

Tax Matters

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IN THIS ISSUE OF *TAX MATTERS*:

- **Legislative Finance Committee hears revised revenue forecast**
- **FTA Loses former NMTRI Head – Now Austin consultant**
- **Interim Committees meeting on taxes**
- **NMTRI Welcomes New Members**
- **Knick Knacks**
 - **TRD proposes new regulations**
 - **Interim Tax Committee meeting in Santa Fe**
 - **New Mexico Mining Association**
- **Tax Quotable**



Legislative Finance Committee Hears Revised Revenue Forecast

The Legislative Finance Committee's ("LFC's") Chief Economist, Dr. Thomas E. Clifford, along with Taxation and Revenue Secretary Rodriguez, and acting Secretary of Finance and Administration Burch presented the states latest revenue forecast as rendered by the consensus revenue forecasting process (which, in addition to LFC's Dr. Clifford, is comprised entirely of classified employees of the administration). In short, the revenue forecast was

revised downward by \$5 million for the year ended June 30 (2010), so recurring appropriations exceeded revised revenues by a total of \$172 million. Revenue for the current 2011 fiscal year was revised downward by \$40 million from the previous July forecast, and FY 2012 revenue was revised down by \$81.4 million. The downward revisions were a result of weaker than expected growth in personal income and absence of employment gains resulting in lowered expectations for gross receipts tax revenue (the state's largest tax program), as well as weaker personal income and certain selective excise tax programs (cigarettes and motor vehicle). Soft natural gas prices also contributed to the reduction and stability of natural gas prices remain one of the greater risks to the forecast.

The amount of legislatively authorized reserve transfers now totals \$247 billion. The result: the shortfall between anticipated 2012 revenues and cost of services (assuming current cost saving measures remain in place) grows to \$257.6 million. The good news is that education and state agencies subject to budget reductions when revenue forecasts are reduced will not see their allotments reduced as a result of the October forecast revisions (enough money to cover the shortfall has been identified in various accounts). The bad news is the reductions in estimates for prior, current and future periods, further eroding budget reserves, means a deeper hole to fill in 2012 and beyond. Additionally, federal Medicaid dollar reductions combined with increasing enrollment to limited ability to modify eligibility requirements means the state is looking at the potential of needing an additional \$350+ million to maintain benefits at current levels.

The news couldn't be much worse for New Mexico's gubernatorial candidates, as both have promised to not raise taxes and to hold the state's two largest expenditure programs, education and Medicaid, immune from budget cuts. LFC Chairman Luciano "Lucky" Varela (D-Santa Fe) indicated the legislature should consider revenue and budget solutions to address the ongoing budget problem. The projected budget gap is now in the ball-park of what was guesstimated by Senate Finance Committee chair and LFC Vice-Chair Senator John Arthur Smith - previously referred to as "Dr. No" by Governor Richardson for his revenue skepticism – and without his honest skepticism over the last couple of years New Mexico would likely be worse off.

[NMTRI note: look for use of words like "loophole" as lawmakers attempt to find ways to raise tax revenues without "raising taxes." For example, in the gubernatorial debate last Sunday night, candidate Denish referred to mandatory combined filing when she asked whether her opponent would "close the loophole on out-of-state corporations?"]

New Mexico has likely “bottomed-out”, but no one knows for sure as revenue growth remains sluggish and employment numbers continue to decline. The forecast revisions were not huge, and softness in GRT and personal income tax revenues are to be expected until the anticipated improvement in personal income and employment materialize. The softness in cigarette tax revenues comes as no surprise given the ineffectiveness of the mechanisms to limit the “leakage” of tax revenue to non-taxed tribal, internet, and illegitimate sources. The sky did not fall although the clouds got a little darker...]

A full copy the revised revenue forecast presentation can be found on the Legislative Finance Committee’s website [here](#).



FTA Loses Former NMTRI Boss to Austin

Former NMTRI Executive Director Jim Eads has announced he is leaving the Federation of Tax Administrators (“FTA”), an organization comprised of state tax agencies, to rejoin Ryan, formerly known as Ryan and Co., a Texas based tax consulting firm with multi-state and multi-national operations. Jim left his position in New Mexico to join Ryan in Austin, Texas in 2006. Jim has a wealth of background in state tax, including stints at AT&T, Sears Roebuck, IRS, Ernst & Young, and the Arkansas Department of Revenue. The move will allow Jim to remain in

Austin and work as Ryan’s Director of Governmental Affairs. On behalf of the board, staff, and members, we congratulate Jim and wish him well in his new position. We also wish best of luck and god’s speed to the FTA as they begin the process of identifying the a replacement for Jim (and his predecessor, Harley Duncan). You can learn more about the FTA and find useful state tax related information on their website here: www.taxadmin.org. You can find out more about Ryan and Company on their website here: www.ryan.com.



Interim Committees Meet on Taxes

At the August and shorter September meetings of the interim Revenue Stabilization and Tax Policy Committee, a significant theme of the meeting agendas, and other legislative focus of late, was with tax credits, exemptions and deductions. The Taxation and Revenue Department had been working hard in an attempt to “score” or place a monetary value on the general fund “cost” of the

various statutory provisions in an effort to respond to legislative and other interests in a tax expenditure budget. Secretary-designate Duffy Rodriguez presented at both meetings, along with members of her staff. One example of this ongoing effort can be found [here](#).

Other related presentations included an evaluation of credits selected by committee staff within the context of the paper previously presented by Dr. Tom Pogue. The group, consisting of Dr. Pogue, Jim O’Neill and Richard commented on eight different credits. Mr. O’Neill drew the proverbial short straw with the controversial film tax credit, and quipped that given the credit’s

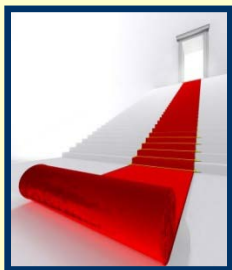
rate of subsidy, the multiplier effect would have to be over three for the state to be ahead. Film Division Director Lisa Stroud responded that some places in California use a multiplier of 15.

Former NMTRD Assistant Secretary/Tax Policy Director Jim O'Neill presented alternatives to improving New Mexico's scores in the Council on State Taxation ("COST") recently released administrative scorecard (on their website [here](#)), on which New Mexico gets a "D" for a variety of administratively related reasons. Jim drafted a series of changes addressing some of those administrative concerns in taxpayer friendly, but reasonable and administrable ways. His overview, and draft statutory language/changes can be seen here ([overview](#), [statute fix](#), and [CIT fix](#)).

A repeat presentation from an earlier Legislative Finance Committee meeting was presented on the topic of pyramiding in the gross receipts tax, corporate income tax and distortions, and tax incidence were given. The earlier versions are and can be found as follows:

- NMTRI Executive Director Richard Anklam presented on gross receipts tax pyramiding. His presentation can be found on the LFC website [here](#) (and NMTRI website, of course).
- Helen Hecht, tax counsel for the Federation of Tax Administrators ("FTA", an organization comprised of state tax agencies), gave an excellent presentation on distortions and corporate income tax. It can be viewed on the LFC website [here](#).
- Gerry Bradley, economist with New Mexico Voices for Children, presented an overview of tax system incidence/regressivity and related studies, Mr. Bradley's presentation can be found [here](#).

Agency overviews of the Taxation and Revenue Department, Department of Transportation, and Motor Transportation of the Department of Public Safety, were also provided by agency executive management and RSTP committee staff. A report on the permanent funds was also given by Public Land Commissioner Pat Lyons and chief State Investment Officer Steve Moise.



WELCOME NEW MEMBERS: The New Mexico Tax Research Institute is delighted to welcome these new members and thank them for their support of good tax policy in New Mexico.

**New Mexico Gas Company
Charles Abadie, CPA**

A very special thank you goes to John Gillis of New Mexico Gas Company, as well as Chuck Abadie, for making the memberships happen and for their help, support and interest in good New Mexico tax policy.

KNICK KNACKS

New Mexico Proposes New Tax Regulations

The Taxation and Revenue Department (“NMTRD”) has 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, scheduled for hearing November 18, pertains to changes in existing regulations under the Gross Receipts Tax Act on the subject of construction. The proposal essentially deletes 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 make changes to the definition of “fixtures,” presumably to make more consistent with New Mexico property law.

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](#), and the proposal regarding construction, pertaining to the gross receipts tax, and scheduled for hearing November 18 can be found on the TRD’s website [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 passed 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 there from. 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.

The second proposal would appear to be a step backward in the sense that it unwinds over two decades of established policy in an arena where the rules are otherwise somewhat vague, ambiguous, and circular. It also represents an administrative tax increase as it narrows the scope of existing gross receipts tax deductions. The winners will be the general fund and the NMTRD. The reason the NMTRD benefits is that its workload will be reduced and it will be able to avoid local government distribution problems. (As with other significant tax law changes, lawyers and accountants stand to benefit too). The losers will be local governments, as the proposal will reduce the value of incentives local governments can offer under the Industrial Revenue Bond program, making recruiting businesses to NM harder.]

Interim Tax Committee Meeting in Santa Fe

The interim Revenue Stabilization and Tax Policy Committee (“RSTP”) is scheduled to hold its fifth meeting next week, 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, a series of economic development and tax incentive discussions including one by rural and urban economic development community representatives, impacted company representatives, and a site selection consultant from KPMG, as well as presentations on the laboratory partnership, small business tax credit, border region tax credits, alternative energy tax credits, federal low income housing credits, and the sunset of the jet fuel gross receipts tax credit.

Property taxes will be 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 including Jim O’Neil, TRD’s Al Maury, and Ron Lethgo, Chaves County assessor representing the Association of Counties property tax committee.

Other topics on the agenda include a presentation of on tobacco settlement permanent fund receipts by former TRD chief hearing officer Al Lama, Chief Deputy of the Attorney General’s office, as well as a presentation on above ground storage tanks. The agenda can be found on the legislative website [here](#).

New Mexico Mining Association Hears About Taxes and Budgets

The New Mexico Mining Association (NMMA) held their annual meeting in Santa Fe on September 15-16 at the Hotel La Fonda. Among other things, topics presented included government restructuring by former New Mexico State University’s and former Governor Garrey Carruthers, as well as a panel on current budget challenges, revenue forecasts, and tax expectations for the coming legislative session that included LFC Director David Abbey, LFC Chief Economist Dr. Tom Clifford, and NMTRI President Richard Anklam. A copy of Richard’s presentation on legislative expectations can be found on the NMTRI website [here](#). More about the NMMA can be found on their website at www.nmma.org.

TAX QUOTABLE:

“I am not worried about the deficit. It’s big enough to take care of itself.”

~ Ronald Reagan



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.



Join NMTRI today!

"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.