Tax Matters

The Newsletter of the New Mexico Tax Research Institute

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HOLD THE DATE AND MARK YOUR CALENDARS NOW – 8TH ANNUAL NMTRI TAX POLICY CONFERENCE IS COMING!

The Eighth Annual NMTRI Tax Policy Conference and annual members' meeting will be held at the Hotel La Fonda on the plaza in Santa Fe, May 12-13. You will be inundated with details following the end of session!

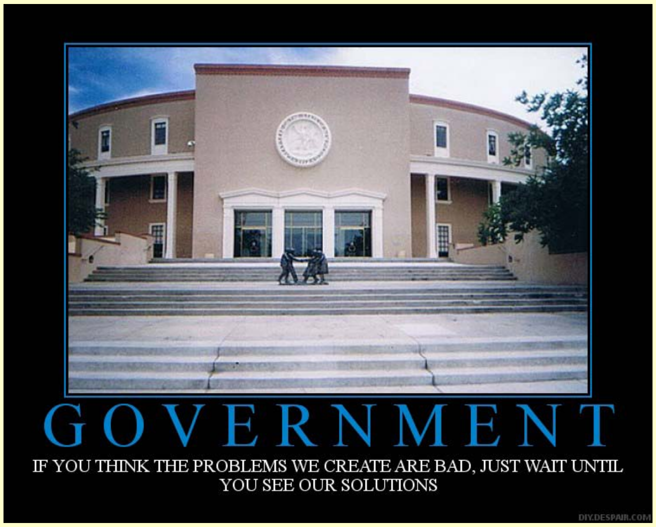
THE MISERY ENDS - OUT OF THE LEGISLATIVE SESSION

From One of the Greatest Deliberative Bodies East of the Pecos and West of the Rio Grande…

The 2011 Regular Session of the New Mexico Legislature ended at noon on Saturday, March 19. It convened at noon on Tuesday, January 18. The deadline for bill introduction was 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 were fair game and not limited by the call of the Governor. It was a somewhat session dark and dismal, given the state's ongoing fiscal crisis, as high profile, contentious and painful budget and revenue issues were center stage along with other contentious issues, mostly surrounding education, drivers licenses for illegal aliens and 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.

What the Hell Just Happened?



A total of 655 House and 628 Senate bills were introduced in the 2011 legislative session. Our expectations regarding fewer tax proposals, plenty of accountability oriented bills, as well as "loophole" closures or "fairness" proposals were met. Also met were expectations of less legislation in general, relative to other recent 60-day sessions (almost twice as many bills were introduced in prior legislative sessions). Still, we tracked well over a hundred tax and significant revenue related bills this session. With passage of the film subsidy limitation and resolution on proposals for state workers to pay a greater portion of their pension contribution instead of the general fund, the stage for the budget to remain balanced was set.

When the proverbial fat lady sang, we counted over two dozen House and Senate bills related to tax passing both houses in some form. Perhaps the highest profile and attention-getting proposal was the great budget balancing film subsidy compromise (HTRC Committee Substitute for House Bill 607/622). In the final bill, the annual cap was moved from $45 to $50 million, and additional restrictions were added along with a refundable application fee for purposes of getting a placeholder in line with respect to the cap was - similar to that structure found previously in Senator Phil Griego's bill (see Senate Bill 613).

Senator Griego's jet fuel bill, Senate Bill 84 got through of course. It would extend the present deduction for jet fuel of 55% past FY13 to FY17, when it otherwise it falls to back to 40%. It doesn't cost general fund money THIS fiscal year.

Senator Cisneros's passed his Senate Bill 210, which would create 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. It initially got out of the Senate Finance Committee only to fail on the floor of the Senate. However, it was later reconsidered, amended and passed by the Senate, and is now on the Governor's desk.

Chairman Sandoval's House Bill 383 and its companion, Senator Leavell's Senate Bill 233 both managed to escape the legislature. Those bills amend definitions of the Alternative Energy Product Manufacturers Tax Credit Act to include as an eligible alternative energy source the products directly secreted by a single cell photosynthetic organism. The credit provided is an amount equal to 5.0% of a taxpayer's expenditures on qualified manufacturing equipment. Earlier versions restricted the credit to corporations, but that restriction was amended out. Similarly, Representative Mary Helen Garcia's House Bill 440 would add "leasing" of tangible personal property to the gross receipts tax deduction for certain eligible generation plant costs under Section 7-9-114, and extend the applicable period for the deduction of qualifying expenditures from 10 to 25 years.

Senator Nava's Senate Bill 179, and its House companion, Representative Powdrell-Culbert's House Bill 523 both passed. They would create gross receipts and compensating tax deductions for locomotive fuel, with the intent of providing Union Pacific an incentive to build a fueling facility in the southern part of the state.

[*NMTRI note: the first "Union Pacific" bills created a gross receipts and compensating tax deduction for fuel sold to or used by locomotive engines, contingent on Union Pacific having begun construction of a fueling facility in the southern part of the state. The committee substitute limits the deduction to fuel loaded or used by a common carrier at the facility in which the $100 million+ investment was made. It makes for an interesting conundrum. Good tax policy principles suggest that similarly situated taxpayers be treated similarly (fairness principle). On the other hand, extending a tax break to BNSF while attempting to encourage Union Pacific to build a fueling facility would have the effect of quadrupling the cost of the incentive, bringing greater concern and bigger questions regarding "return on investment" such an all inclusive effort presents. Of all the tax expenditure proposals that have made it to the Governor's desk, this of course is the one that we all expect her to sign since she publicly supported the effort.*]

Also passing was Representative Trujillo's House Bill 273, which would reinstate 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, which is why its chance of passage is high (and it invokes the words "small business"). While this version no longer encourages out of state purchasing, it also has been made harder to manipulate the benefits through withholding, making it even less valuable to taxpayers and easier to pass. It has been on the Economic Development Department's list for years, so the likelihood of the governor's signature is probably second only to the locomotive fuel proposals.

Senate President Pro Tem Jennings also managed to pass his Senate Bill 282, which would create a credit for *doctors* in the amount of $1000/*patient* (up to 4) participating in cancer clinical trials. The purpose is to encourage physicians to participate as clinical trial investigators.

Perhaps the most broadly applicable taxpayer friendly tax proposal to come out of the legislature is Representative Candy Spence-Ezell's House Bill 470, which increases the threshold for the personal income tax estimated payment penalty exception from $500 to $1000 before underpayment penalties apply. Such a proposal would take some burden off of taxpayers and the Department; however its quite generous since it essentially adds over $10,000 of additional income that can be earned before being one would be subject to estimated reporting requirements. We'll handicap this spending provision as the fourth most likely to get signed, after locomotive fuel, jet fuel, and the R&D Small Business Tax Credit.

A $125 Million Tax Increase Passed?

Representative Mimi Stewart's House Bill 59, representing an increase in unemployment insurance contributions to the tune of $125 million dollars, was passed by both houses and sent to the governor. The proposals moves NM to contribution schedule 3, from contribution schedule 1, and is intended to stave off insolvency of the unemployment insurance trust funds (that means an increase from an average per employee contribution of $214.50 to $369.80. Proponents suggest that the alternative is would be a mandatory shift to schedule 6 ($512.21/employee) once the funds are sufficiently depleted. Although not good news for employers, the proposal has broad business community support as they strongly favor it to the alternative.

[*NMTRI note: hoping the economic situation changes faster than we all know it will is another "kick the can" alternative to dealing forthrightly with important fiscal issues and one that we've been making some progress getting away from. Mild discomfort now, while not ideal, is better than hitting the windshield down the road.*]

Free of Charge (or almost)...

Bills that don't cost money and/or promise improved transparency proved easier to pass in this environment than others. Rep. Eleanor Chavez's House Bill 161, which provides for a tax expenditure budget, is awaiting the Governor's signature, along with the identical Senate version introduced by Senator Tim Keller (see Senate Bill 47). Senator Keller's other measure intended to improve film industry accountability (see Senate Bill 44), also passed both houses. Likewise, House Taxation and Revenue Committee ("HTRC") Chair Ed Sandoval's requirement proposal to review certain tax credits found in his House Bill 166 passed. Senator Stuart Ingle managed to get his Senate Bill 436 passed, a proposal requiring the Taxation and Revenue Department to report no later than December 1 of each year, the total amount of taxes withheld by remitters and paid to the Department during the previous calendar year, and the amounts credited against income taxes.

[*NMTRI note: these and other well-intended proposals designed to enhance transparency or accountability, including provisions written into other tax bills and some non-tax proposals seem to abound in this "broke/post-corruption" phase of state government's recovery. No funding has been provided to fulfill these requirements, so they'll have to be accomplished through existing resources. We suspect we'll get what we pay for, so manage your expectations since we're not likely to get answers to the hardest economic impact questions.]*

Another tax related bill that doesn't cost general fund money is House Bill 437, which enacts a property tax exemption for certain veteran's organizations. The exemption was authorized by constitutional amendment and is likely to pass. Property tax measures are easier to pass as they have very little implication for the general fund, but the property tax is also controlled by certain constitutional provisions, which limit the legislature's ability to tinker. Although they do not cost the general fund, measures like this do cost some taxpayers money as they shift tax burden from one class of taxpayer to the others.

The two seemingly popular bills that amend the Enhanced 911 Act, Representative Bobby Gonzalez's House Bill 328 and Senator Rodriguez's Senate Bill 422, both made it out of the legislature. They add and modify definitions providing authority to impose surcharges on Voice Over Internet Protocol (VOIP) and pre-paid phone communications, but also clarify that E911 charges would not be imposed on broadband Internet access charges. There isn't much opposition, and the counties support the measure. The bill does present some compliance burden for businesses and the Taxation and Revenue Department, and may take effect too quickly to be comfortably implemented if signed into law.

Senator Ingle's Senate Bill 326 passed. It 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 for sale of tangible property for resale. It originally limited the applicability of the provision to transactions for which a taxpayer's administrative or judicial remedies have not been exhausted, but was amended to apply "post-assessment" so long as the matter is protested by the end of the year).

[*NMTRI note: this proposal attempts to provide additional relief from the otherwise strictly form over substance rule NM has with many of its gross receipts tax deductions requiring the possession of specific resale certificates (nontaxable transaction certificates or NTTCs) within certain timeframes. Complaints about "gotcha" audits have been around for years, where taxpayers have been caught unaware and assessed tax as result of an otherwise allowable transaction but without timely possession of the NTTC. While NM has policy reasons for its requirements, some reasonable allowance or safety valve makes sense. This proposal may not go far enough in that it does not address similar issues in other gross receipts tax deductions with the same requirements, nor will it preclude one of the more common and egregious "gotcha's" that occur with tape match notices that can result in fairly quick assessment on the basis of no NTTC with sometimes little taxpayer sensitivity.*]

Speaker Lujan's House Bill 429, corrects an unintended "loophole" in the compensating tax (created last year when another loophole was closed). It moved out of the House Taxation and Revenue Committee without recommendation, and then passed the House with a strong margin after compensating tax rate on services change from 5% instead of 5.125% was amended out of the bill.

[NMTRI note: the compensating tax bill is a no-brainer from a policy perspective, as there is no reason to have a tax structure that leaks in favor of out-of-state consumption. While it makes no sense to not increase the compensating tax rate on services to make it equal to the rate on other purchases - since it's what was originally intended and makes sense – however this issue is not critical since few, if any, taxpayers are ever subject to the compensating tax on services.]

Senator Campos passed his SB 552, hoping to clarify the meaning of "livestock" by adding examples of "livestock" for purposes of the gross receipts tax exemption for livestock found in Section 7-9-18, including horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids, and farmed cervidae (elk), as well as their carcasses, but not canines or felines.

[*NMTRI note: this may be the best kind of bill in that we're not sure anything actually changes under this proposal*]

Other administrative measures that passed include Speaker Lujan's House Bill 343 and Senator Munoz's Senate Bill 483, which declares that it is the legislative intent that taxes imposed by political subdivisions (cities, counties, universities, school districts, other) authorized by virtue of criteria such as area, population, net taxable base, etc., are not automatically repealed just because the authorizing criteria cease to be met, provided that the tax has not been repealed or terminated. It appears the proposal is intended to allow local governments to "keep their deal" once they get it, and not be excluded because of future changes in population, etc.

What Didn't Quite Make It…

We're not aware of any other significant tax increase/revenue enhancement proposals other than the aforementioned HB 59 to get to the Governor's desk. If they had, we would expect her not to sign them. Also not passing were any direct changes to the state's major tax programs.

Several "good bills" that appeared to have a shot at getting through included Representative Trujillo's electric plug in car tax exemption proposal in his House Bill 39, and Representative Bobby Gonzales proposal to make geothermal tax credits refundable in his House Bill 75 both managed to get withdrawn from their Senate Finance Committee assignments and sent to the Senate floor before time ran out. The latter had been amended to no longer be refundable but had been otherwise broadened to apply per building rather than per taxpayer. Ditto for Representative Powdrell-Culbert's House Bill 304, which would have extended the life of the relatively inexpensive and seemingly unoffensive Angel Investor's Tax Credit, but it ended up getting the same help a bit too late, like the other two bills.

Senator Smith's Senate Bill 194, an interim Revenue Stabilization and Tax Policy Committee endorsed bill, passed the Senate unanimously but never managed to finish the journey through the House. It would have repealed the Venture Capital Investment Act, a literally never-used tax credit found in Article 2D of Chapter 7, NMSA 1978 (and not to be confused with the Angel Investment Tax Credit).

[*NMTRI note: it's ironic and unfortunate that in this era of austerity, the legislature could not pass one of the better Revenue Stabilization and Tax Policy Committee endorsed proposals eliminating a tax credit that has never been used. If you can't get past that sort of history and constituency (read: no-one), we're in real trouble when it comes time to do material tax reform*]

Senator Eichenberg's proposal to address "tax lightning" got really close to passing, having escaped the Senate Finance Committee for a Senate floor vote. His Senate Bill 108 would revalue properties sold from 2004 through present, limit the increase in value of residential property at 3% per year and cap them at current and correct values, and provide for a sales ration approach for valuing new construction.

[*NMTRI note: while it got close, House leadership opposition probably sunk this effort to restore property taxes to a fair and constitutional state. Although not perfect (current and correct is tax nirvana), politically this proposal was palatable and was a workable solution. Some argued that* *we should wait for the courts to decide the issue (three district court decisions in two different districts have already ruled the current law unconstitutional), but no one ever likes what the courts do, and now was the time to dispense with the politics and misinformation, and fix a problem while low property values make it the least painful.*]

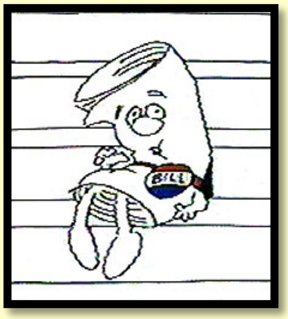
Now What?

It's finally over folks… now we have to wait and see what Governor Martinez does or doesn't do. Although it's not clear what the Governor intends to do with respect to many of the proposals, her actions will ultimately better define her perspectives on various matters. She's signed eight bills into law so far (here on the legislature's website), none of them tax related. She also vetoed one bill, Senator Keller and Representative Bandy's Senate Bill 187. Senate Bill 187 formalized the Legislative Finance Committee's (LFC's) program evaluation function and broadened the LFC's ability to obtain and review information otherwise made confidential by state and federal law. Although we weren't tracking this bill, the Governor mentioned tax returns as one example of why she was vetoing the bill, as the proposal did not extend penalties for improper disclosure of confidential information to the new users (her veto message can be seen here).

[*NMTRI note: LFC needs all the help and support they can get keeping the Legislators informed and keeping an eye on the agencies. Confidentiality exists in many places for many different reasons. When it comes to tax, confidentiality is the lynchpin of a voluntary compliance system. Although attacked on occasion by administrations and legislators and others from time to time, there is rarely ever sufficient reason to weaken basic taxpayer confidentiality. Lawmakers and members of the administration outside of Tax & Rev don't have any legitimate need to see your tax return, nor should they want to at the end of the day. So long as the administering agency is clean and competent, everyone wins. Exceptions should be rare, well reasoned, and sufficient penalties extended to eliminate the chance of abuse or erosion of taxpayer confidence.*]

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 tax related FIR's.

Bills with significant tax or revenue implications introduced in 2011 Legislative Session and Passing BOTH Houses:



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 59 Stewart	**Unemployment Contribution Temporary Schedule: HB 59** Implements employer contribution schedule 3 in the second quarter of 2012 for purposes of unemployment insurance contributions.	Passed
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.	Passed
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 or repealed. The proposal is a Revenue Stabilization and Tax Policy Committee endorsed bill.	Passed
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).	Passed
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) and pre-paid phone communications.	Passed
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	Passed

	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.	
HB 382 Sandoval	**Photosynthetic Energy Tax Credit: HB 382** Amends definitions of the Alternative Energy Product Manufacturers Tax Credit Act to include as an eligible alternative energy source, products directly secreted by a single cell photosynthetic organism. The credit provided is an amount equal to 5.0% of a taxpayer's expenditures on qualified manufacturing equipment.	Passed
HB 429 Lujan	**Compensating Tax Transaction Requirements: HB 429** Closes a perceived loophole in the compensating tax imposition statute (7-9-7), amendment removed the compensating tax rate on services change to 5.125%, which would have matched the other compensating and statewide gross receipts tax rates.	Passed
HB 437 T.A. Garcia	**Veteran's Property Tax Exemption: HB 437** Creates a property tax exemption for certain veteran's organizations property.	Passed
HB 440 M.H. Garcia	**Advanced Energy Tax Deductions for Some Leases: HB 440** Adds "leasing" of tangible personal property to the gross receipts tax deduction for certain eligible generation plant costs under Section 7-9-114, and extends the applicable period of the deduction from the year qualifying expenditures begin from 10 to 25 years.	Passed
HB 470 Ezell	**Underpayment of Estimated Tax Penalty Changes: HB 470** Increases the threshold for the personal income tax estimated payment penalty exception from $500 to $1000 before underpayment penalties apply.	Passed
HB 487 Martinez	**Create Direct Wine Shipment Permit: HB 487** Creates a new section of the Liquor Control Act providing for a direct wine shipment permit that allows the holder of a New Mexico winegrower's license or the holder of a winery license in a state other than New Mexico to obtain a permit that will allow up to two cases of wine per month to be shipped directly to a New Mexico resident. Requires that applicants register and report liquor excise and gross receipts tax to the TRD.	Passed
HB 523 Powdrell-Culbert	**Locomotive Fuel Tax Gross Receipts Deduction: HB 523** 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).	Passed
HB 607 Ben Lujan	**Film Production Tax Credit Act: HB 607** Caps the film credit at $45, requires two and three year installments for credits in excess of $1 and 5 million, respectively; narrows and limits certain qualified expenditures, precludes interest on installment payments	Passed

	of credits, requires audits of credits in excess of $5 million.	
HB 622 Taylor	**Public Peace, Health, Safety, & Welfare: HB 622** Caps the film credit at $65, requires two and three year installments for credits in excess of $1 and 5 million, respectively; narrows and limits certain qualified expenditures.	HTRC-succeeding entries H 607
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.	Passed
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.	Passed
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.	Passed
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 at certain fueling locations. The exemptions are contingent on certification by the Economic Development Department certification that the construction of the locomotive refueling facility receiving the deductions in Dona Ana County has commenced by July 1, 2012. (Note: essentially represents the third extension of this exemption, apparently resulting from construction delays, however it was narrowed on amendment such that the tax preference only extends to the facility and not to others)	Passed
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.	Passed
SB 233 Leavell	**Plant Photosynthesis As Alternative Energy: SB 233** Amends definitions of the Alternative Energy Product Manufacturers Tax Credit Act to include as an eligible alternative energy source, products directly secreted by a single cell photosynthetic organism. The credit provided is an amount equal to 5.0% of a taxpayer's expenditures on qualified manufacturing equipment.	Passed
SB 282 Jennnings	**Tax Liability For Certain Physician Services: SB 282** Creates a credit for *doctors* in the amount of $1000/*patient* (up to 4) participating in cancer clinical trials. The purpose is to encourage	Passed

	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.	
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.	Passed
SB 422 Rodriguez	**E911 Surcharge on Communications Services: SB 422** Amends the Enhanced 911 Act to add and modify definitions providing authority to impose surcharges on Voice Over Internet Protocol (VOIP) communications.	Passed
SB 436 Ingle	**Oil & Gas Withholding Info to Legislature: SB 436** Requires the Taxation and Revenue Department to report no later than December 1 of each year, the total amount of taxes withheld by remitters and paid to the Department during the previous calendar year, and the amounts credited against income taxes.	Passed
SB 445 Phil Griego	**Direct Wine Shipment Permits: SB 445** Creates a new section of the Liquor Control Act providing for a direct wine shipment permit that allows the holder of a New Mexico winegrower's license or the holder of a winery license in a state other than New Mexico to obtain a permit that will allow up to two cases of wine per month to be shipped directly to a New Mexico resident. Requires that applicants register and report liquor excise and gross receipts tax to the TRD.	Passed
SB 483 Munoz	**Taxation of Political Subdivisions: SB 483** 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.	Passed
SB 552 Campos	**Tax Definition of Livestock: SB 552** Adds examples of "livestock" for purposes of the gross receipts tax exemption for livestock found in Section 7-9-18, including horses, asses mules cattle, sheep, goats, swine, bison, poultry, ostriches emus, rheas, camelids, and farmed cervidae (elk), as well as their carcasses, but not canines or felines.	Passed

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 when Governor Richardson's estimates of the cost of providing current services differed dramatically from the Legislature's (a $450M vs. $250M gap). The difference was due to assumptions (i.e. Legislative Finance Committee or "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.

Taxation and Revenue Implementing New Withholding
The Taxation and Revenue Department has made public preliminary forms and notice for the pass-through entity and oil and gas withholding regime. The new law is in effect now, although penalties don't apply until next year. Questions about how the new requirements for documenting exceptions to the new withholding rules will be handled are now being answered. For purposes of the residency exception, notarized affidavits will be required on Form RPD-41354, but for this year other information like the address on file may be relied upon in order to ease transition to the new rules. The transition rule does not seem to apply to old filing agreements, with the new *Nonresident Owner's or Remittee's Agreement on Behalf of a Pass-Through Entity or Remitter* Form RPD-41353 being required at the time the entity files its annual reports for the tax year. Owners filing such an agreement are required to remit their withholding on behalf of the PTE quarterly on Form RPD-41356, *Pass-Through Entitys Owner's Quarterly Tax Payment*. The PTE withholding report itself, Form RPD-41355 Quarterly Pass-Through Entity Withholding Tax Return, is to be filed quarterly, apparently without regard to whether withholding is actually due. The Department's explanation of their new program is in their Bulletin B-200.25.

The new withholding requirements contain things industry did not want to see, and it is virtually certain there are unforeseen ramifications of the requirements yet to be revealed. Look for this tax withholding program to be an evolving one.

TAX QUOTABLE:

"I place economy among the first and most important virtues, and public debt as the greatest of dangers to be feared. To preserve our independence, we must not let our rulers load us with perpetual debt. If we run into such debts, we must be taxed in our meat and drink, in our necessities and in our comforts, in our labor and in our amusements. If we can prevent the government from wasting the labor of the people, under the pretense of caring for them, they will be happy."

~ *Thomas Jefferson*

DON'T FORGET THE PRINCIPLES - REDUX

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.

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.

NEW MEXICO TAX RESEARCH INSTITUTE

"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" Campañía General de Tabacos v. Collector, 275 U.S. 87, 100 (1927), Justice Oliver Wendell Holmes, dissenting.

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