

Tax Matters

The Newsletter of the New Mexico Tax Research Institute

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INTO THE LEGISLATIVE SESSION



The 2012 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 17, and ends at noon on February 16th. 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 emergence 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 messages from the Governor. It is expected to be a very busy session, as high profile and contentious issues of budget and revenue, not to mention others such as drivers' licenses, social promotion, fireworks, the death penalty, and other issues will be center stage. According to the December consensus revenue forecast, there's a little over \$250M of "new money" available for appropriation. However, sagging natural gas prices have some concerned that that number is high. The forecast was viewed previously as a little conservative, and state general fund revenues are of course predicated on many revenue streams, primarily gross receipt tax. The revenue forecasters may revise the forecast before the end of the session. The Legislative and Administrative budgets are not that far apart, with the lion's share of new money in both budgets going to Medicaid and the unwinding of one of the retirement "swaps" whereby the state would again start paying a portion of the employees' pension contributions that had been shifted to employees in a prior year effort to balance the budget. The most distinguishing difference between the budgets is the Administration's desire to provide \$55 million in tax cuts, whereas the LFC budget proposal contains no tax proposed tax increases or decreases.

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.

Thus far, 258 bills (131 House bills and 127 Senate bills) have been introduced thus far. If you can't wait to see the whole list, you can find them on the Legislature's daily bill locator [here](#). Most members went home early Thursday afternoon or Friday, but look for the pace to pick up in week two.

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.

Tax Talk

The 30-day session arrived last Tuesday. 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 they too will still be introduced. We're currently tracking 18 tax related House bills, and 16 tax related

Senate bills. As previously mentioned, 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 smallest half of gross receipts taxpayers, proposed tax relief to address pyramiding in the manufacturing and construction industries, a \$1000 tax income credit for hiring veterans, a 25% exemption for military retiree pensions, and relief in other technological areas such as directed energy. Bills of her proposals have yet to be seen, but they are expected to be introduced in the next few days.

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 endorsement isn't as predictive of likelihood of passage as it once was, it does essentially guarantee that the legislation will at least be introduced... and most committee endorsed proposals have been introduced already.

Corporate Income Tax

There are three corporate tax related proposals introduced so far. Representative Strickler's [House Bill 130](#) is identical to his proposal of last year – phasing corporate tax rates down to 4.8% over a couple of years. Senator Wirth pre-filed his eighth annual attempt at requiring combined reporting. His [Senate Bill 9](#) this year reduces the top marginal rate from 7.6% to 7%, doesn't force consolidated filers to file combined, but does strip any net operating losses of any separate filer when it takes effect (under present law regulation). Another duplicate of last year's legislative proposals is Senator Sapien's [Senate Bill 42](#). The exceptionally narrow proposal (i.e. no one in NM currently qualifies) provides for a two year single weighted sales factor election for those making qualified investments in excess \$250 million, a four year election for investments in excess of \$500 million, a six year election for investments over \$750 million, and an eight year election for investments in excess of a billion dollars. The election cannot be taken in conjunction with the investment credit, and still manages to garner a fiscal impact of \$3-13 million.

Gross Receipts and Compensating Tax

As is always the case, there's a lot of energy behind drilling holes in the retail GRT base. It's not hard to do if one can craft the proposals narrowly enough to keep the fiscal impact small. So far, there's Senator Phil Griego's proposal to add dialysis facilities to the definition of medical practitioners allowed in his [Senate Bill 20](#), Representative Trujillo wants to create a deduction for certain daycare services in [House Bill 52](#), and they both want to exempt electric drive vehicles from motor vehicle excise tax, gross receipts, and compensating tax their co-sponsored [House Bill 22](#). Speaker Lujan has a bundle of changes and new deductions, some of which appear redundant, that appear related to efforts to create a multi-grid electrical distribution center in New Mexico (see his [House Bill 116](#)).

Other efforts include a significant expansion of the locomotive fuel GRT and compensating tax deduction currently enjoyed by Union Pacific. The \$100 million investment threshold to qualify for the GRT and compensating tax deduction for locomotive fuel (diesel) that has to be made after 7/1/2011, is proposed by Representative Lundstrom and Senator Phil Griego to be reduced

to \$50 million, and the spectrum of qualifying expenditures greatly expanded. Apparently the state's largest railroad wants piece of that action. (see: [HB 47](#) and [SB 43](#)). Additionally, there's an effort to change the phrase "enriched uranium" to "uranium hexafluoride" in the GRT deduction related to its processing and sale.

One of the more interesting proposals to date is that of Senator Fischmann in his [Senate Bill 74](#). He proposes small business corporate and personal income tax anti-pyramiding credits that are paid for with increases in Motor Vehicle Excise Tax, a 50% reduction in the 50% deduction for capital gains, and mandating combined reporting.

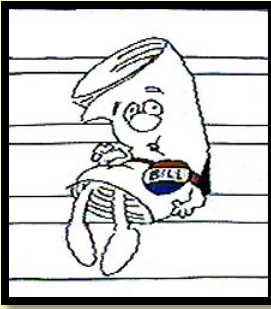
[NMTRI note: while it won't go anywhere, we appreciate the anti-pyramiding effort and the two of the Senator's raisers are in areas where New Mexico is much lower than other states, including the surrounding "low tax" jurisdictions.]

Credits and Incentives

Most of the remaining tax proposals fall in the category of credits and incentives. We'll discuss these in greater detail in the next issue as we anticipate a few more, as well as some changes to the existing ones. There are credits proposed for hydrogen production, a "fix" to the High Wage Jobs Tax Credit, some "Utah" style investment credits, a re-authorization of the Angel Investment Credit Act, and more. The most amusing are the competing proposals by Representatives Kintigh and Park ([House Bill 117](#) and [House Bill 85](#), the former of which phases-out the film production credit, while the latter eliminates the annual cap on credits issued. The one that most makes our head hurt most is the 36 page proposal by Senator Papen for New Market Tax Credits ([Senate Bill 76](#)). Patterned off of the federal credit, it applies to investment in or loans to "low income community business" meaning most of New Mexico qualifies... including parts of Santa Fe. The credit would be administered by the Mortgage Finance Authority has few limits and guidelines, and has the potential to provide higher levels of subsidy than the aforementioned and controversial film tax credit. The current proposal does contain a cap to prevent unanticipated general fund hemorrhaging.

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:



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.	HBIC/HTRC -HBIC
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.	HCPAC/HT RC-HCPAC
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.	HHGAC/HT RC-HHGAC
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.	HBIC/HTRC -HBIC
HB 47 Lundstrom	Locomotive Fuel Gross Receipts: HB 47 Expands the type of expenditures eligible and reduces the investment necessary to be made after to July 1, 2011 for the locomotive fuel deduction by fifty percent, from \$100 million to \$50 million.	HTPWC/HT RC-HTPWC
HB 48 Larranaga	Eliminate Some Tribal Gas Tax Deductions: HB 48 Eliminates the gasoline tax deduction provided for registered Indian tribal distributors.	HTPWC/HB IC/HTRC- HTPWC
HB 49 Larranaga	Motor Vehicle Excise Tax to State Road Fund: HB 49 Distributes sixteen and sixty-seven hundredths percent of the net receipts attributable to the motor vehicle excise tax to the road fund (currently, 100% is distributed to the general fund).	HTPWC/HA RK/HAFC- HTPWC
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	HHGAC/HT RC-HHGAC

	services.	
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.	HBIC/HTRC -HBIC
HB 70 Trujillo	Uranium Hexafluoride Gross Receipts: HB 70 Changes the present law GRT deduction for the sale of “enriched uranium” to “uranium hexafluoride.”	HBIC/HTRC -HBIC
HB 75 Cook	Cigarette Tax to Recreational Fund: HB 75 Creates a distribution to the county and municipality recreation fund in the amount of eight three hundredths of a percent (.83% or .0083 of the net receipts attributable to cigarette tax revenue).	not prntd- HRC
HB 85 Park	Repeal Film Production Tax Credit Cap: HB 85 Deletes the present law \$50 million annual cap on credit payments, as well as the associated language pertaining to subsequent year payments of approved credits in excess of the cap.	HBIC/HTRC -HBIC
HB 102 Baldonado	Estimate Property Tax in Valuation Notices: HB 102 Requires that an estimate of property tax due, along with a disclaimer thereto, be included with notices of value of residential properties issued by county assessors.	HHGAC/HT RC-HHGAC
HB 116 Lujan	Electric Conversion Facility Gross Receipts: HB 116 Expands the present law compensating tax deduction for electricity used in the production and transmission of electricity to include voltage source conversion technology, and creates a new gross receipts tax deduction for receipts from the transmission of electricity where voltage source conversion technology is employed, to include ancillary services, as well as a new deduction for receipts from operating a market or exchange for the sale or trade of electricity, rights to electricity, and derivative products from providing ancillary services (whatever that means).	HBIC/HTRC -HBIC
HB 117 Kintigh	Film Production Tax Credit Changes: HB 117 Provides for the reduction of the film credit percentage (currently 25%) by 1% per year until it reaches zero in 2032. Also provides for transferable negotiable instruments for payment of the credit, and new rules and reduced caps (\$45 million) for redemption.	HBIC/HTRC -HBIC
HB 123 Powdrell- Culbert	Extend Angel Investment Tax Credit: HB 123 Extends the currently expired Angel Investment Credit Act to apply to investments made through 12/31/2016.	HBIC/HTRC -HBIC
HB 130 Strickler	Reduce Corporate Income Tax Rates: HB 130 Reduces corporate income tax rates to 4.8% by eliminating the 7.6% for tax years beginning in 2013, and eliminating the 6.7% bracket for tax years beginning in 2014 (leaving the rate at a flat 4.8% in tax years 2015 and beyond).	HBIC/HTRC -HBIC
HB 131	Income Tax Contribution to Veterans’ Fund HB 131	HBIC/HTRC

Herrell	Provides for the revision of personal income tax forms to allow taxpayers to designate a portion of their refund to veterans' enterprise fund.	-HBIC
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.	SCC/SCORC /SFC-SCC
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.	SCC/SCORC /SFC-SCC
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.	SCC/SCORC /SFC-SCC
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.	SCC/SCORC /SFC-SCC
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 by the interim Revenue Stabilization and Tax Policy Committee.	SCC/SCORC /SFC-SCC
SB 23 Leavell	Uranium Hexafluoride Gross Receipts: SB 23 Changes the present law GRT deduction for the sale of “enriched uranium” to “uranium hexafluoride.”	SCC/SCORC /SFC-SCC
SB 36 Eichenberg	Transportation Zone Reinvestment Zone Act: SB 36 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.	SCC/SCORC /SFC-SCC
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	SCC/SCORC /SFC-SCC

	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.	
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.”	SCC/SCORC /SFC-SCC
SB 45 P. Griego	Locomotive Fuel Gross Receipts: SB 45 Expands the type of expenditures eligible and reduces the investment necessary to be made after to July 1, 2011 for the locomotive fuel deduction by fifty percent, from \$100 million to \$50 million.	SCC/SCORC /SFC-SCC
SB 68 Keller/Doyle	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 and capped at 30% of state taxes paid. 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.	SCC/SCORC /SFC-SCC
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.	SCC/SCORC /SFC-SCC
SB 76 Papen	State New Markets Tax Credit: SB 76 Similar to federal new markets credits, the act creates a state version for qualified low income areas (most of New Mexico qualifies). The credits for qualified investments apply to corporate income tax and premium tax and would be administered by the Mortgage Finance Authority.	SCC/SCORC /SFC-SCC
SB 99 Eichenberg	Income Tax Credit For New Business: SB 99 Creates a corporate income tax credit for seven 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 25% of the difference between the taxpayer’s corporate tax liability and the tax liability in a “base” year, but is refundable and capped at 15% of state taxes paid. The proposal 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.	SCC/SCORC /SFC-SCC

SB 101 Ryan	High Wage Jobs Tax Credit Application: SB 101 Creates a single definition of “wages and benefits” for purposes of job qualification and benefit. The proposal limits the cost of the expansion by limiting the retroactivity of the new rules, inserting a statute of limitations on claiming the credit similar to other business tax incentives, and closing potential “loopholes” by addressing the ineffective “export” requirement and implications presented by reorganizations. The proposal raises the annual wage and benefit threshold for qualification from present law \$40K to \$65K in urban areas, and from \$27K to \$40K in rural areas. Endorsed by the interim Revenue Stabilization and Tax Policy Committee.	SCC/SCORC /SFC-SCC
SB 104 Eichenberg	Use of Conservation Tax Credit Water: SB 104 Amends the personal and corporate income tax acts, pertaining to the agricultural water conservation credit to provide that conserved water cannot be put to consumptive beneficial use unless allowed by a permit issued by the state engineer.	SCC/SCON C/SCORC/S FC-SCC

Legendary Local CPA Passes



C.E. “Woody” Woodcock passed away last week. Woody was a prominent CPA in the community, having retired from a long career and Peat Marwick Main and Co. to continue in the business community for decades. Woody served on the Franklin Jones Commission in the late 60’s – the effort that led to the reformation of New Mexico’s tax structure and administration. Woody received the New Mexico Tax Research Institute’s first Franklin Jones Award for lifetime achievement in New Mexico tax policy in 1996. Woody served as the chairman of the New Mexico Society of Certified Public Accountants from 1953-1955. He also chaired the Michigan Society of Certified Public Accountants. Woody was 92. His achievements are too numerous to list here, but you can read more in yesterday’s Albuquerque Journal article [here](#).

[NMTRI note: Woody’s contributions were quite real, and he will be sorely missed.]

TAX QUOTABLES

Next to being shot at and missed, nothing is really quite as satisfying as an income tax refund.
~ *F. J. Raymond*

People who complain about paying their income tax can be divided into two types: men and women.
~ *anonymous*

A tax loophole is "something that benefits the other guy. If it benefits you, it is tax reform.
~*Russell B. Long*

The income tax created more criminals than any other single act of government.
~Barry Goldwater



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!