

Tax Matters

The Newsletter of the New Mexico Tax Research Institute

Issue No. 2011-3

February 6, 2011

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

505-842-5833
Richard.Anklam@nmtri.org
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 “SUPERBOWL” ISSUE OF *TAX MATTERS*:

- **Into the Legislative Session**
- **List of Tax Related Legislation**
- **Happenings Leading Up to the Legislative Session**
- **Tax Foundation Ranks State Sales Taxes**
- **Knick Knacks**
- **Tax Quotable**

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 goes on...

So far, 375 House and 415 Senate bills have been introduced. We’d expected fewer tax proposals but plenty of accountability oriented bills, as well as similar but differently monickered “loophole” closures or “fairness” proposals. Our expectations have been met. We are also seeing fewer bills overall, partly as a result of fewer spending requests given the budget situation in these tough economic times. Still, we’re tracking around 64 tax and significant revenue related bills introduced thus far (let us know if you notice a bill not on the list that should be).

We can expect a new revised consensus revenue forecast to be released next week sometime. Those expecting a miracle will likely be disappointed, but for budget purposes they’ll then know what their target is.

In the meantime, bills are just starting 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 really just starting to hear bills. The few tax related measures that have actually moved in the house have managed to get through their first committee assignments (House Business and Industry in this case). They include Rep. Trujillo’s electric plug-in car exemption ([HB 39](#)), Representative Gonzales’s effort to make geothermal pump tax credits refundable ([HB 75](#)), and Chairman Sandoval’s gross receipts tax deduction for veterans services we complained about last time ([HB 89](#)). All three are now at their final committee stop in the House, the House Taxation and Revenue Committee. Their journey will likely slow as the committee policy tends to be to initially table all bills with a negative fiscal impact until closer to the end of the session when leadership decides what they want to push to the House floor (but of course there are always exceptions).

The Senate is similar. Five bills have managed to find their way out of the Senate Corporations and Transportation Committee (“SCORC”), all but one on their way to SFC. They include Phil Griego’s jet fuel deduction, Senator Beffort’s welfare to work credit update ([SB 135](#)), and

Senator Keller's tax expenditure budget proposal ([SB 47](#)) which made it out without recommendation. Senator Eric Griego pushed one of his bills through the same committee; his proposal to narrowly tax internet commerce (i.e. "Amazon" legislation) in [SB 95](#). Getting out of the Senate Public Affairs Committee ("SPAC") was Senator Ulibarri's veteran owned business preference proposal in [SB 149](#). These and many more will see committee action this week.

New "raiser" proposals still coming

Although not really in vogue or seen in large numbers, tax increase proposals are still being introduced. Representative Stewart introduced a companion to Senator Feldman's tobacco tax increase in [House Bill 250](#). Representative Gonzales's [House Bill 328](#) enacts, repeals, and amends sections of the Enhanced 911 Act, in part to bring voice over internet protocol ("VOIP") communications into the tax base. Representative Egolf has proposed what is essentially a 2.5% additional retail sales tax on alcoholic beverages in his [House Bill 361](#).

Bills that cost money

Tax proposals that will carry negative fiscal impacts continue to be proposed. Another proposal to provide a tax expenditure in the form of a credit military retirement pay, identical to the previously mentioned Senator Sharer's SB 217 has been introduced in representative McMillan's [House Bill 265](#). Representative Garcia's [House Bill 239](#) 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.

Representative Trujillo's [House Bill 273](#) 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). The credit is relatively inexpensive and ineffective. While this version no longer encourages out of state purchasing, it has been made less valuable to taxpayers. However, the current form remains subject to manipulation of withholding which can increase benefit to the inclined. Possibly the most interesting tax credit proposal to day, Senator Eric Griego has introduced his [Senate Bill 342](#). It 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." Look for the largest gross receipts taxpayers in the state to start broadcasting soon if this one is enacted.

Also, Representative Powdrell-Culbert's [House Bill 304](#) would extend the availability of the Angel Investment Credit Act to investments made prior to 12/31/2015. (Note: this credit is still in effect.)

Senator Leavell now has two bills that introduce "leasing" into the scope of some green credits/deductions. His [Senate Bill 243](#) expands the GRT deduction for sales of solar energy systems to include 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. [Senate Bill 409](#) Adds "leasing" of tangible personal property to the gross receipts tax deduction for certain eligible generation plant costs under the Section 7-9-114 alternative energy deduction.

Representative Jeff has introduced a couple of measures with tribal implications. Her [House Bill 288](#) would 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. Her [House Bill 287](#) 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.

[NMTRI note: while the latter is much more financially material than the former, it does not implicate the general fund directly, as it’s a primary road fund revenue source.]

And other stuff

Senator Ingle and Representative Ezzell have introduced legislation (see [Senate Bill 326](#); [House Bill 281](#)) that would relax the nontaxable transaction certificate (NTTC) requirements when those relying upon the sale for resale of tangible personal property deduction in the gross receipts tax (Section 7-9-47), by allowing the Secretary authority to “approve other evidence.”

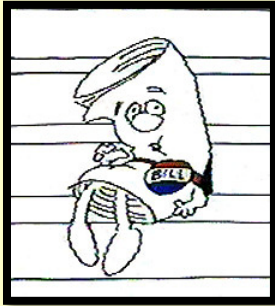
[NMTRI note: this bill addresses a perceived “gotcha” in the state’s law that requires any necessary NTTC be on hand within 60 days of demand in audit, or the deductions are disallowed and taxed. However, the issue is broader than that with respect to other gross receipts tax deductions. New Mexico has not been consistent with its documentation standards, whereby some deductions require an NTTC, some make it optional, while other provide for the use of alternative evidence - A more comprehensive approach to the broader issue is desirable. Also, one must be careful not to create loopholes by accidentally invalidating the compensating tax.]

Speaker Lujan has introduced [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 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

Bill Number/ Sponsor:	Title: Link to bill language: Description	Assignments -Location:
HB 19 D.Kintgh	No Film Tax Credit & Limit film Investments HB 19 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 (tbl)
HB 23 M.H. Garcia	Liquor Excise Tax Distribution to Schools: HB 23 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 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	Reduce Hospital Tax Levy For Hospital Funding: HB 25 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	Plug-in Electric Car Exemption: HB 39 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	Severance Tax Fund Investment in Energy: HB44 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	“Net Income” Definition For Income Taxes: HB 61 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	Geothermal Pump Tax Credit Refundability: HB 75	HBIC/HTRC

Gonzales	Makes the credit refundable above and beyond any existing taxpayer 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.	-HBIC-DP-HTRC
HB 89 Sandoval/UI ibbarri	Veteran Owned Business Gross Receipts: HB 89 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	Internet Sales Gross Receipts: HB 102 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	Income Tax Exemption For People Over 65: HB 119 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	Budget and Corporate Transparency: HB 156 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	Tax Expenditure Budget Development and Report: HB 161 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
HB 165 Crook	Define "Modified Combined Tax Liability: HB 165 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	Review Certain Tax Credits: HB 166 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	HBIC/HTRC -HBIC

	or repealed. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	
HB 198 B. Lujan	Tax Credits for Natural Gas as Vehicle Fuel: HB 198 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
HB 200 Strickler	Reducing Corporate Income Tax Rates: HB 200 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
HB 222 Egolf	Reduce Unequal Treatment of Taxes & Credits: HB 222 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	HBIC/HTRC -HBIC
HB 239 Garcia	Veteran Employment Tax Credit: HB 239 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
HB 250 Stewart	Define “Tobacco Products” & Enact Minimum Tax: HB 250 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	Military Retirement Income Tax Exemption: HB 265 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	Small Business Tax Credit Eligibility Period: HB 273 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	TRD Secretary Approve Certain Evidence: HB 281 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	Special Fuel Tax Deduction on Indian Land: HB 287 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	HBIC/HTRC -HBIC

	laws.	
HB 288 Jeff	Teacher Income Tax Deduction on Indian Land: HB 288 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	Angel Investment Tax Credit Extension: HB 304 Extends the availability of the Angel Investment Credit Act to investments made prior to 12/31/2015.	HBIC/HTRC -HBIC
HB 327 Gonzales	Property Value, Certain Tax Credits Accepted: HB 327 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	Surcharges Imposed on Communication Services: HB 328 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	Reduce Mill Levy to Pay for County Hospital: HB 335 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	Political Subdivision Qualification to Tax: HB 343 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	Point-of-Sale Surtax on Retail Alcohol Sales: HB 362 Essentially imposes an additional retail sales tax at the rate of 2.5% on the sale of alcoholic beverages	HBIC/HTRC -HBIC
SB 6 Wirth	Combined Tax Reporting for Some Corporations: SB 6 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	Net Taxable Income Determination SB 7 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	Tax Forms Itemizing Gross Receipts Exemptions: SB 39 Requires taxpayers with gross receipts to report most exemptions and all but one deduction separately by category, requiring substantially more	SCORC/SFC -SCORC

	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.	
SB 44 Keller	Film Production Tax Credit Tracking & Review: SB 44 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
SB 46 Griego	Extend Jet Fuel Gross Receipts Tax Credit: SB 46 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	Tax & Rev Dept. Tax Expenditure Budget: SB 47 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 primary tax programs. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	SCORC/SFC -SCORC- w/o rec-SFC
SB 81 Feldman	Tobacco Products Tax & Definitions: SB 81 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	Jet Fuel Gross Receipts Credit: SB 84 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	Income Surtax, Distribution, & School Funds: SB 94 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	Internet Sales Gross Receipts: SB 95 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	Extend Annual Property Valuation Increases: SB 108 Limits the applicability of the 3% valuation limitation to owner occupied residences, eliminates the revaluation upon change in ownership, and	SCORC/SFC -SCORC

	provides for revaluation if owner-occupation ends.	
SB 113 Boitano	Tax Credit for Certain Scholarship Donations: SB 113 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	Family Assistance Employer Tax Credits: SB 135 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	Veteran Owned Business Preference: SB 149 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	Military Construction Service gross Receipts: SB 160 Reinstates the deduction for construction services performed on Cannon AFB from 7/1/11 – 12/31/14.	SCORC/SFC -SCORC
SB 169 Smith	Film Production Tax Credit Cap: SB 169 Limits allowable film tax credits for production and post production recipients to \$2 million dollars.	SCORC/SFC -SCORC
SB 170 Smith	Tax Itemization & Return Filing: SB 170 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	Dialysis Facility Service Gross Receipts: SB 178 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
SB 179 Nava	Locomotive Fuel Gross Receipts: SB 179 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
SB 189 Neville	Property Tax Increases & Revaluations: SB 189 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	Repeal Venture Capital Investment Act: SB 194 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	Hydrogen Fuel Production Tax Credits: SB 210 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	Military Retirement Pay Tax Exemption: SB 217 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
SB 234 Leavell	Solar Energy Gross Receipts: SB 243 Expands the GRT deduction for sales of solar energy systems to include 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/SC ORC/SFC- SCONC
SB 243 Fischmann	Tax Increment District Requirements: SB 243 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	Motor Excise Tax Increase & Offset: SB 244 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	Soft Drink Sales Gross Receipts: SB 256 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	Adjust Liquor Tax Distribution: SB 258 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 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	Cigarette Taxes on Tribal Land: SB 264 Narrow's the tribal exemption of the cigarette tax to apply only to sales of	SIAC/SCOR C/SFC-SIAC

	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.	
SB 282 Jennings	Tax Liability For Certain Physician Services: SB 282 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	Sweetened Beverage Excise Tax: SB 288 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 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.	SCORC/SFC -SCORC
SB 317 Lovejoy	Native American Tax Settlement Approp: SB 317 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
SB 326 Ingle	TRD Secretary Approve Certain Evidence: SB 326 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	Tax Credit for Certain Radio Stations: SB 342 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	Advanced Energy Deduction for Certain Leases: SB 409 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



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 with the 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](#).



Tax Foundation Ranks State Sales Taxes

The Tax Foundation issued its annual comparison of state tax rank last week. New Mexico was the 18th highest. Five states don’t impose state general sales taxes (can be remembered as “NOMAD”, New Hampshire, Oregon, Montana, Alaska, and Delaware. Some however provide for narrower taxes (“leasing” in Delaware or locally imposed taxes Alaska. According to the Tax Foundation’s Fiscal Fact No. 258, the states with the highest combined state and local sales tax rates were: Tennessee at 9.44%, California at 9.08%, Arizona at 9.1%, Louisiana at 8.69%, and Washington at 8.64%. The states with the lowest combined state and local sales tax rates (that had state level sales taxes) were: Hawaii at 4.35%, Maine at 5%, Virginia at 5%, South Dakota at 5.22%, and Wyoming at 5.3%. The full report can be found on the Tax Foundation website [here](#).

Table 1
State and Local Sales Tax Rates, Ranked by Total Rate
 as of January 1, 2011

State	State Tax Rate	Average Local Tax Rate	Total Rate	Rank
Alabama	4.00%	4.03%	8.03%	10
Alaska	None	1.12%	1.12%	46
Arizona	6.60%	2.41%	9.01%	3
Arkansas	6.00%	2.10%	8.10%	9
California (a)(c)	8.25%	0.83%	9.08%	2
Colorado	2.90%	4.08%	6.98%	24
Connecticut	6.00%	None	6.00%	33
Delaware	None	None	None	47
Florida	6.00%	0.99%	6.99%	23
Georgia	4.00%	2.95%	6.95%	25
Hawaii (b)	4.00%	0.35%	4.35%	45
Idaho	6.00%	0.03%	6.03%	32
Illinois	6.25%	1.97%	8.22%	8
Indiana	7.00%	None	7.00%	19
Iowa	6.00%	0.84%	6.84%	26
Kansas	6.30%	1.65%	7.95%	12
Kentucky	6.00%	None	6.00%	33
Louisiana	4.00%	4.69%	8.69%	4
Maine	5.00%	None	5.00%	43
Maryland	6.00%	None	6.00%	33
Massachusetts	6.25%	None	6.25%	31

Michigan	6.00%	None	6.00%	33
Minnesota	6.875%	0.265%	7.140%	17
Mississippi	7.00%	None	7.00%	19
Missouri	4.225%	3.237%	7.462%	15
Montana (d)	None	None	None	47
Nebraska	5.50%	0.89%	6.39%	29
Nevada	6.85%	1.11%	7.96%	11
New Hampshire	None	None	None	47
New Jersey	7.00%	None	7.00%	19
New Mexico (b)	5.125%	2.010%	7.135%	18
New York	4.00%	4.52%	8.52%	6
North Carolina	5.75%	2.07%	7.82%	13
North Dakota	5.00%	0.57%	5.57%	39
Ohio	5.50%	1.28%	6.78%	27
Oklahoma	4.50%	3.83%	8.33%	7
Oregon	None	None	None	47
Pennsylvania	6.00%	0.34%	6.34%	30
Rhode Island	7.00%	None	7.00%	19
South Carolina	6.00%	1.25%	7.25%	16
South Dakota	4.00%	1.22%	5.22%	42
Tennessee	7.00%	2.44%	9.44%	1
Texas	6.25%	1.36%	7.61%	14
Utah (a)	5.95%	0.67%	6.62%	28
Vermont	6.00%	None	6.00%	33
Virginia (a)	5.00%	None	5.00%	43
Washington	6.50%	2.14%	8.64%	5
West Virginia	6.00%	None	6.00%	33
Wisconsin	5.00%	0.42%	5.42%	40
Wyoming	4.00%	1.30%	5.30%	41
District of Columbia	6.00%	-	6.00%	-

Source: Tax Foundation calculations; state revenue departments; Sales Tax Clearinghouse.

Note: Some states levy gross receipts taxes in addition to sales taxes.

(a) Three states levy a mandatory local add-on sales tax at the state level: California (1%), Utah (1.25%), and Virginia (1%). We include this in their state sales tax.

(b) Hawaii and New Mexico have broad sales taxes that also apply to many services.

(c) California's state sales tax is scheduled to drop 1 percentage point on July 1, 2011.

(d) Due to data limitations, this table does not include sales taxes in local resort areas in Montana

[NMTRI note: while comparisons such as this can be useful and informative, it is important to consider all tax programs when attempting to compare states. The Tax Foundation and others do try to do this. Also, this is not a "burden" study. New Mexico's broader tax base in its gross receipts tax, as footnoted in the report above, suggests that the effective rate of tax and relative burden can be higher than states with the same or higher rates due to "pyramiding" of tax.]

KNICK KNACKS

Rockefeller Sees Positive Trend in Early Data

The Nelson A. Rockefeller Institute of Government has issued their quarterly State Revenue Report, where they say that according to the most recent Census Bureau data as well as their own

research and preliminary data for the fourth quarter, most states appear to be slowly recovering. Revenue continues to rebound during the third and fourth quarters. When compared to the same third quarter a year ago, revenues were up 4.5%. According to their report, 43 states had reported positive revenue growth in the third quarter, with ten having grown increases in the double digits. Earlier reporting states showed collections to be up 6.9 percent in the fourth quarter. The full report can be accessed on the Rockefeller Institute website [here](#).

New York Desperate for Cigarettes

Possibly signaling their seriousness about collecting state tax on tribal cigarette sales to non-tribal members, New York's Governor Cuomo has included \$130 million in additional cigarette tax revenue in their budget. With exceptionally high tax rates and close proximity to tribal retailers, New York has been making efforts to tax certain tribal cigarette sales to non tribal members for years. Cuomo will apparently be the fifth state executive to attempt to end tribal sales free of state tax. (Note: Senator Harden has a proposal that would essentially do the same thing in the New Mexico legislature ([SB 264](#)), which is sure to be controversial).

TAX QUOTABLE:

"To tax the community for the advantage of a class is not protection: it is plunder."

~Benjamin Disraeli



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!