

# ***Tax Matters***

*The Newsletter of the New Mexico Tax Research Institute*

Issue No. 2010-11

November 15, 2010

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**HOLD THE DATE AND MARK YOUR CALENDARS NOW – 5<sup>TH</sup> ANNUAL NMTRI LEGISLATIVE OUTLOOK CONFERENCE IS COMING!**

The Fifth Annual NMTRI Tax Policy will be held at the Embassy Suites Hotel in Albuquerque, one month from today, on December 14<sup>th</sup>. You will be inundated with program and registration details soon! Don't

miss your chance to hear from tax and budget interested leaders from the House and Senate, news on the state's December (and final) revenue forecast, and other information from the Legislative Finance Committee, views from interested stakeholders, and more.



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**New Mexico Elects New Governor and Other Officials**

New Mexico elected its first elected female governor, and the nation's first elected Hispanic female governor on November 2 with the victory of Republican Susana Martinez over Democrat Lt. Governor Diane Denish. On the same ticket, former state legislator and gubernatorial candidate John Sanchez joins Susana as the next Lt. Governor (besting former Democratic Party chair Brian Colon for the number two spot). Also of great interest was the defeat of incumbent Democrat Secretary of State Mary Herrera by state Senator Diana Duran (the first Republican to win that office in eighty years) in a landslide. Other statewide offices went to

Democrat incumbents, as anticipated, with state Auditor Hector Balderas, Treasurer James Lewis, and Attorney General Gary King retaining their positions. In the open race for Commissioner of Public Lands, Democrat and former Land Commissioner Ray Powell defeated Republican Matt Rush. The entire House of Representatives was up for re-election. The Democratic majority was significantly diminished with eight seats going from Democrat to Republican, leaving Democrats with a three seat majority. As far as New Mexico's three congressional seats, Republican Steve Pierce defeated incumbent Democrat Harry Teague in the southern district. In the northern, Democrat incumbent Ben Ray Lujan defeated Republican challenger Tom Mullins by a slimmer than anticipated margin. In the tightest race of the three, incumbent Democrat Martin Heinrich defeated Republican John Barela.

New Mexico, a historically blue state, got a bit purpler after the election. It was the perfect storm for Democrats, with a bad economy and underemployed electorate leaning anti-incumbent

nationwide, corruption scandals related to the Governor's office as well as the Secretary of State's contributed to the losses here. The political implications to the House of Representatives don't end there either. There is speculation that the Speaker of the House, Ben Lujan, could be challenged in his own caucus, or put down by a coalition with Republicans now that so few extra votes are needed. House Minority Leader Tom Taylor overcame a challenge of his own Saturday night when his caucus voted to retain him as Minority Leader over Albuquerque's Larry Larranaga. Keith Gardner will remain as Minority Whip and Anna Crook as caucus chair.

*[NMTRI note: A special NMTRI congratulations to all the winners and a sincere thank you to all of the participants for making our electoral process work. While one can always complain about half-campaign-truths, negative campaigning, and emotional rhetoric that adds little to good debate, we were fortunate to have a good slate of capable candidates on both sides of the aisle, and the voting public was more interested and involved than is often seen in mid-term elections such as these – 52%+ turnout.]*

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### **Transitions and Budget Woes in Election's Wake – And What Does it Mean for Tax?**



In what the local press was calling a “bombshell”, the Governor's office announced a revised budgetary shortfall of \$452 million next year. The Legislative Finance Committee's (“LFC's”) estimate released weeks earlier to include a presentation to the interim tax committee (see article below) anticipated a shortfall of \$257 million. The latter number is a “consensus” number produced by the LFC in conjunction with a group otherwise comprised of classified analysts and economists. The numbers differ in part due to the potential in additional growth in Medicaid expenditures and differing baseline assumptions (i.e. LFC assumes that cost saving austerity measures such as

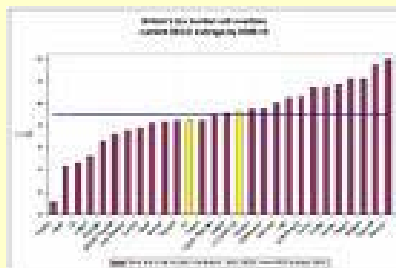
requiring state workers to contribute a greater portion of the overall pension costs to reduce the state's expense). LFC is expected to reconcile the numbers soon.

Meanwhile, the Governor and Governor-elect have met in person. The Governor named Brian Condit to coordinate transition efforts from their end. Governor-elect Martinez has named former New Mexico Congresswoman and state Health and Human Services Secretary Heather Wilson to lead her transition effort. Former state representative and Lt. Governor candidate Brian Moore was named as policy chief for the team. Martinez has been naming transition team leaders and teams, and is encouraging applications from all qualified candidates for positions within her administration (her transition website can be found here:

<http://www.martineztransition.com> ). While the positions of Chief of Staff and Chief Counsel are expected to be announced soon, the first significant personnel announcement is Friday's designation of Richard May as Martinez's nominee to be the Secretary of the Department of Finance and Administration. Most recently at Sandia Labs, Mr. May has served in a variety of roles including chief of staff of the U.S. House Budget Committee. The transition team for the Taxation and Revenue Department (TRD) is said to be Mark Moores, Executive Director of the New Mexico Dental Association. Former TRD Secretary John Chavez is also rumored to be on the transition team; however no details are available at this time.

[NMTRI note: leadership is critical, particularly in government. We wish the Martinez team luck in indentifying the best possible people for the critical positions at the Taxation Revenue Department and other critical state agencies]

Since the budget remains bleak regardless of how you count the numbers, keeping campaign promises to not raise taxes and to hold the state's two largest expenditure programs, education and Medicaid, immune from budget cuts, appears more unachievable by the moment. All budgets and revenue options will be on the table when the 60-day session begins in January.



## More Interesting Studies and Reports Issued

### Metro Denver EDC

The Metro Denver Economic Development Corporation prepared its 6<sup>th</sup> annual report looking at their economy from various perspectives (some more relevant than others). They leverage various existing studies and reports (i.e. Pew, Tax Foundation, etc.), illustrating multi-year trends from representative states, as well as from Colorado and what they view as her competitor states. New Mexico is one of those competitors, as are our neighbors, so you get to see how New Mexico compares to our neighbors from the perspective of the various reports and studies looked at in the report. The results are not that favorable for New Mexico in many cases, and some of the information presented is more meaningful than others, but the various comparisons are interesting. According to the Metro Denver Economic Development Corporation:

“Colorado competes each day for new jobs both nationally and internationally. Employers and their consultants search the Internet for data to compare state against state for potential locations and expansions. The Metro Denver Economic Development Corporation (Metro Denver EDC), an affiliate of the Denver Metro Chamber of Commerce, releases a new edition of *Toward a More Competitive Colorado* each year in conjunction with Qwest. The annual study examines a host of economic competitiveness rankings. The goals of this research are twofold:

1. To examine job creation opportunities where the state and region have a competitive advantage.
2. To set benchmarks by which Colorado's competitiveness can be tracked against the nation and competing states.

“This study is a collection of numerous national rankings on economic competitiveness. While there are hundreds of different rankings on any host of topics, the ones chosen are typical of the elements that weigh most heavily in either a company's perception of the region or the reality of the company's business circumstances (see the Methodology page).

“The Metro Denver EDC's economic development recruitment and retention efforts focus on key industry clusters where the region has a significant concentration of jobs or other assets in excess of the national average. For more information on Metro Denver's major industry clusters, visit [www.metrodenver.org/industries](http://www.metrodenver.org/industries). By comparing the needs

of the region's clusters with Colorado's competitive position, a number of challenges facing the Colorado economy become apparent."

The report can be viewed in its entirety on the Metro Denver EDC website [here](#).

### **Tax Foundation Business Climate Index**

The Tax Foundation recently released their 2011 State Business Tax Climate Index ("SBTCI"). Their intention is to provide a tool for policymakers and others to gauge how their states' tax systems compare. Their approach was to create five component indexes (using 112 variables) representing the significant state business-related taxes (property, corporate income, sales, unemployment, and individual income taxes) imposed as of July 1, 2010. According to the Tax Foundation, "tax competition is an unpleasant reality for state revenue and budget officials, but it is probably the most effective restraint on state and local taxes. When a state imposes higher taxes than a neighboring state, business will cross the border to some extent. Therefore, states with more competitive tax systems score well in the SBTCI because they are best suited to generate economic growth."

No great surprises are to be found in their results. According to the study, the state with the best business climate was South Dakota, followed by Alaska, Wyoming, Nevada, Florida, Montana, New Hampshire, Delaware, Utah and Indiana. Compared to the prior year, Wyoming and Alaska traded places and Washington fell out of the top ten, allowing Indiana a spot in the top ten. According to the SBTCI, the state with the worst business climate was New York, followed by California, New Jersey, Connecticut, Ohio, Iowa, Maryland, Minnesota, Rhode Island and North Carolina. Compared to the prior year, New Jersey improved from the worst position to third worst, Vermont and Wisconsin improved beyond the worst ten, and Connecticut and North Carolina joined the bottom ten.

Not at the bottom of every list, New Mexico ranked 33 overall in their study, down significantly from 23 the prior year, with was up from 26 the year before that. In the specific tax categories, New Mexico ranked 1<sup>st</sup> in property tax (again), 16<sup>th</sup> in employment taxes (up from 19 in the prior year), 45 in sales tax (down from 42 in the prior year), 20 in individual income tax (down from 19 in the prior year), and 31 in corporate income tax (up from 32 in the prior year). The authors point out that many scores are tightly clustered around the center, so several states, like New Mexico, fell in the rankings with relatively minor downward moves in general sales tax and personal income tax. According to the report: "Despite New Mexico's impressive climb in the Unemployment Insurance Tax subindex, the state's tax climate dropped ten places in the overall ranking, from 23<sup>rd</sup> best in FY 2010 to 33<sup>rd</sup> best in FY 2011. Changes to the sales tax base helped propel New Mexico downward in the ranking, but as always with states ranked in the middle of the distribution where the scores are so close together, small changes" can make significant differences in the score. The index is "relative" to other states, so Illinois for example, who changed nothing, moved up in the index in so doing. The report can be found on the Tax Foundation website [here](#).



### **Interim Tax Committee Meets in Santa Fe**

The interim Revenue Stabilization and Tax Policy Committee (“RSTP”) held its fifth meeting October 24-26, in Room 322 of the State Capitol Building in Santa Fe. Tax related presentations include a repeat presentation of the October revised revenue forecast by LFC’s Dr. Tom Clifford and Secretaries Burch and Rodriguez. Secretaries Burch and Rodriguez’s presentation can be found [here](#), and Tom Clifford’s on the LFC website [here](#). There were a series of economic development and tax incentive discussions and presentations, including one by rural and urban economic development community representatives, impacted company representatives, and a site selection consultant from KPMG. There was also a presentation on the laboratory partnership small business tax credit, which is essentially an appropriation to help the two national laboratories support small businesses in New Mexico.

Jerry Pacheco of the Border Industrial Association and Juan Massey, Regulatory Affairs Director for Verde Realty, presented on expanding the current income tax deduction for Texans working in New Mexico near the border - to include warehouse workers. The testimony did not appear to be warmly received. There were also presentations on alternative energy tax credits, federal low income housing credits, and the sunset of the jet fuel gross receipts tax credit (proponents would like to see it extended).

Property taxes were discussed in two presentations; the first by LFC staff Clifford and Golebiewski on fiscal impacts of property tax legislation, and a second regarding tax lightning and other issues and proposals and options including Jim O’Neil, TRD’s Al Maury, and Ron Lethgo, Chaves County assessor representing the Association of Counties property tax committee. Some of their presentations can be found [here](#), [here](#) and [here](#).

Other topics on the agenda included a presentation by former TRD chief hearing officer Al Lama, Chief Deputy of the Attorney General’s office regarding conflicts in the Tobacco Settlement Act relative to recent changes to the Tobacco Tax Act. Their proposed draft statutory change can be found [here](#).

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## **KNICK KNACKS**

### **New Mexico Still Proposing One New Tax Regulation, Withdraws Second Proposal**

As mentioned in the previous newsletter, the Taxation and Revenue Department (“NMTRD”) had set public hearings for November 16 and 18, 2010 for two proposed regulations.

The first set of proposed changes pertains to the Tax Administration Act, the Income Tax Act, the Withholding Tax Act, the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. It represents an attempt on the part of the department to implement the expansion and consolidation of the two income tax withholding programs. The implementing statutes and proposed regulations are somewhat complex, and may require several iterations and experience before the intent of the law is smoothly implemented by the NMTRD, and understood and complied with on the part of taxpayers.

The second proposal has since been withdrawn and the public hearing cancelled by the Taxation and Revenue Department. It had been set for hearing on November 18, and pertained to changes in existing regulations under the Gross Receipts Tax Act on the subject of construction. The proposal essentially deleted twenty-year old regulatory language that clarified when tangible personal property would be considered tangible property or construction (services) for purposes of the deduction for sales of tangible personal property to governments (Section 7-9-54 NMSA 1978). The proposals also made changes to the definition of “fixtures,” presumably to make the tax law more consistent with New Mexico property law. That proposal or an alternative ones could come back in the future.

Copies of these proposed regulations can be found on the New Mexico Register website or on the Taxation and Revenue Department’s website. The PTE/O&G withholding proposal scheduled for hearing on November 16 can be found on the TRD’s website by clicking [here](#).

*[NMTRI note: the PTE/O&G withholding proposals represent a good faith effort on the part of the NMTRD, which has worked on the development of the statutes and proposed regulation with significant input on the part of industry, including the New Mexico Society of CPA’s and the New Mexico Oil and Gas Association. The intent of the new withholding regime is to improve income tax compliance and state revenue resulting therefrom. Good tax policy suggests that the process should be targeted and performed in a way that creates the least administrative costs on taxpayers as well as the NMTRD, while accomplishing the intended goals of the legislation. For that to happen, additional regulatory changes and perhaps statutory changes may be necessary as not all complications or problems can always be identified prior to implementation of such complicated statutory changes.*

### **Interim Tax Committee Meeting in Santa Fe**

The interim Revenue Stabilization and Tax Policy Committee (“RSTP”) is scheduled to hold its seventh meeting November 29-30 in Room 322 of the State Capitol Building in Santa Fe. The agenda is not yet published. However, we are approaching the time when any “committee bills”, those measures endorsed by the committee and often technical in nature, are approved by the committee. Members from the committee typically volunteer to sponsor the proposed legislation in the upcoming session if there are any. When finalized, the agenda will be available on the legislative website [here](#).

### **Voters, Elections and Taxes**

Washington residents overwhelmingly rejected a proposal to create a a state income tax. It would have levied a tax of 5% on anyone earning more than \$200,000, and 9% for incomes greater than \$500,000. It also would have cut state property taxes by 20% and eliminated the applicability of the Business and Occupation Tax (“B&O”) for many smaller businesses. The proposal, advanced by Bill Gate’s father and supported by Bill was voted down by 65% of voters. Proponents had claimed that only 1.2% of the population would have paid more taxes and the plan would have provided more than \$11 billion over five years to fund education and healthcare. Washington voters also repealed a recently enacted tax on candy, soda and bottled water.

[NMTRI note: in January, neighboring Oregon narrowly passed increased taxes on businesses and higher income individuals.]

In other tax related election activity, California voters rejected Proposition 24, which sought to repeal pro-business tax changes enacted by the legislature, was also soundly defeated (58+% voted against the repeal). In Massachusetts, a proposal to repeal the sales tax on alcohol was narrowly approved, and a proposal to cut the general state sales tax rate to 3% was defeated by a 57%-43% margin. Voters have their priorities.

### **Bigger in Texas?**

In a recently published cash report issued by Texas Comptroller Susan Combs, Texas collected \$2.5 billion less in taxes in the 2010 fiscal year ended Aug. 31, than in the prior year. The collections were almost \$2 billion less than she had predicted they would be in the prior year when her office certified their two year budget. Texas is currently staring at a shortfall over the two years that some suggest could be more than \$21 billion. The only state in the country with a meaningful surplus currently is North Dakota.

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### **TAX QUOTABLE:**

“No matter what anyone may say about making the rich and the corporations pay taxes, in the end they come out of the people who toil.”

~Calvin Coolidge



**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.



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

Join NMTRI today!