

Tax Matters

The Newsletter of the New Mexico Tax Research Institute

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IN THIS “60-DAY SESSION” ISSUE OF *TAX MATTERS*:



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REGISTER NOW – 12th Annual NMTRI Tax Policy Conference Coming April 27-28



REGISTER NOW for the 14th Annual New Mexico Tax Research Institute Tax Policy Conference: April 27-28 (Thursday and Friday), at the Sandia Resort and Casino in Albuquerque. Members of NMTRI may attend for \$245.00 per person. Interested government or academic folks may attend for \$250.00. Other non-members are welcome for \$255.00. Registration includes continental breakfasts both days as well as lunch and a hosted reception on Thursday. Reservations and payment should be received no later than April 24, 2017; however last minute decision makers can call (505) 842-5833. CPE and CLE are available (depending on the final state of the agenda and MCLE Board determination, we anticipate 8.8 hrs of CLE and 11 hours of CPE PLUS 1 hr of ethics taught by KPMG's Tim McCormally. It will be offered at Friday morning (7:45 – 8:45) and everyone is encouraged to come. For those staying at the resort, CALL NOW to secure our preferred room rate (\$169) as the reservation block expires soon (505.796.7500 is their number or just click [HERE](#) to go the Resort's NMTRI reservation site). Don't miss Professor Rick Pomp, the Tax Analyst's Martin Sullivan, the Council on State Taxation (COST), the Multistate Tax Commission, The National Governors Association, KPMG, the Tax Foundation, Director David Abbey from the Legislative Finance Committee, the Taxation and Revenue Department and more. A final agenda will be published imminently.

CLE/CPE Available (CLE = approx. 8.8 general CLE plus 1 hr ethics = 9.8 hrs CLE; and/or 11 hrs CPE plus 1 hr ethics CPE = 12 hrs CPE)

To register, go to our website (www.nmtri.org) or click [HERE](#) If you have any difficulty, please call us (505.842.5833) or email (richard.anklam@nmtri.org).

* A meeting of the NMTRI Board of Directors and members will precede the event. Telephonic participation will be allowed.

OUT OF THE LEGISLATIVE SESSION – IT BEGAN - JANUARY 17, 2017



The 2017 Regular Session of the New Mexico Legislature convened at noon on Saturday, January 17, and ended at noon on March 18. Legislation passed but not acted on by the governor is pocket vetoed on April 7. The effective date of legislation that's not a general appropriation bill, a bill carrying an emergency clause or other specified effective date takes effect on June 16. It was a very busy session, as high profile and

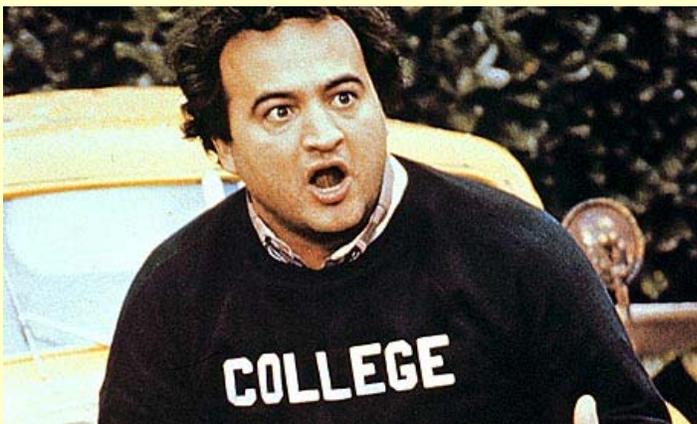
contentious issues in the wake of an election cycle that re-installed the Democratic majority in the House, not to mention the significant turnover in general membership and Peter Wirth replacing Michael Sanchez as Senate Majority Leader.

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.

Click [here](#) to see the daily bill locator on the legislative website. We have our list of introduced tax related legislation in both chambers below.

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 <https://www.nmlegis.gov/>. The site has become increasingly functional and reliable over time. Information is reasonably up to date and legislation can be easily followed from home.

Legislative Post Mortem... What Just Happened?



While it didn't exactly come in like a lion, the 2017 legislative session in New Mexico pretty much went out like an anti-climactic lamb. The pace was never fast – some suggest intentionally. While the budget, a revenue/tax increase bill to fund it, and an aspirational tax reform nod were sent to the Governor, it was fairly clear she would not accept them. She was apparently more interested in the broader reform found in [HB 412](#), and

was willing to exchange some form of increases or timing of reforms to fund the budget in order to get reform. On Friday, the Governor's last day to act on pending legislation, she vetoed Carl Trujillo's [HB 202](#) (the tax increase/revenue package). She also vetoed Rep Larranaga's [HB 191](#) -

a proposal to smooth oil and gas revenue volatility, which was used by the Senate as the vehicle to add GRT repeal/review provisions in an effort to produce a bill that was tax reform related. The Governor also line-item vetoed much of the budget found in [HB 2](#), including legislative agency funding and funding for higher education. That means the state is headed into another budget crisis (and special session).

What Becomes Law... or Doesn't?

From a numerical or fiscal perspective, as expected, not a lot happened. We only counted 14 tax bills – 2 being duplicates - that made it to the Governor's desk. A larger number got close. Of those, five were signed into law and the rest were vetoed (or pocket vetoed – meaning they died through the governor's inaction – something that can happen to bills that arrive on the governor's desk late).

The Governor did sign the solvency measure passed early in the form of [HB 8](#), which eliminated certain cigarette tax distributions. She also signed one of the two duplicate tax break bills for the Pan Am center in Las Cruces – [HB 249](#) sponsored by Rep's Martinez, Ferrary, and Small (Papen's identical bill in [SB 94](#) was pocket vetoed). Ironically, agencies like the Taxation and Revenue Department were the only other winners as the three other tax bills passed were agency/administrative bills—Carl Trujillo's [HB 408](#), which was mostly designed to reverse a



court decision on penalty and interest applicability to successors, and narrows a trap for taxpayers filing claims; Senator Shendo's [SB 181](#), which adds the higher education department to the definition of “claimant agency” for purposes of refund offset in the NMTRD tax refund offset program; and Senator Wirth's [SB 391](#), which creates a corporate income tax add-back for all expenses or costs paid directly or indirectly to captive real estate investment trust.

Of note, in addition to the veto of Larranaga's and Carl Trujillo's bills, the governor vetoed the two companion proposals for expanding the lodgers tax (the Airbnb bills) by narrowing the present law exemption for vendors offer fewer than three rentals. Those two bills, Carl Trujillo's [HB 266](#) and Senator Sapien's [SB 254](#), passed the House unanimously and passed decidedly in the Senate.

[NMTRI note: if you think nothing happened from a tax perspective, you'd be right and wrong. Little – particularly of consequence passed, and we'll be going back for a special session soon unless we want our universities to sit out a year of operations. On the tax front, however, the Governor appeared to be serious about having a legacy of tax reform, and Rep. Harper's epic effort in his HB 412 made more progress than anyone expected. The movement also brought the long needed scrutiny of the proposal as various interests were forced to better understand it. It's still a work in progress and there's lots of technical fixes and policy conversations to work through – hopefully those start soon because a version of that proposal will likely be at issue in the soon-to-be-called special session. There's not even the beginnings of a “deal” yet as far as we know, and if a special session is called before there is one, it will cost a lot of money and end in failure, as lawmakers wonder the halls like zombies before deciding to go home. So while such deals lack the transparency one would prefer, they're better than the alternative.

Interestingly, the corporate income tax add-back provision moved smoothly and was the first add-back NM has seen. They can be a necessary feature to prevent certain abuses – typically in separate filing regimes – when reasonably crafted. This one is.]

Governor’s Action on Passed Tax Related Bills

Bill Number/ Sponsor:	Title: Link to bill language: Description	Assignments- Location:
HB 8 Dodge/Lunds trom	Eliminate Cigarette Tax Distribution HB 8 Eliminates the 1.25% distribution to the NMFA from Cigarette Tax revenues. Associated bonds have been retired.	Signed
HB 63 Crowder/Go nzales	Local Option Fuel Tax: HB 63 Renames and expands the County and Municipal Gasoline Tax Act to apply to all municipalities and counties, and allows the inclusion of special fuel (diesel) in the tax program.	Pocket Veto
HB 176 Ezell, Nibert, Wooley	Muni Enviro Services Gross Receipts: HB 176 Expands the uses of and renames the municipal environmental services gross receipts tax increment (to “municipal infrastructure and environmental gross receipts...)	Pocket Veto
HB 191 Larranaga	Oil & Gas School Tax to Stabilization Reserve Fund: HB 191 Proposes to distribute excess revenues from the oil and gas emergency school tax (over a 5 yr avg. and other limits) to a tax stabilization reserve fund. Amended to require study /repeal of many GRT credit/exemptions/deductions.	Veto
HB 202 Carl Trujillo	Tax of Business Without Physical Presence: HB 202 Narrows engaging in business for purposes of the GRT to not include those without nexus and unregistered with less than \$100K sales in NM, changes the definition of place of business to include the buyer’s location in the case of those selling goods or services with no other place of business in NM. The committee substitute added the healthcare taxation scheme with a 60% deduction found in, increases the motor vehicle excise tax from 3-4%; imposes a new commercial vehicle license tax.. Senate amendments narrow the healthcare tax provisions to hospitals only, freeze corporate changes, increases gasoline, PPL and special fuels taxes.	Veto
HB 249 Martinez, Ferrary, Small	College Special Event Gross Receipt: HB 249 Extends the gross receipts tax deduction for NMSU’s Pan Am Center (only) and creates a new governmental gross receipts tax deduction for the same purpose.	Signed
HB 266 Carl Trujillo	Short-Term Rental Occupancy Tax: HB 266 Effectively expands the lodgers tax act by striking the limitation that three or more units be available (expanding scope to single-unit rentals)	Veto
HB 408 Carl Trujillo	Tax Liability Changes & Definitions: HB 408 Makes technical corrections, eliminates 210 day “gotcha” provision in refund claim statute, makes completeness of a claim solely determined by the Department.	Signed

SB 94 Papen	Nonathletic Event Gross Receipts: SB 94 Extends the gross receipts tax deduction for NMSU’s Pan Am Center (only) and creates a new governmental gross receipts tax deduction for the same purpose.	Pocket Veto
SB 181 Shendo	Colleges As Tax Refund Intercept Claimants: SB 181 Adds the higher education department to the definition of “claimant agency” for purposes of refund offset in the NMTRD tax refund offset program.	Signed
SB 247 Munoz	Liquor Tax and County Definition: SB 247 Increases the maximum rate that that may be imposed under the Local Liquor Excise Tax Act from 6 to 9%, and changes the population range and property tax values of counties that can impose the tax so that the imposing/beneficiary county (McKinley) may continue to do so at a higher rate.	Pocket Veto
SB 254 Sapien	Short Term Rental Occupancy Tax: SB 254 Effectively expands the lodgers’ tax act by striking the limitation that three or more units be available (expanding scope to single-unit rentals).	Veto
SB 390 Steinborn	Film Tax Credit “Production Facility”: SB 390 Reduces from 50 to 45 the number of acres required to be a production facility for purposes of the film production tax credit.	Veto
SB 291 Wirth	Captive Real Estate Investment Trust Income SB 391 Creates a corporate income tax add-back for all expenses or costs paid directly or indirectly to captive real estate investment trust.	Signed

Thanks for Reading

Join us weekly through the session as we try to provide balanced policy analysis, commentary and discussions of the tax and budget proposals that implicate tax policy in New Mexico. Join us weekly through the session as we try to provide balance policy analysis, commentary and discussions of the tax and budget proposals that implicate tax policy in New Mexico.

DON'T FORGET THE PRINCIPLES



It's important, particularly when dealing with tough economies, tough decisions, and the emotionally charged subject of taxes, to view the world in the context of principles. Taxes are good in that they raise the money we need to pay for the services we need. They can also be bad if they create inefficiencies, distortions, or inequities. It's a more rational 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. We must raise the revenue we need for government (putting aside the debate over how much) while doing the least harm to the economy and to those things we need most (e.g. job creation) while being fair and protecting the most vulnerable in our communities. 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.

TAX QUOTABLES

The power of taxing people and their property is essential to the very existence of government."

~James Madison, U.S. President

"All taxes discourage something. Why not discourage bad things like pollution rather than good things like working or investment?"

~Lawrence Summers

"In 1790, the nation which had fought a revolution against taxation *without* representation discovered that some of its citizens weren't much happier about taxation *with* representation."

~Lyndon B. Johnson



COMMENTS: Your suggestions and comments on this newsletter, the conferences (past or future), the Distinguished Lectures Series, our research or any aspect of NMTRI's operation and programs are welcome. Please send them to richard.anklam@nmtri.org, call 505-269-6791 or mail them to P.O. Box 91657, Albuquerque, New Mexico 87199-1657. We genuinely solicit your input and thank you for your support.



"The power to tax involves the power to destroy" - McCulloch v. Maryland, 17 U.S. 316 (1819), Chief Justice John Marshall.

"Taxes are what we pay for civilized society" Campaña General de Tabacos v. Collector, 275 U.S. 87, 100 (1927), Justice Oliver

Wendell Holmes, dissenting.
Join NMTRI today!