

Tax Matters

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INTO THE LEGISLATIVE SESSION – IT BEGINS JANUARY 16, 2012



The 2012 Regular Session of the New Mexico Legislature convenes at noon on Tuesday, January 17, and ends at noon on February 16. The deadline for bill introduction is February 1. Legislation not acted on by the governor is pocket vetoed on March 7th. The effective date of legislation that's not a general appropriation bill, a bill carrying an emergency clause or other specified effective date takes effect on May 16.

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 expected to be a very busy session, as high profile, contentious and painful issues of budget and revenue will be center stage 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.

For the fifth year, bills can be “pre-filed”, or introduced before the start of the session. Thus far, 132 bills (53 House bills and 79 Senate bills) have been pre-filed. If you can't wait to see what's already been introduced, click [here](#) to see the list of pre-filed House bills, and [here](#) for the Senate bills.

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 site has become increasingly functional and reliable over time. Information is reasonably up to date and legislation can be easily followed from home.

DON'T FORGET THE PRINCIPLES



It's important, particularly when dealing with tough economies, tough decisions, and the emotionally charged subject of taxes, to view the world in the context of principles. Taxes are good in that they raise the money we need to pay for the services we need. They're bad in that they create inefficiencies, distortions, and sometimes inequities. It's a more rationale 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. We need to raise the money we need for government (and there's obviously plenty of debate to be had on that subject) while doing the least harm to the economy and to those things we need most (e.g. job creation) while being fair

and protecting the most vulnerable in our communities. Accordingly, we've taken the opportunity to reprint our principles of good tax policy here:

State and local taxes should be adequate to provide an appropriate level of those goods and services best provided by the public sector, such as education, public safety, law enforcement, streets and highways, and the courts.

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



Tax-pectations for the Upcoming Session

The 30-day session has almost arrived. While primarily a budget session, meaning taxes and the controversy they bring are fair game, other controversial issues from the Special Session such as social promotion, driver's licenses for undocumented residents, fireworks ban authorities and the like are sure to come up. Still, there are many tax interests and agendas out there. As with last year, we anticipate fewer than normal tax increase proposals since it appears fairly clear that the Governor would not sign one, but a few will still be introduced.

You don't have to be Nostradamus to get an idea of what sorts of tax legislation will be introduced. While the Legislative Finance Committee doesn't have tax increases or decreases in their proposed budget, the Governor has reserved \$55 million in her budget for tax decreases. In her press release (found [here](#) on the Governor's website), Governor Martinez has GRT relief for the half of all taxpayers who pay the smallest amount of gross receipts tax, proposed relief for tax pyramiding in the manufacturing and construction industries, a \$1000 income tax credit for hiring veterans, a 25% exemption for military retiree pensions, and relief in other technological areas such as directed energy. Bill drafts have yet to be pre-filed or made publicly available, although they certainly will be soon. The administration has also made noise and perhaps left

the door open for corporate tax relief, property tax relief, administrative reform, and other tax issues.

As mentioned in an earlier newsletter, the interim Revenue Stabilization and Tax Policy Committee (“RSTP”) chaired by Senator Eichenberg endorsed nine pieces of tax related legislation, several of which have been pre-filed and appear in the table below. A list of what was endorsed by RSTP and what wasn’t can be found on our website [here](#). The proposals themselves can be found on the committee’s legislative website [here](#). While an endorsement isn’t as predictive of passage as it once was, it does at least guarantee that the legislation will be introduced.

Lastly, tax proposals – particularly bad ones – tend to be regurgitated (so to speak) from year to year. So, merely recalling what’s been introduced (but failed to pass) in recent years will give you some idea of what will be introduced again. For confirmation of that, all you need do is scroll down to the table of pre-filed bills below.

Join us weekly through the session as we try to provide balance policy analysis, commentary and discussions of the tax and budget proposals that implicate tax policy in New Mexico.

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



Note – in the table below, if no effective date is mentioned, the bill lacks one and would take effect upon enactment, May 16, 2012. 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, 2013 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 22 Trujillo/P. Griego	Limited Motor Vehicle Excise Tax Exemption: HB 22 Exempts qualified electric plug-in vehicles from the Motor Vehicle Excise Tax, changes the exemption from the GRT and compensating tax to include plug-in vehicles, and include them in the definition of “alternative energy vehicle” for purpose of the Alternative Energy Products Manufacturers Tax Credit. Endorsed by the interim Revenue Stabilization and Tax Policy Committee.	House Pre-file
HB 26 Rehm	Reduce Mil Levy To Pay For County: HB 26 Eliminates class A counties from imposing hospital mil levies under present law, and provides new more limited imposition authority.	House Pre-file
HB 29 Rehm	Reduce Property Tax Levy For County Hospitals: HB 29 Effectively phases-out the property tax mill levy for county hospitals in class A counties (UNMH in Bernalillo county) to 10% of 2012 mill rates over four years.	House Pre-file

HB 36 O'Neill	Liquor Excise Tax To Drug Courts: HB 36 Provides for a distribution from the liquor excise tax in the amount of 3.5% to the administrative office of the courts drug courts to supplement funding of drug courts. Endorsed by the interim Revenue Stabilization and Tax Policy Committee.	House Pre-file
HB 47 Lundstrom	Locomotive Fuel Gross Receipts: HB 47 Reduces the investment necessary to be made prior to July 1, 2011 to qualify for the locomotive fuel deduction by fifty percent, from \$100 million to \$50 million.	House Pre-file
HB 52 Jim Trujillo	Child Daycare Services Gross Receipts: HB 52 Creates a GRT deduction for receipts from child daycare services provided to families <i>qualified</i> to receive state assistance for child daycare services.	House Pre-file
HB 61 Begaye	Firework Gross Receipts Tax Distribution: HB 61 Creates a "fire protection fund" for the purpose of funding wildfire prevention programs and distributes 60% of the net receipts attributable to fireworks sales for that purpose.	House Pre-file
SB 9 Wirth	Corporate Tax Rates and Combined Reporting: SB 9 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 new corporation filing/doing business in New Mexico to report on a federal consolidated basis, but preserves the election for existing corporations already filing in that manner.	Senate Pre-file
SB 15 Keller	Capital Investment Tax Credit: SB 15 Modifies the Investment Credit Act to act to allow a credit on capital investments for local businesses or those who relocate 80% of their employees to New Mexico. Effectively creating a short-term interest free loan limited by tax appetite, the credit on capital investment can only be carried forward five years, must be paid back within five years of when taken, and is effectively capped at \$102,500.	Senate Pre-file
SB 16 Keller	State Graduate Employment Tax Credit: SB 16 Creates a non-refundable personal and corporate income tax credit in the amount of \$5000 for hiring New Mexico graduates within 18 months of graduation form a New Mexico institution. The credit cannot be taken in conjunction with the High Wage Jobs Tax Credit, the Rural Jobs Tax Credit, or the Technology Jobs Tax Credit, and cannot be carried forward.	Senate Pre-file
SB 17 Cisneros	Hydrogen Fuel Production Tax Credit: SB 17 Creates a 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.	Senate Pre-file
SB 20 Griego	Dialysis Center Gross Receipts: SB 20 Adds dialysis centers to the laundry list of "qualified practitioners" eligible for the deduction for the sale of services to Medicare. Endorsed	Senate Pre-file

	by the interim Revenue Stabilization and Tax Policy Committee.	
SB 23 Leavell	Uranium Hexafluoride Gross Receipts: SB 23 Changes the present law GRT deduction for the sale of “enriched uranium” to “uranium hexafluoride.”	Senate Pre-file
SB 35 Eichenberg	Transportation Zone Reinvestment Zone Act: SB 35 Proposal allows local governments to create districts for transportation projects similar to TIDDs where gross receipts tax revenue can be earmarked and dedicated for such purposes, and bonds issued. Endorsed by the interim Revenue Stabilization and Tax Policy Committee.	Senate Pre-file
SB 42 Sapien	Manufacturing Investment Weighted Sales Factor: SB 42 Creates tiered single sales factor elections based on qualified investments by manufacturers in a tax year (e.g. \$250M investment in year one would provide a two year single sale factor election for years 2 and 3, a \$500M investment would allow a 4yr election, \$750M a 6yr election, and \$1000M producing an 8yr elections. Investments in otherwise qualified equipment cannot be taken for purposes of the Investment Tax Credit.	Senate Pre-file
SB 43 E. Griego	Local Music Radio Station Gross Receipts: SB 43 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.”	Senate Pre-file
SB 45 P. Griego	Locomotive Fuel Gross Receipts: SB 45 Reduces the investment necessary to be made prior to July 1, 2011 to qualify for the locomotive fuel deduction by fifty percent, from \$100 million to \$50 million.	Senate Pre-file
SB 68 Keller	New Business Corporate Income Tax Credit: SB 68 Creates a corporate income tax credit for ten years for small New Mexico businesses having been here over 5 years, or a new business in New Mexico starting after July 1, 2012 and investing over \$25 million dollars. The recipient must create “economic base jobs”, defined as those jobs that pay at least the average wage for the area. The credit is 50% of the difference between the taxpayer’s corporate tax liability and the tax liability in a “base” year, but is refundable? The credit has clawback provisions requiring a first priority lien and sets a maximum credit amount not to exceed thirty percent of the increase in state revenue over the first base year for which the taxpayer has claimed the credit.	Senate Pre-file
SB 74 Fischmann	Tax Credits, Deductions and Reporting: SB 74 Creates a 5.125% personal and business income tax credit against the value of acquired business services, capped at \$13K. The proposal also reduces the capital gain exemption to 25% from 50%, mandates combined reporting for all but those currently filing consolidated returns, and increases the motor vehicle excise tax to 4% while eliminating the trade in deduction.	Senate Pre-file

KNICK KNACKS

New Mexico Proposing One New Tax Regulation

The New Mexico Taxation and Revenue Department (“NMTRD”) has set a public hearing for a proposed regulation on January 30, 2012, in the Secretary’s conference room (No 3002/3137), located on the third floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. The hearing is scheduled to begin at 9:30 am.

The proposal edits the compensating tax regulation 3.2.1.30, adding examples and asserting that the definition of “use” means “to employ or utilize property or a service for a particular purpose” and “does not include mere ownership or possession of property, or the “mere treatment, processing or servicing of tangible property to make the property fit for utilization when the ultimate use of the property is outside New Mexico.”

Copies of the proposed regulation can be found on the New Mexico Register website or on the Taxation and Revenue Department’s website [here](#).

[NMTRI note: this change is apparently intended to clarify a perceived ambiguity in current law in a way consistent with historical and rational policy regarding compensating tax imposition relative to bailments].

New Senator to Serve This Session

Governor Susana Martinez has appointed Lisa Curtis, a Democrat and president of the New Mexico Trial Lawyers Association, to fill the District 21 seat vacated when republican Senator Ken Cravens resigned to assume the lobbyist position at the New Mexico Oil and Gas Association. She will serve the remainder of Craven’s term, which ends this year. Curtis’s was the only name submitted for the heavily Republican district by the Bernalillo and Sandoval county commissions, on party line votes.

TAX QUOTABLES

“Like mothers, taxes are often misunderstood, but seldom forgotten.”

~ Lord Bramwell

“Tax reform is taking the taxes off things that have been taxed in the past and putting taxes on things that haven’t been taxed before.”

~Art Buchwald



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!