been 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.

With support from the administration, lawmakers decided to move forward with the old forecast numbers. If state revenues do in fact deteriorate, we'll could be doing this all again soon. The question would be whether the deterioration would eat through reserves requiring another special session, and could that happen before the upcoming elections.

[NMTRI note: the question of the revenue forecast is not one of if it's wrong, but rather by how much and in what direction. New Mexico and most other states continue to revise forecasts regularly – and in only one direction – down. The likelihood of a pleasant surprise and above forecast revenues is unfortunately not high.]

The tracking reports on the Legislative Finance Committee's website can be found [here](#) (click on "monthly revenue tracking").

KNICK KNACKS

Colorado's Amazon Alternative

Colorado's Governor has embarked that state on an experiment to try and increase tax reporting by so-called "remote" sellers (mail-order and internet sellers who do not have physical presence in the state and therefore don't pay state or local taxes). Rather than signing onto the Streamlined project (where states are attempting to simplify their taxes in order to get support for expanding the tax to remote sellers) or using a statutory presumption of presence for certain internet sellers, what are now referred to as "Amazon" laws, Colorado is trying a slightly different tactic.

Colorado HB 1193 requires Internet retailers to notify their customers through first-class mail that the customers owe use taxes. But to avoid that requirement, retailers can instead choose to collect sales tax on their own. That bill will take effect March 1.

[NMTRI note: New Mexico by statute precludes the Taxation and Revenue Department from enforcing compensating (use) tax collections from individuals – guaranteeing a competitive tax disadvantage for local retailers – and state coffers – relative to non-nexus out-of-state sellers. Accordingly, Colorado's measure, if effective, could not be emulated here in NM without that change. The situation also explains New Mexico's interested in the Streamlined Sales Tax Project, which could avoid the need to eliminate the present law compensating tax collection prohibition.]

Pennsylvania Governor Proposes Tax Change

Pennsylvania Governor Ed Rendell (D) proposed a \$66.4 billion budget that represents a 4.1% increase in their current general fund budget. To pay for it, he proposes broadening the state sales tax and lowering the rate from 6% to 4%. The change would eliminate some exemptions but would broaden the taxation of business-to-business transactions. Many retail transactions such as some groceries, clothing, legal and medical services would remain exempt under his proposal. The proposal also eliminate sales tax vendor compensation, reduces the corporate income tax rate from 9.99% to 8.99%, eliminate the cap on net operating loss carry-forwards, and imposes mandatory combined reporting but with a single-sales factor apportionment. It also imposes a new severance tax on natural gas extraction.

Bad News for Kansas

Preliminary figures released Friday by the Kansas Department of Revenue showed that Kansas collected \$194.9 million in various taxes during the month of February, or \$71.2 million less than state officials projected. Only two of the 16 tax programs counted exceeded projections. Overall year to date collections of around \$3.1 billion, are over \$100 million (3.3%) behind expectations. They hope to continue refining the estimates in order to fix the current year shortfall and balance the project \$400 million shortfall next year.

TAX QUOTABLE:

"The difference between death and taxes is death doesn't get worse every time Congress meets.

~ Will Rogers



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!