

Tax Matters

The Newsletter of the New Mexico Tax Research Institute

Issue No. 2011-1

January 23, 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 ISSUE OF *TAX MATTERS*:

- **Into the Legislative Session**
- **Don't Forget the Principles of Good Tax Policy!**
- **List of Tax Related Legislation**
- **Taxation and Revenue Department Gets New Leadership**
- **Happenings Leading Up to the Legislative Session**
- **Knick Knacks**
 - **New Gross Receipts Tax Rates Effective Now**
 - **Business Day in Santa Fe**
- **Tax Quotable**

LEGISLATIVE SESSION BEGAN JANUARY 18, 2010



The 2010 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.

Again, for the fourth time, bills could be “pre-filed”, or introduced before the start of the session. Thus far, 127 House and 218 Senate bills have been introduced so far. There are no surprises so far as the litany of tax proposals we’ve come to expect have already appeared, although perhaps in fewer numbers than in recent years, given the administration’s and others’ unwillingness to raise taxes. Similarly, tax expenditures... tax deductions and credits... are also being introduced, albeit not in the great number that we would otherwise expect. Perhaps the fact that in the absence of increases, those proposals require further cuts in other budgets to be paid for has hit home. Senator Neville has introduced property tax legislation in an effort to address “tax lightning”. Senator Wirth had pre-filed his anticipated mandatory combined reporting proposal for corporate income taxes (excluding manufacturers), along with a proposal requiring the adding back of certain related party expenses. Three film related bills have been introduced thus far. Senator Smith’s bill caps credit amounts per production to \$2 million, Representative Kintigh’s bill repeals the credit entirely, and Senator Keller’s proposal would attempt to impose great accountability and control over the incentive program. Senators Smith and Keller have also introduced proposals aimed at improving the data the state receives regarding exemptions and deductions (good idea in part, but also more complicated and burdensome than most realize). Also already introduced are personal income tax surcharges for upper incomes, liquor tax increases that would put NM at the highest in the country, and a botched repeal of the personal income tax add back of itemized state taxes. Predictable perennial proposals exempting military pensions and incomes of those over 65 have already been introduced as well. More will come, of course...

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.

DON’T FORGET THE PRINCIPLES

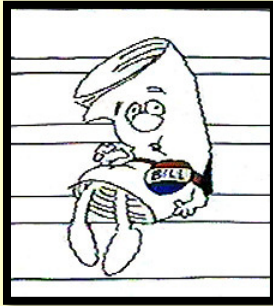


It is important, particularly when dealing with tough economies, tough budget decisions, and the emotionally charged subject of tax increases, to view the world from the framework of sound principles. Taxes serve an important purpose in that they raise the money to pay for the government services we need. But taxes can also create inefficiencies, distortions, and sometimes inequities. It is a better 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. Apart from the debate about how much money our state government should spend and on what, the state has to raise that money in ways which don’t harm to the economy, don’t get in the way of job creation and that are seen as fair and equitable. 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.

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
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.	HBIC/HTRC -HBIC
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 Gonzales	Geothermal Pump Tax Credit Refundability: HB 75 Makes the credit refundable above and beyond any existing taxpayer	HBIC/HTRC -HBIC

	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.	
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.	HCPAC/HT RC-HCPAC
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 -SFC
SB 7 Wirth	Net Taxable Income Determination SB 7 Imposes requirements to “addback” 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 effort on the part of taxpayers and the TRD in an effort to garner more detailed information from taxpayers.	SCORC/SFC -SCORC
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.	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 in the for all “significant general fund revenue sources” – meaning the primary tax programs.	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.	SCORC/SFC -SCORC

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
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
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 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.	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 benefits included in income.	SCORC/SFC -SCORC

Taxation and Revenue Department Getting New Leadership



From the NMTRD website: Governor Martinez has appointed Demesia Padilla to replace Dorothy “Duffy” Rodriguez as Cabinet Secretary-designate of the New Mexico Taxation and Revenue Department. She is a CPA and former IRS agent, having most recently served as a Director on the Gaming Commission. She also had run for state Treasurer in 2006. “As a consumer and as a taxpayer, I understand New Mexico’s tax code and the roadblocks that businesses and families often face,” Ms. Padilla said. “I will work toward removing those roadblocks so we could make our tax code more friendly to businesses and families, and improve overall economic climate in our state.”

Ms. Padilla is a licensed certified public accountant in the states of Nevada and New Mexico. In 1985 she began her accounting career with a national accounting firm in Las Vegas, Nevada. Prior to starting her accounting firm, she was an Internal Revenue Service Agent in the Albuquerque office.

Ms. Padilla is an active member in her community and church serving on numerous boards and committees. Currently she is the chairperson for the Bernalillo County Audit Committee. She also served in the position of a certified public accountant on the New Mexico Gaming Control Board for three years.



In addition, the Department has hired Dr. Thomas E. Clifford, PhD. as its Director of Tax Policy and Research. Dr. Clifford highly experienced in New Mexico fiscal issues, having served as chief economist for both the Taxation and Revenue Department as well as the Department of Finance and Administration, where he also served as Deputy Secretary. Tom has worked for the U.S. Congress as the Joint Committee on Taxation, most recently served the Legislative Finance Committees chief economist, and prior to that of course he was the Director of Research for the New Mexico Tax Research Institute.

A couple of incumbent exempt employees have been retained by the TRD, at least for the time being. S.U. Mahesh has been retained as Public Information Officer and is said to be now working on behalf of several agencies. Alvan Romero has retained as the Director of the Tax Fraud Investigation Division (“TFID”). Alvan is a CPA and retired from a career with the IRS working in the area of criminal tax fraud investigations before joining the TRD in 2003 to start the TFID.

The current administration appears a bit overwhelmed in its attempt to fill positions at TRD and other agencies, however more announcements are expected in the near future, and rumor has it another highly experienced individual has been identified for a position as well. Based on what we’ve seen so far, we’re heartened to note the current administration appears to be taking tax policy and administration seriously.

The board, members, and staff wish Secretary Padilla, Dr. Clifford, and those that follow congratulations and the best of luck for the critical and challenging positions they’ve assumed and the roles they fill. Competent tax administration and policy is critical for New Mexico to be competitive economically, as well as for the public trust in general and faith in the current administration.



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](#).

NMTRI was busy during the same period, speaking to groups such as the Economic Forum, Association of Commerce and Industry’s board of directors meetings, the Association of Counties board of directors meeting, and on the 770 KKOB Radio with member Brad Steward of Pulakos CPAs on their show “Let’s Talk Business. Although somewhat similar, the Economic Forum presentation can be found [here](#), and the NMAC presentation can be found [here](#) on the NMTRI website. A podcast of the radio show will be posted [here](#) on the Pulakos CPAs website.

KNICK KNACKS

New Gross Receipts Rates Effective this Month

New Mexico's gross receipts tax rates can vary with local options and state changes that occur on January 1 or July 1. Taxpayers reporting gross receipts taxes on an accrual basis are subject to the new rates when they accrue the sales. Cash basis taxpayers are subject to the tax rates based upon when they receive payment (and can run into problems when they bill an old tax rate and later collect after the rate goes up, yet they're still subject to the higher rate in that circumstance).

We've raised concerns about the trend of increasing rates in New Mexico, and the aggravating effect that has on the regressive nature of the tax, as well as the pyramiding problem that lacks transparency and reduces the competitiveness of our businesses. The good news... not much changed this time, and the rate has remained constant in the larger municipalities (all rates when up in July when the state-wide increase became effective). The new rate table can be found on the NMTRD website [here](#).

Business Day in Santa Fe

This Monday evening the Santa Fe Chamber of Commerce will host its annual reception for business folks and legislators at the Santa Fe Convention Center. Details and registration can be accomplished on their website [here](#). Tuesday morning is the Association of Commerce and Industry's Business Day event, with speakers that include Governor Martinez and some of the most influential legislators in Santa Fe, will also be held at the Santa Fe convention center. Further details and registration information can be found on ACI's website [here](#).

TAX QUOTABLE:

"There may be liberty and justice for all, but there are tax breaks only for some."

~Martin A. Sullivan



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!