

# ***Tax Matters***

*The Newsletter of the New Mexico Tax Research Institute*

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## **IN THIS “SPECIAL SESSION” ISSUE OF *TAX MATTERS*:**

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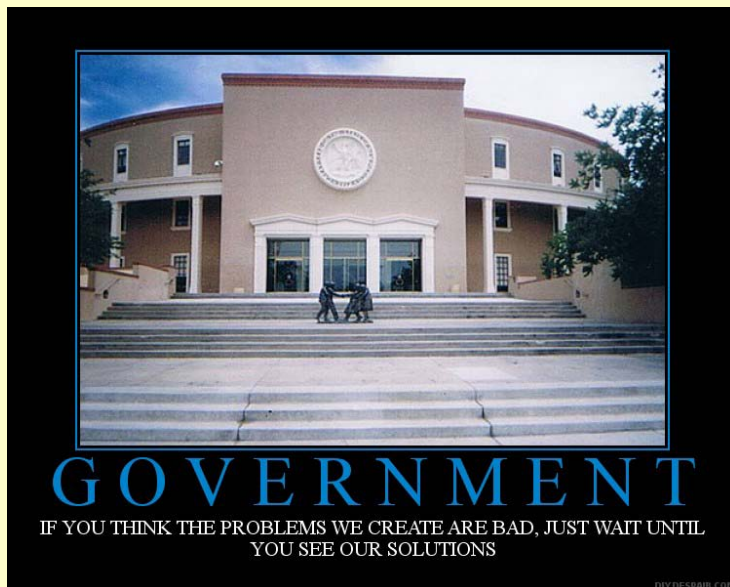


**HOLD THE DATE AND MARK YOUR CALENDARS NOW – 7<sup>TH</sup> ANNUAL NMTRI TAX POLICY CONFERENCE IS COMING!**

The Seventh Annual NMTRI Tax Policy Conference and annual members meeting will be held at Sandia Resort and Casino north of Albuquerque on May 20-21<sup>st</sup>. You will be inundated with details following the end of the special session!

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## SPECIAL SESSION ENDS - LEGISLATURE SENDS BUDGET/TAX BILLS TO GOVERNOR



This time last week we were reviewing the results of the regular session and speculating about the special session while House and Senate leaders were crafting a budget “deal.” With the exception of the GRT/food proposal, the tax side of the deal was comprised of variations of regular session proposed legislation: a quarter cent increase in the gross receipts and compensating tax, a “fix” to a hole in the compensating tax, and a 50 cent increase in the cigarette tax, an increase in the Low Income Comprehensive Tax Credit (“LICTR”), and compromise on the spending differences suggested by the respective chambers. A repeal of the food deduction and creation of a food credit (not one of the food tax proposals introduced in the regular session), was the exception. Some thought the proposed tax package to be too regressive, while others complained it didn’t go far enough with spending reductions. Still, the deal was struck and the Governor issued a narrowly crafted proclamation calling for the special session and setting the agenda. Despite the narrow proclamation, several “non-deal” tax measures, possibly not germane, were introduced as well. Some were never heard but one passed in the form of a requirement to add-back the state income or sales taxes itemized and deducted for state tax purposes.

**What finally emerged were three tax related bills, including an omnibus package of several related and unrelated tax measures:**

**Senate Finance Committee Substitute for Senate Bill 10, 12 & 13**, increased the statewide gross receipts and compensating tax rates by one eighth percent, repealed the food tax deduction while creating a 5.125% food credit and repealed certain “hold harmless” distributions, required the “add-back” of state income and sales taxes itemized and deducted for state income tax purposes, and closed a “hole” in the compensating tax. The total revenue generated by the bill is approximately \$200 million.

The GRT/compensating tax rate increase is the first change in the base rate since 1990, and raises around \$60 million per year. NMTRI has expressed concern about rate growth in the GRT, which has recently been comprised of the repeal of the municipal credit (which had the effect of increasing rates in municipal areas by 10% of the state base, or .5%), more local option tax enactments, and new taxes for special purposes like the spaceport and train operations. Rate increases have negative implications on the current GRT, namely pyramiding and regressivity. The 1/8 percent increase is certainly less damaging and therefore preferable to the quarter percent or higher increase we have previously opposed.

The other food deduction related GRT proposals, when taken together, also raise around \$60 million per year. The GRT food deduction is repealed and replaced with a credit in the amount of the new state rate, 5.125%. The hold harmless distribution of local option taxes is also repealed, which then leaves the local options taxes in place. The tax on food would vary depending on the location, but the average statewide rate is 2.07%. The state would not be completely out of the “hold harmless” business as it would continue to make the 1.225% municipal distribution from the base state rate through FY 2011, after which the distribution would be reduced to 1.05%. (Note: in municipal areas the state returns 1.225% of its 5% share the municipal government – the food credit would therefore have to be only 3.775% in municipal areas were policymakers truly severing the state versus locally funded tax.) Local governments are held harmless in the first year, and some make money due to limitations on the hold harmless distributions being repealed, however there is a small net loss to local government revenues in the out years.

The compensating tax proposal is said to raise (or stop the inevitable loss of) \$12 twelve million per year. While the estimate is highly uncertain and represents over 20% of the state’s estimated \$58 million in anticipated general fund revenue from the tax for 2010, its aims to eliminate the potential problem that sales into New Mexico would be deemed “sales in New Mexico” for purposes of the compensating tax – causing the sales to be subject only to the gross receipts tax – even where New Mexico has no “nexus,” or sufficient connection with New Mexico such that it can be required to pay gross receipts taxes. It does put the taxpayer in the position of making “nexus” determinations with regards to their vendors, and we assumed the TRD will develop and issue guidance such as presumptions that can be made for purposes of compliance.

The remaining tax increase provision of the bill requires personal income tax filers to add back state income or sales taxes itemized and deducted from their income for federal income tax purposes. The proposal is effective tax year 2010 (read: NOW) and contains a penalty exception for those caught unaware relative to their estimated tax payment requirements. The proposal also contains intellectually consistent changes eliminating the inclusion of state tax refunds from taxable income after 2010. It does not include a provision to scale the add-back to the portion of federal itemized deductions actually allowed – a measure that would have added some intellectual consistency or fairness, but also would have reduced revenue and added complication. The measure was more palatable to those who wanted to see income taxes raised. It is progressive, particularly in light of the aforementioned defect, as it does not impact typically lower income non-itemizers. All but five other states that impose an income tax require some form of add back. So, relative to other income tax increase proposals, this form of tax increase should least harm New Mexico’s competitiveness relative to regional and national rate comparison.

Lastly, the bill spends an additional \$5 million on enhancing LICTR benefits by approximately 20%. The benefits schedule is fixed rather than indexed, and hasn't been adjusted since 1998. Benefits are increased \$10 to \$70 dollars per return depending on income and family size. In addition, the income limitation is increased such that an additional 20,000 individuals/8500 households will receive LICTR benefits beyond present law numbers.

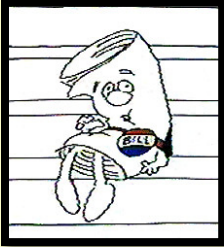
**House Taxation and Revenue Committee Substitute for House Bill 3** increases the cigarette tax by 75 cents per pack for 4 years. Distributions of tax revenues are altered to minimize impacts on non-General Fund tax beneficiaries. The proposal also increases appropriations to the public education department for early childhood education and appropriations to the CYFD (children, youth and families department) for early childhood programs by over \$10 million in FY11. General Fund revenues are increased by \$22.5 million in FY11 and by \$33.5 million in FY12 through FY14. The bill contains a requirement that tribes and pueblos must certify to the Taxation and Revenue Department that they impose a similar tax in order to remain eligible for the tribal exemption. Such language represents an attempt to address the serious policy defect high cigarette taxes create – that is the so-called “leakage” problem - the shifting of purchases to sellers who aren't currently required to pay taxes or simply don't report and pay them, like tribes and some internet retailers. The language in this bill is a “fig-leaf” in that it gives the appearance of addressing the leakage problem but does not do so in a manner that would be effective. That means we need to take significantly more than a dollar out of compliant taxpayers' pockets to get the same amount of revenue per packs sold. The cigarette tax is also one of the most regressive taxes there is, a concern that is less often raised and more muted when raised because it's a “sin” tax, representing a socially undesirable behavior and escapable by “choice” – although it's a good thing for the budget they're addictive. Note the tax passed was 25 cents per pack higher than originally agreed to in the early deal – something the House wanted and eventually got, but was the source of much extended debate.

**Senate Bill 2**, introduced by Senator Phil Griego, authorizes the tax department, with the concurrence of the governor, to declare an amnesty period of no more than 180 days provided that that amnesty period shall occur within the fiscal year 2011. All collections resulting from the tax amnesty are to be identified specifically and reported to the legislature. The proposal works within the context of the state's managed audit program and the Secretary is authorized to waive certain eligibility requirements of the managed audit program currently available to New Mexico taxpayers. Therefore, it could be applied to taxpayers currently being pursued for non-filed returns, taxpayers with existing debt, and taxpayers who have been audited in the past who have unreported and unassessed taxes. The bill contains an emergency clause and is expected to collect an additional \$2.1 million in FY11 and \$6.8 million in FY12, declining after that as a result of payment plans. In addition, the Taxation and Revenue Department (TRD) is appropriated \$500,000 for the purpose of conducting the tax amnesty program.

*[NMTRI note: the proposal represents minimal change relative to the existing managed audit program. Accordingly, any additional revenue associated with the program may arise as much from “good press” and outreach as the loosening of program requirements]*

The Governor has yet to act on the special session proposals.

**Bills with significant tax or revenue implications introduced in the first 2010 Special Legislative Session and passing both houses:**



If no effective date is mentioned, the bill lacks one and would take effect upon enactment. Effective date for GRT and other tax bills is July 1, 2010 unless otherwise noted. Income Tax bills are essentially retroactive being effective tax years beginning on or after January 1, 2010 unless otherwise noted. “TYBA” = Tax years beginning on or after. Other notes: “CS” indicates committee substitute; “a” indicates amended

<b>Bill No. Sponsor:</b>	<b>Title: Link to bill language: Description</b>	<b>Assignments -Location:</b>
HB 3 Chasey	<b>Cigarette Tax Increase and Tribal Stamp: <a href="#">HB 3</a></b> HTRC Committee Substitute for HB 3 increases the cigarette tax by 75 cents per pack for four years and changes distributions.	Passed
SB 2 Griego	<b>Temporary Tax Amnesty Program: <a href="#">SB 2</a></b> Authorizes the Taxation and Revenue Department to administer a temporary tax amnesty program within the context of their managed audit program and appropriates \$500K for that purpose.	Passed
SB 10 Cisneros	<b>Increase Low Income Comprehensive Tax Rebate: <a href="#">SB 10</a></b> Senate Finance Committee Substitute for Senate Bill 10 increases statewide GRT/compensating tax rates 1/8%, requires personal income tax filers to add back state income and sales taxes itemized and deducted for federal purposes, increases LICTR payment amounts, eliminates food deduction and some hold harmless provisions while creating a food sale GRT credit, and closes a hole in the compensating tax.	Passed

**The Hangover Continues**



The regular session is long past, but we’ve still yet to learn the final disposition of the regular 30-day session. Only 67 House and 62 Senate bills passed both houses in the session. Only thirteen tax related bills passed both houses and made our list below. Sixteen House and twenty-one Senate bills so far have been signed into law, with only six being tax related. Both Senator Mary Kay Papen’s [Senate Bill 95](#) and Representative Antonio Lujan’s [House Bill 112](#) authorizing the Las Cruces tax increment development district (“TIDD”) were signed.

Representative Tom Garcia’s proposal in [House Bill 203](#) to ease the gaming tax at Ruidoso

Downs if combined with a local option tax by the local residents has also been signed. It had passed both houses unanimously and is intended to be revenue neutral to the general fund over time. Representative Stewart's [House Bill 233](#) preventing revaluation of residential property resulting from the addition of solar power related improvements was signed. Also signed into law was the proposal by Senator Rodriquez in [Senate Bill 144](#) to amend the affordable housing tax credit act by expanding the definition of "affordable housing project" to include counties with populations in excess of 100,000. Lastly, Senator Phil Griego's [Senate Bill 59](#), which increases the "buy-out," or payments made equal to 40% of the gasoline tax revenue associated with the sale of 250K gallons of gasoline per year to Nambe and Santo Domingo pueblos, from ten to twenty years. Since the direct payments to the two tribes to not engage in their former "bump and run" gasoline sales comes out of the road funds, the generous subsidy extensions were not competing general fund budget issues and concerns for funding.

We still expect Speaker Lujan's pass-through entity and oil and gas proceeds withholding expansion to be signed by the Governor. That proposal would require quarterly withholding and limit exceptions to both types of withholding to resident individuals and domiciled C-corporations ([HB 120](#)). Some of the other proposals that don't cost money over time have a good chance of enactment (i.e. Senator Tim Keller's [SB 47](#) creating incentive requirements; or Senator John Sapien's proposal in [SB 162](#), which would allow counties to pledge the last 1/16<sup>th</sup> increment of the county local option gross receipts tax to pay revenue bond obligations). None of those proposals seemed to face strong opposition during the session.

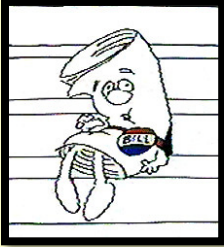
Given the fact that New Mexico is attempting to balance the budget, the passed bills that have a negative general fund impact, such as the tax credits found in HB 171 and HB 261 below will likely face closer scrutiny since they have to be "paid for" with tax increases or budget cuts.

The tax increases that were passed but not as part of the budget deal were Representative John Heaton's [HB 208](#), relatively small increase in the Oil and Gas Conservation Tax for the remediation of facilities used for the storage, transportation or disposal of waste from oil and gas operations. New Mexico's tax burden on oil and gas leans to the high side in the region, but the increase was a modest change from .19% to .24% on oil and only when the average price of West Texas Intermediate crude averages over \$70 in the prior quarter. Also passing both houses was Representative Mimi Stewart's [HB 144](#), which increases unemployment insurance contributions 21% by implementing schedule one payments for eighteen months beginning July 1, 2010. It also transfers funds and decreases monthly benefits from 60% to 53.5% of the average weekly wage. Rarely do tax or fee increases pass both houses unanimously, but this one did as the alternative fund insolvency and federal implications made the increase a "no brainer."

A list of tax related bills passing both houses is compiled for your information below. We'll be doing it all again soon. The entire list of bill passing both houses can be found in a locator report on the Legislative Council Service ("LCS") website [here](#).

The LCS 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/>.

**Bills with significant tax or revenue implications introduced in 2010 Legislative Session and passing both houses:**



If no effective date is mentioned, the bill lacks one and would take effect upon enactment, May 19, 2010. Effective date for GRT bills is July 1, 2010 unless otherwise noted. Income Tax bills are essentially retroactive being effective tax years beginning on or after January 1, 2010 unless otherwise noted. “TYBA” = Tax years beginning on or after. Other notes: “CS” indicates committee substitute; “a” indicates amended

<b>Bill No. Sponsor:</b>	<b>Title: Link to bill language: Description</b>	<b>Assignments -Location:</b>
HB 8 B. Lujan	<b>Development Training Funds <a href="#">HB 8</a></b> Appropriates \$5 million non-reverting funds for purposes of classroom and in-plant employee development training programs.	Passed
HB 112 A. Lujan	<b>Las Cruces Tax Increment Project: <a href="#">HB 112</a></b> Authorizes the issuance of \$8 million for the Las Cruces main street downtown TIDD.	SIGNED
HB 120 B. Lujan	<b>Withholding Tax Changes: <a href="#">HB 120</a></b> Merges to some extent the pass through entity (“PTE”) and oil and gas proceeds withholding requirements, and further requires quarterly withholding on oil and gas proceeds or share of a PTE owner’s net income unless payments are made to a New Mexico resident. The new withholding requirements take effect January 1, 2011. Definitions and “safe harbor” provisions have been added to the prior year’s proposal, and publicly traded partnerships are excluded.	Passed
HB 144 Stewart	<b>Unemployment Contribution Schedule: <a href="#">HB 144</a></b> Implements unemployment contribution schedule one, transfers fun balances, eliminates a fund, and decreases monthly benefits from 60% of the average weekly wage to 53.%.	Passed
HB 171 Lujan	<b>Transport of Dairy Waste for Gas Tax Credit: <a href="#">HB 171</a></b> Creates transferrable personal and corporate income tax credits for feedlots and dairies in the amount of \$5 per wet ton of agricultural biomass (i.e. manure) transported to a facility that uses biomass to generate electricity or make biofuels. The credit is capped at \$5 million dollars per tax program on a first come first serve basis.	Passed
HB 203 T. Garcia	<b>Business Retention Gross Tax &amp; Gaming Tax: <a href="#">HB 203</a></b> Creates a new county local option tax subject to voter approval in an amount up to 1/4% in 1/16% increments. Also creates a gaming tax credit for racetracks with takes under \$20 million not to exceed \$1 million per	SIGNED

	fiscal year if the county imposes the business retention gross receipts tax.	
HB 208 Heaton	<b>Oil and Gas Tax Reclamation Fund: <a href="#">HB 208</a></b> Increases the maximum rate of the Oil and Gas Conservation Tax on oil from .19% to .24% when the average price of West Texas Intermediate crude is above to \$70 for the prior quarter. The increase is distributed to the Oil and Gas Conservation Fund, which can be used to remediate facilities used for the storage, transportations, or disposal of waste from oil and gas operations.	Passed
HB 233 Stewart	<b>No Solar Panels As Property Tax Improvements: <a href="#">HB 233</a></b> Excludes solar energy systems from the types of property that trigger re-valuation of property for tax purposes and prevent inclusion of solar equipment in property tax values at the time of installation.	SIGNED
HB 261 M.H. Garcia	<b>Solar &amp; Wind Energy Equipment Gross Receipts: <a href="#">HB 261</a></b> Expands present law GRT deduction for sale of wind energy nacelles and related equipment to governmental entities to include supporting structures (“construction”) and solar energy generation equipment and related equipment for generation and transmission. Creates a gross receipts and compensating tax deduction for the value of eligible generation plant costs from the sale of tangible personal property. The deduction requires nontaxable transaction certificates and certification from the department of environment.	Passed
SB 47 Keller	<b>Economic Development Tax Incentive Changes: <a href="#">SB 47</a></b> Creates guidelines for the creation and review of economic development incentives.	Passed
SB 59 P. Griego	<b>Extend Gas Tax Sharing Agreement Terms: <a href="#">SB 59</a></b> Increases the 10 year “buy-out”, or payments made equal to 40% of the gasoline tax revenue associated with the sale of 250K gallons of gasoline per year to Nambe and Santo Domingo pueblos from ten to twenty years.	SIGNED
SB 95 Papen	<b>Las Cruces Tax Increment Project: <a href="#">SB 95</a></b> Authorizes the issuance of \$8 million for the Las Cruces main street downtown TIDD.	SIGNED
SB 144 Rodriguez	<b>Affordable Housing Tax Credit Use &amp; Vouchers: <a href="#">SB 144</a></b> Amends the affordable housing tax credit act by expanding the definition of “affordable housing project” to include counties with populations in excess of 100,000.	SIGNED
SB162 Sapien	<b>County Gross Receipts for Certain Projects: <a href="#">SB 162</a></b> Provides for a 1/16% increment of the county gross receipts tax be allowed to be used for purposes of county infrastructure and bonding	Passed

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## KNICK KNACKS

### **New Mexico Gets “D” in COST Report**

The Council On State Taxation (COST) released their latest research: “The Best and Worst of State Tax Administration - The 2010 COST Scorecard on Tax Appeals & Procedural Requirements.” In their report, they create a scorecard evaluating each state based on statutes governing “fair, efficient and customer-focused tax administration.” COST’s interest in state tax appeals processes and administrative practices has resulted in the regular publication of their scorecard ranking the states on their adoption of procedural practices which impact the perceived fairness of the rules and requirements for state tax administration and appeal of state tax matters. It is their view that taxpayers will more fully and willingly comply with a tax system they perceive to be balanced, fair, and effective. The COST Scorecard seeks to objectively evaluate state statutes and rules that govern the degree of taxpayer access to an independent appeals process, and state treatment of selected procedural elements that impact taxpayers’ perceptions of fairness and efficiency. According to COST, the highest-ranking states in the 2010 Scorecard are Alaska, Delaware, Idaho, Minnesota, and Montana. Those states that rank the lowest are California, Florida, Louisiana and Rhode Island (New Mexico ranked only slightly better and received a D). According to COST, it is critical to note that a state’s grade—whether low or high—is not a reflection on those charged with administering that state’s taxes, but rather a reflection of the laws under which they are required to work. The COST report can be viewed [here](#).

*[NMTRI note: The New Mexico Taxation and Revenue Department moved their hearing officers away from their litigators and protest officials several years ago to improve the appearance of independence. Measures to sever the hearing officers from the NMTRD have been discussed and introduced, but thus far no proposal has addressed the budget and organizational issues presented as the NMTRD hearing officers include those responsible for implied consent hearings resulting from suspicion of DUI.*

### **Washington DC Gets New Top Estimator with New Mexico Connection**

Norton Frances, former chief economist for the Legislative Finance Committee, has been named Interim Director of Revenue Estimation for the District of Columbia, replacing the venerable Robert Ebel at the helm. Norton left his post in Santa Fe less than a year ago to pursue opportunities in the beltway, and was presented a special NMTRI service award at our last Annual Conference. NMTRI board, staff, and members would like to congratulate both Norton and the District in this time of change and opportunity.

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### **TAX QUOTABLE:**

“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](mailto: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.



Join NMTRI today!

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"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.