Tax Matters

The Newsletter of the New Mexico Tax Research Institute

Issue No. 2014-05 **February 23, 2014**

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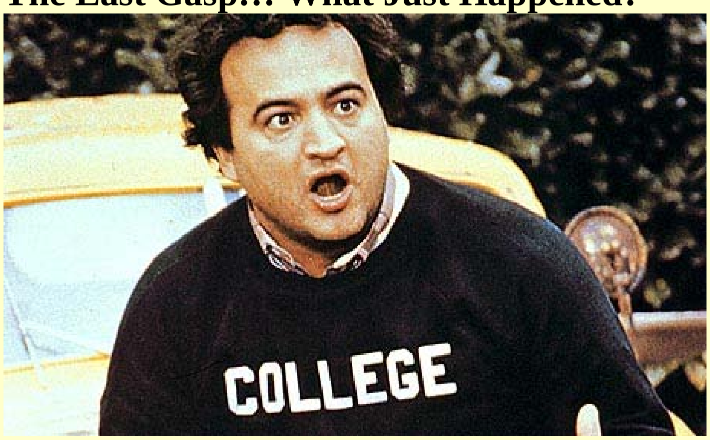
INTO THE LEGISLATIVE SESSION – IT BEGAN JANUARY 21, 2014

The 2014 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 21, and ended at noon on February 20. Legislation not acted on by the governor is pocket vetoed on March 12. The effective date of legislation that's not a general appropriation bill, a bill carrying an emergency clause or other specified effective date is May 21.

There were 785 bills introduced in this year's 30-day session. Of the 785, 406 were House bills, and the remaining 379 were from the Senate. In the end, 91 bills (42 House and 49 Senate) managed to pass both chambers to arrive on the Governor's desk. For the entire list of passed legislation awaiting the governor's action (or inaction), click here.

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 site has become increasingly functional and reliable over time. Information is reasonably up to date and legislation can be easily followed from home.

The Last Gasp… What Just Happened?



While it didn't exactly come in like a lion, the 2014 legislative session in New Mexico pretty much when out like a lamb. The pace was never fast – some suggest intentionally. After the House failed to reach a budget compromise, the Senate Finance Committee produced a budget that passed the Senate unanimously and the House concurred – meaning the primary purpose of the 30-day session had been accomplished. In what was sold as legislative bipartisanship, other mostly non-controversial measures were also passed (e.g. the band-aid "fix" for the lottery scholarship). The attitude that it was better to live to fight another day prevailed, as most controversial measures - be they education reform, drivers licenses, tax increases, an array of controversial constitutional amendments (e.g. min wage, permanent fund money for pre-K, etc.), cabinet appointments to the Public Education Department, etc. - were all left perhaps for future debate.

[NMTRI note: at least in recent history, the legislature sometimes takes it's time, but it does tend to gets it biggest job – the budget – done. Also, while we sometimes take a slightly pithy or cynical perspective of the process, it's important to remember the process itself is by design slow

and tedious. The legislative process is the sand in the wheels of progress – and that's not always a bad thing. For every good idea there are lots of not-so-good ones, and political expediency often yields the worst legislation. Even good policy requires extensive vetting to be well crafted and properly implemented. So, thank your elected officials for their hard work and a job well done.]

From a numerical or fiscal perspective, as expected, not a lot happened. We only counted 11 tax bills that made it to the Governor's desk. A much larger number got close.

Gross Receipts Tax Measures – More Retail Base Erosion

We've lamented repeatedly in the past the curious incongruity of tax policy conversations during the interim - including - concerns over tax and fiscal policy; the effectiveness of incentives; accelerated narrowing of the tax base through a proliferation of exemptions, deductions and credits; raising of rates; provisions exacerbating pyramiding and regressivity; loss of competitiveness and ability to create jobs; and lack of fairness and equity. Lawmakers and policy wonks alike engage in the lament and self-flagellation over tax changes that have blown holes in our tax base while doing little to actually make the structure more reliable, predictable, or less distortive or anti-competitive. But then they'll set off to dismantle the tax base in strange and inconsistent ways, oftentimes creating additional burdensome requirements on taxpayers and tax collectors without the necessary mechanisms to make them useful. Most proposals will likely make pyramiding worse since they'll put upward pressure on tax rates without significantly addressing the tax on business inputs. Accordingly, the negative effects of pyramiding on business competitiveness as well as the increased load on vulnerable households will likely be magnified.

This year, of course, wasn't any different. There were lots of proposals to carve out additional areas of the gross receipts tax – some more meritorious than others. Many were healthcare related, while others were offered under economic development arguments. In the end the early frontrunners won the race, but most never crossed the finish line at all. As has been the case in recent years, the gross receipts tax proposals outnumbered those for other tax programs. They also represented almost half of the tax bills that passed (5 out of the 11).

Both aircraft related gross receipts tax deductions passed. Recall that one removes the gross receipts tax from those providing parts and/or maintenance services on aircraft. This proposal, found in Rep. White and Sen. Cisneros' **HB 14**, expands the "Eclipse" deduction (Section 7-9-62) which under present law only applies to aircraft manufacturer's receipts from selling parts and maintenance. The proposal was amended to require new reporting requirements (without enforcement mechanisms) on all taxpayers currently taking the present law deduction, as well as those that would benefit from the new provisions. Also required is a legislative report every year on the cost and effectiveness of the entire deduction credit, – the latter of which cannot actually be determined by the data collected even if it were accurate, beginning in 2019. The deduction does not sunset.

The other aircraft related proposal, Rep. Wooley's **HB 24**, extends the existing gross receipts tax deduction for aircraft refurbishment of commercial or military aircraft to the *sale* of commercial or military aircraft as well. Given the way the law is structured, it also eliminates any compensating tax due (aircraft currently receive a 50% deduction from GRT and compensating tax). Its purpose appears to be to support the industry efforts in the Roswell area where refurbishment, painting and other aircraft service activities take place. This one is somewhat clumsily crafted—creating a deduction for the sale of something we can't tax anyway – that is, military aircraft. The proposal was amended to require new reporting requirements (without enforcement mechanisms) on all taxpayers currently taking the present law deduction, as well as those that would benefit from the new provisions. Also, like HB 14, this bill requires a legislative report every five years on the cost and effectiveness of the entire deduction credit, – the latter of which cannot actually be determined by the data collected even if it were accurate, beginning in 2019. This deduction also does not sunset.

Non-aircraft related gross receipts tax measures included two healthcare related GRT deduction expansions – seemingly one of the legislature's favorite kind. Rep. Gonzales's **HB 32** expands the "Medicare" deduction in Section 7-9-77.1 to add dialysis facilities to the laundry list of things that can be deducted when sold to the U.S. government. The proposal also imposes new reporting requirements (without enforcement mechanisms) on all taxpayers currently taking the present law deduction, as well as those that would benefit from the new provisions. Unlike the other beneficiaries, dialysis facilities will only be able to take a one-third deduction in the first year (FYE 2015), two thirds in the following year, and 100% in the third. The proposal also requires a legislative report every five years on the cost and effectiveness of the credit – the latter of which cannot actually be determined by the data collected even if it were accurate. The deduction effectively sunsets on 6/30/2024.

The second healthcare related proposal to pass was Sen. Papen's **SB 88**, which would create a new deduction from gross receipts for the sale of infusion therapy services and for the sale or lease of durable medical equipment ("DME"). Not all sellers are created equal for purpose of this deduction. Taxpayers may not take the deduction if they don't participate in the Medicaid program or if received less than 90% of their revenue from the sale or lease of the goods/services made deductible by this proposal. "Infusion therapy" is in the title of the bill and included in the new deduction when introduced, however all references to infusion therapy were amended out of the bill in the first committee. The proposal is afflicted with the optional separate reporting requirements we've come to expect, and contains language requiring those availing themselves of the deduction to effectively waive conflicting statutory confidentiality provisions (which can't actually be waived by taxpayers since the requirement and associated penalties apply to employees of the Taxation and Revenue Department). The proposal also requires a legislative report every five years on the cost and effectiveness of the credit – the latter of which cannot actually be determined by the data collected even if it were accurate. The deduction effectively sunsets on 6/30/2020.

[NMTRI note: Holy inconsistency Batman! It's hard to know where to begin. Let's start with the separate reporting requirements. We've lamented in the past that they're analogous to making a guy walking through the desert carry bags of sand. They come with plenty of cost to taxpayers and government, but without the benefit. Reporting is "optional" in the sense that there's no legislative backbone to mandate penalties for incorrect reporting – which are essential if one wants good data. (See the hold harmless debacle of a decade ago that we still haven't recovered from). Apparently someone thinks adding the word "effectiveness" to the

reporting requirement will generate the answer. But while this is the one question everyone wants to know the answer to – it can't be answered by fiat. The data – even if accurately reported and captured – won't provide for an answer to this much more difficult question.

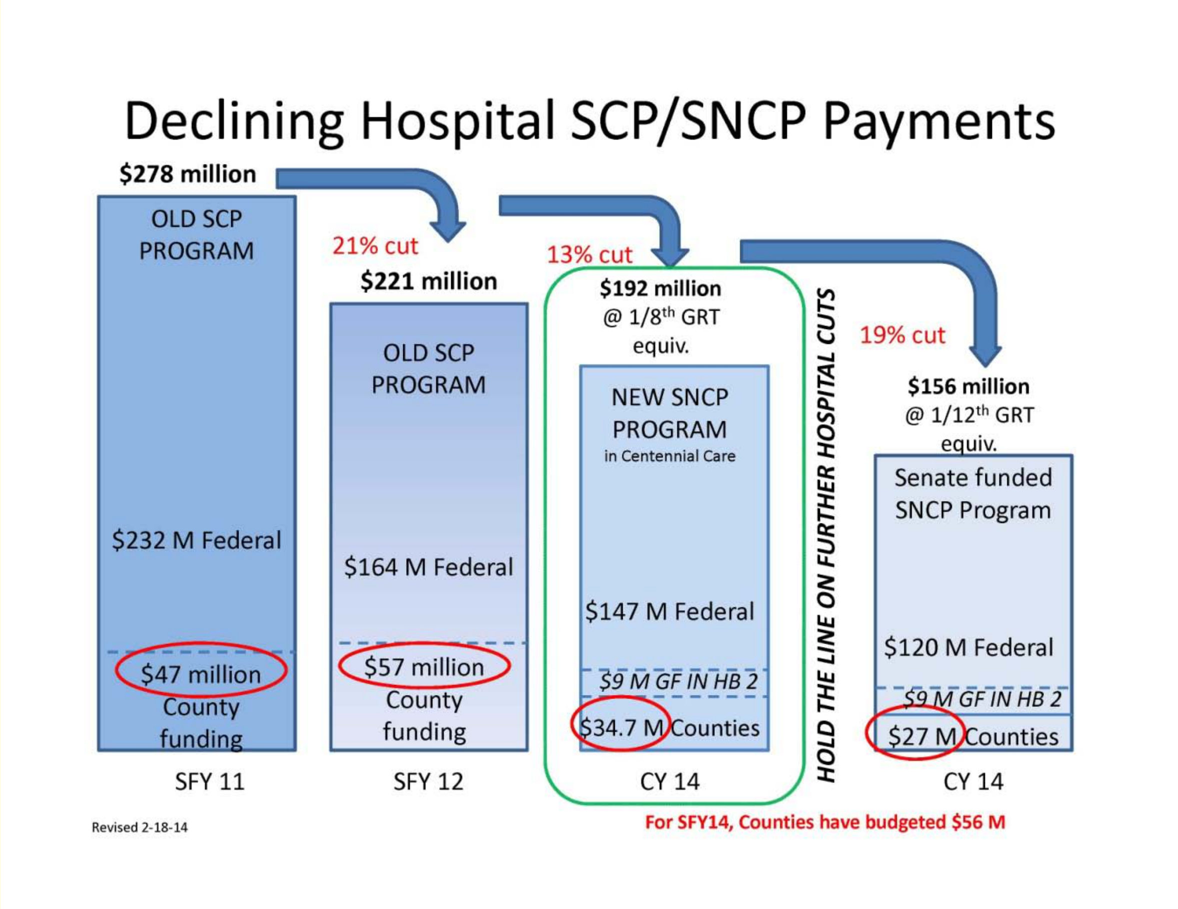
But it gets better. One of the four GRT deductions passed suggests taxpayers must waive confidentiality. Two require legislative reports every five years, while one requires legislative reporting every year. The medical provisions both sunset, albeit at different times (2020 vs. 2024), while both aircraft provisions are permanent. One deduction (dialysis facilities) is phased-in over a very short period. Seriously? While we're sure there are well thought out policy grounded reasons for the vast inconsistencies in the related deductions and associated implementation and reporting, we're still trying to figure out what they are.

We complain about tax base erosion, but we don't necessarily believe the tax base is perfectly defined (and its definition is becoming increasingly less coherent). The aircraft and medical deduction promoters can make fairness arguments (i.e. why not dialysis and DME given the other stuff we no longer tax, and why not give aircraft servicers the same break as manufacturers and not drive expensive work out of state to places that don't tax it?) The problem is that's always the argument – and the argument actually gets more valid as we offset the narrowing base with increasingly higher rates. Just wait for the hold harmless and new county rates to take effect.

Picking tax winners and losers has always been somewhat arbitrary. We mentioned last year that the DME proposal was patently inequitable because it drew that unique line between sellers that had 90%-plus sales of DME versus sellers that sold less. So, at 91% you're a tax winner and at 89% you're a tax loser. Clearly it's not about making DME cheaper for patients or it wouldn't matter. (Planning tip – put the DME component of your business in a SMLCC or the like if you fail to meet the 90% threshold.) But this little bit of unfairness is sure to inspire more taxpayers to ask for their own special deduction.

We probably need to start over in light of the 21st century economy and the degraded state of our primary tax structure. In the meantime, we might as well stay optimistic and hasten the end as quickly as possible, for everyone's good...]

Meanwhile, changes made to the federal Sole Community Provider Act have created the potential for huge funding problems for some county hospitals that are highly leveraged under the prior funding regime. We include the proposal found in Sen. Nancy Rodriguez's **SB 268** here because it creates additional GRT rate authority (1/12 or 1/16%) for counties to offset the 1/12% the state is will be clawing back from county governments (excluding Bernalillo and Sandoval counties, who fund their hospitals with GRT increments and don't get sole community provider funds). It creates a "Safety Net Care Pool" to make payments to hospitals for a period of three years, and allows for federal matching funds to be secured. The late amendment making the clawback 1/12% rather than 1/8% leaves the counties with more funds for other indigent care, but reduces payments to hospitals and lowers the amount of federal funds that can be secured. This issue will continue. A schematic provided us by the NM Hospital Association attempts to describe the situation below:



Other Tax Related Bills

Originally introduced in a form to permanently increase liquor Tax distributions to the DWI Grant Fund grant fund (at the expense of the general fund), the committee substitute for Rep. Carl Trujillo's proposal now temporarily increases distributions from the Liquor Excise Tax to the local DWI grant fund for FY 16-18 only to 46% from 41.5% (which the distribution percentage returns to in FY 19. See **HB 16**.

Rep. Gonzales has two proposals that impact non-GRT taxes. His **HB 30** would add detail to volume definitions of alternative fuels by specifying the associated weight per unit of volume; and would narrow the category of those that can make lump sum annual payments in lieu of the usage based tax. In his **HB 288**, he proposes creating a deduction from the Petroleum Products Loading Fee for biodiesel that will ultimately be subsequently blended by a rack operator (as newly defined in the Act). The effort is an apparent attempt to eliminate the potential double taxation of biodiesel similar to the successful effort in the prior session addressing the same issue in the Special Fuels Tax Act (diesel tax).

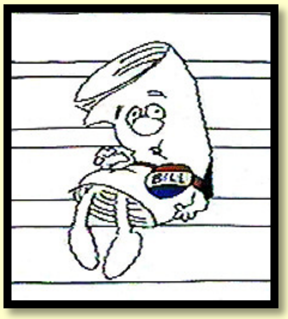
Senator Wirth's **SB 117** provides that single member LLC's ("SMLLC's") are treated the same as 501(c)(3) owners for purposes of the gross receipts and compensating tax exemptions and deductions as they pertain to 501(C)(3)'s. The proposal enjoyed unanimous votes in both houses.

Sen. Ivey-Soto's **SB 140** passed both houses. It provides authority and process to revise the base year of a tax increment development district's base year once during the life of a district—provided that the year revised is a completed calendar year, no tax increment bonds have been issued, and the revision is reasonable and in the best interest of the state.

Lastly, the only other tax related Senate bill passing both houses is Sen. Leavell's **SB 106**. It provides for an increase in the number of years a net operating loss for personal and corporate income tax may be carried forward and claimed from 5 to 20 years, beginning with losses incurred in tax years beginning 1/1/2013 or after only.

[NMTRI note: the non-GRT bills are not high impact. The liquor tax distribution became a short term funding mechanism. The biodiesel proposal if well crafted simply avoids double-taxation and makes consistent that program with changes last year to the Special Fuels Tax Act. The effort to confer the gross receipts and compensating tax benefits enjoyed by 501(C)(3)'s to their single member LLC's is consistent with federal tax policy evolution when the SMLLC is treated as a disregarded entity. When it's not disregarded (i.e. the entity "checks the box" to be treated as a taxable entity), there may be the potential for unintended consequences in that the limitations on the GRT exemption for 501(C)(3)'s in Section 79-30 could be rendered ineffective. Lastly, the NOL bill was somewhat accidental good policy. NOL's are an integral part of an income tax structure and arbitrarily stripping them – particularly from activities engaged in desirable efforts (i.e. start-up, expansion and new investment- is not good). While the predominant state limit (and federal) of 20 years may be more than necessary, most would agree 5 is too short. Since the proposal passed both houses unanimously, apparently the legislature agreed. That said, while the prospective change didn't create windfalls and it pushes the cost out past 5 years, it still comes with a cost.]

Bills with significant tax or revenue implications passing both houses and going to the Governor's office:



Note – in the table below, if no effective date is mentioned, the bill lacks one and would take effect upon enactment, May 21, 2014. Effective date for GRT and other non-income tax bills is July 1, 2014 unless otherwise noted. Income Tax bills are effective tax years beginning on or after January 1, 2015 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 14 White/Cisneros	**Aircraft Parts & Maintenance Gross Receipts** HB 14 Expands an existing deduction to provide a gross receipts tax deduction for sales of aircraft parts and services.	HTRC/HAFC-HTRC-DP/a-HAFC-DP-Passed/H-SCORC/SFC-SCORC-DP-SFC-DP-Passed/S
HB 16 Carl Trujillo	**Liquor Tax Distribution to DWI Grant Fund:** HB 16 After a committee substitute in HTRC and an amendment in HAFC, increases the distribution from the Liquor Excise Tax to the local DWI grant fund for FY16-18 only to 46% from 41.5%, which the distribution percentage returns to in FY19.	HTRC/HAFC-HTRC-CNP-CS/DP -HAFC-DP/a-Passed/H-SPAC/SFC-SPAC-DP-SFC—w/drn-Passed/S
HB 24 Wooley	**Commercial or Military Aircraft Gross Receipts:** HB 24 Expands the present law gross receipts tax deduction for the sale of certain services on military or commercial aircraft would be expanded to include the sale of the aircraft themselves (currently subject to tax but privy to a 50% deduction).	HTRC/HAFC-DP/a-HAFC-DP-Passed/H-SCORC/SFC-SCORC-DP-SFC-DP-Passed/S
HB 30 Gonzales/Keller	**Alternative Fuel Tax Definitions & Payment:** HB 30 Adds detail to volume definitions of alternative fuels by specifying the associated weight per unit of volume; narrows the category of those that can make lump sum annual payments in lieu of the usage based tax.	HTPWC/HTRC/HTPWC-DP/a-HTRC-DP-Passed/H-SFC-w/drn –Passed/S
HB 32 Gonzales	**Dialysis Facility Gross Receipts:** HB 32 Adds dialysis centers to the laundry list of "qualified practitioners"	HHGIC/HTRC-HHGIC-

	eligible for the deduction for the sale of services to Medicare. Endorsed by the interim Revenue Stabilization and Tax Policy Committee.	DP-HTRC-DP-fl/a-Passed/H-SCORC/SFC-SCORC-DP-SFC-w/drn-Passed/S
HB 288 Gonzales	**Biodiesel Tax Deduction: HB 288** Creates a deduction from the Petroleum Products Loading Fee for biodiesel that will ultimately be subsequently blended by a rack operator (newly defined in the Act).	HTPWC/HTRC-HTPWC-DP/a-HTRC-DP-fl/a-Passed/H-SFC-w/drn-Passed/S
SB 88 Papen	**Infusion Therapy & Med Supply Gross Receipts: SB 88** Creates a new deduction from gross receipts for the sale of infusion therapy services or for the sale or lease of durable medical equipment. Not all sellers are created equal for purpose of this deduction: taxpayers may not take the deduction if they don't participate in the Medicaid program or received less than 90% of their revenue from the sale or lease of the goods/services made deductible by this proposal.	SCC/SCORC/SFC-SCC-germane-SCORC-DP/a-SFC-DP-HTRC-DP-Passed/H
SB 106 Leavell	**Exclude NOL Carryover For Up To 20 Years: SB 106** Provides for an increase in the number of years a net operating loss for personal and corporate income tax may be carried forward and claimed from 5 to 20 years, beginning with losses incurred in tax years beginning 1/1/2013 or after only.	SCC/SCORC/SFC-SCC-germane-SCORC-DNP-CS/DP-SFC-DP-Passed/S-HTRC-DP-Passed/H
SB 117 Wirth	**Sole Member LLC Tax Status: SB 117** Provides that SMLLC's are treated the same as 501(c)(3) owners for purposes of the gross receipts and compensating tax exemptions and deductions.	SCC/SCORC/SFC-SCC-germane-SCORC-DP-SFC-w/drn-Passed/S-HTRC-DP-Passed/H
SB 140 Ivey-Soto	**Tax Increment District Base-Years: SB 140** Provides authority and process to revise the base year of a tax increment development districts base year once during the life of a district if the year revised is a completed calendar year, no tax increment bonds have been issues, and upon finding that the revision is reasonable and in the best interest of the state.	SCC/SCORC/SFC-SCC-germane-SCORC-DNP-CS/DP-SFC-DP/a-Passed/S-

		HBIC/HJC-HBIC-DP-HJC-w/drn-Passed/H
SB 268 Rodriguez	**Sole Community Provider Federal Compliance: SB 268** The bill attempts to amend several sections of law to bring NM into compliance with respect to federal changes to the Sole Community Provider Act. It creates a "Safety Net Care Pool" to make payments to hospitals for a period of three years. Gives counties an additional rate authority of up (amended to 1/12 or 1/16%). Excludes Sandoval (and Bernalillo) Counties.	SCC/SPAC/SFC-SCC-germane-SPAC-DNP-CS/DP-SFC-DP/a-SFC-DP/a-fl/aa-Passed/S-HTRC-DP-Passed/H

New Mexico Business Tax Competitiveness Study – Updated

The revised 2013 New Mexico Business Tax Competitiveness study that we worked with Ernst & Young LLP has been completed. That earlier 2011-2012 Business Tax Competitiveness Study was a collaborative effort whereby the State of New Mexico, the City of Albuquerque, Bernalillo County, the New Mexico Municipal League and seven private sponsors funded the New Mexico Tax Research Institute ("NMTRI") to engage Ernst & Young, LLP to expand upon a recently completed 50 state study on effective state tax rates for certain modeled business.

That study centered on a hypothetical $100 million dollar investment by corporations in nine different industries. The corporations in the study were assumed to export 95% of their respective goods and services, and were assumed to be subject to corporate income tax. That initial study, performed for the Council on State Taxation ("COST"), pegged New Mexico as having the highest effective tax rate on the business investments they modeled – although they didn't include incentives in their calculations. Both from our own experience and the result of a similar exercise undertaken in 1997 by KPMG's Berent's Group, we knew that failing to account for credits or incentives would not tell the whole story. So, the original COST study was enhanced to include incentives. The impacts of often talked about policy options were modeled in the process as well. We of course found in our enhanced 2011 effort what we learned in 1997 – that is, that:

1. New Mexico imposes a significant burden on business investment;
2. To a greater extent than most other states, NM uses incentives to offset a great deal of the burden; and
3. When incentives are taken into account, NM is much more competitive, but depending on the industry we can still impose the highest or lowest tax burden, or anywhere in between
4. Lastly, if you aren't eligible for incentives, lets hope you're competing with similarly situated locals.

Results

The results were not surprising. Most of the business favorable tax policies enacted in the last several years were targeted toward the manufacturing sector. That sector saw significant decreases in the effective tax rate despite increases in gross receipts and property tax rates across the board as well as a higher threshold for the High Wage Jobs Tax Credit. On a comparative basis, New Mexico now presents the lowest effective tax rates (ETR) to three of the four hypothetical company investments in manufacturing sectors, and the second lowest ETR in the fourth. Interestingly and counter to the historic trend, the bulk of the additional effective rate reduction achieved in the manufacturing sectors since the prior study now occurs on a preincentive rather than post-incentive basis. (Recall that New Mexico had the highest effective tax rate in all studied sectors before the application of incentives.)

Non-manufacturing ETR's faced the same headwind as the manufacturing sectors in terms of the increasing GRT and property tax rates generally, as well as increased wage thresholds for the High Wage Jobs Tax Credit (HWJTC). However, the only change reducing ETR's in the non-manufacturing sectors was the decrease in corporate income tax rates.

Analysis Before and After Existing Incentives Are Taken Into Account

After existing incentives were taken into account, relative rankings for New Mexico by broad and narrow sectors were as follows:

Change in effective tax rates 2011 to 2013, before credits, Average for manufacturers and services

	Manufacturers			Services		
States	**2011**	**2013**	**Percent Change**	**2011**	**2013**	**Percent Change**
Arizona	6.9%	5.8%	-15.1%	10.3%	8.3%	-19.3%
California	6.0%	5.8%	-3.5%	10.2%	9.7%	-4.2%
Colorado	5.8%	6.2%	7.1%	7.7%	8.2%	5.9%
Nevada	6.9%	6.8%	-2.0%	6.9%	6.7%	-2.3%
New Mexico	17.9%	9.5%	-46.9%	13.4%	12.6%	-6.3%
Oklahoma	9.9%	10.0%	1.5%	12.0%	12.4%	3.2%
Oregon	3.5%	3.6%	3.1%	2.3%	2.3%	1.7%
Texas	10.8%	10.9%	1.4%	7.9%	8.1%	2.7%
Utah	6.6%	6.8%	3.0%	6.9%	7.0%	2.8%
Average without NM	*7.0%*	*7.0%*	*-0.7%*	*8.0%*	*7.9%*	*-2.0%*

After existing incentives were taken into account, relative rankings for New Mexico by broad and narrow sectors were as follows:

Change in effective tax rates 2011 to 2013, after credits, Average for manufacturers and services

	Manufacturers			Services		
States	**2011**	**2013**	**Percent Change**	**2011**	**2013**	**Percent Change**
Arizona	4.4%	4.2%	-4.2%	9.0%	8.0%	-11.8%
California	5.8%	5.6%	-3.6%	9.8%	9.4%	-4.3%
Colorado	5.7%	6.1%	7.2%	7.5%	8.0%	6.0%
Nevada	5.7%	5.6%	-1.8%	6.3%	6.1%	-2.1%
New Mexico	8.1%	3.3%	-59.5%	3.4%	6.1%	81.0%
Oklahoma	9.0%	9.2%	1.7%	12.0%	12.4%	3.2%
Oregon	3.4%	3.5%	3.2%	2.1%	2.2%	1.8%
Texas	10.8%	10.8%	0.6%	7.9%	7.9%	0.0%
Utah	5.5%	5.7%	3.9%	6.5%	6.7%	2.9%
Average without NM	*6.3%*	*6.3%*	*0.9%*	*7.6%*	*7.6%*	*-0.9%*

Change in effective tax rates comparative rankings from the 2011 to 2013 studies, after credits

Industry	**NM's Effective Tax Rate (ETR) 2009 rates/2011 study**	**NM Effective Tax Rate (ETR) 2013 rates**
Headquarters	1st Highest	2nd Highest
Research and Development	9th Highest (Lowest)	9th Highest (Lowest)
Renewable Energy Equipment Manufacturing	1st Highest	8th Highest(2nd lowest)
Business Support Services	8th Highest	3rd Highest
Food Products Manufacturing	1st Highest	4th highest
Computer & Electronics Manufacturing	3rd Highest	9th Highest (Lowest)
Electrical Equipment Manufacturing	1st Highest	7th Highest/3rd Lowest
Aerospace Products and Parts Manufacturing	9th Highest (Lowest)	9th Highest (Lowest)
Management, Scientific and Tech. Consulting Services	9th Highest (Lowest)	8th Highest(2nd Lowest)

Strengths, Limitations and Other Caveats

Representative business comparisons such as this one have the benefit of holding all variables constant so that a direct comparison of relative tax burden among differing tax jurisdictions can be made. While the approach provides an "apples-to-apples" comparison of tax burden on given investments and operations, the reality is all other variables are not constant. New Mexico might compare favorably or unfavorably relative to cost of labor, real estate, utilities or other non-tax business costs that could outweigh the tax expense associated with a given investment. Accordingly, tax burdens are not the only considerations in business expansion, location, and relocation decisions. However, when all other things are held equal, tax burdens can be very significant and certainly factor into investment decisions.

Since this study is an enhancement of the broader Ernst & Young study, it is limited to the assumptions made in that original study. For a more detailed description of the underlying model and assumptions, that study can be found at: http://cst.informz.net/z/cjUucD9taT0xNDQ4NTYxJnA9MSZ1PTEwMDIzNjc2NzEmbGk9NjI5NTAyMw/index.html.

For more background, the 1997 KPMG Barents Group Study can be found on the NMTRI website at: http://www.nmtri.org/associations/3740/files/KPMG Berents Group NM Tax Study.pdf.

The study necessarily makes relatively simple corporate income tax assumptions and does not model the effects of combined reporting mandated by other states versus New Mexico's separate filing option. Also, while the study accounts for the tax burden on business inputs, it does not attempt to model the effects of pyramiding in the supply chain inside or outside of New Mexico. New Mexico's broad gross receipts tax base when combined with relatively high rates results in more pyramiding of tax than other states' sales tax structures, increasing the cost of purchasing goods and services in New Mexico relative to others states. As previously mentioned, other offsetting costs such as potentially lower costs of labor or real estate are also not modeled in this study.

Changes in assumptions can yield dramatic changes in results as well. For instance, corporate income tax is a significant driver of New Mexico's effective tax rate on the modeled industry sectors. If a similar investment were made by a company not taxed as a corporation (general partnerships, S-Corporations, LLPs, LLCs, etc.) the results would change meaningfully for both New Mexico and comparison states.

The study is not an all-encompassing view of tax burden on static large businesses, small businesses, households or the like – all of which would be worth studying. This study is merely a piece of a larger puzzle focusing on the tax impacts on large corporate capital investment.

Policy Options, Tradeoffs, and Recommendations

Policy makers who want to reduce New Mexico's tax burden on new corporate investment in sectors where New Mexico still ranks highest can see from the results of this study how the policy options modeled would reduce that burden. In fact, any tax reduction or incentive that offsets taxes due will reduce effective tax rates. Any decision on whether to implement these or other similar options, however, will require consideration of general tax policy objectives, as well. For instance, reducing the effective tax rate imposed on a manufacturer of goods for export could be accomplished in one of several ways--using targeted tax credits, eliminating any tax on inputs, reducing corporate or gross receipts tax rates, or changing corporate income apportionment factors (like the single-weighted sales factor), etc. Each of those options presents different broader tax policy implications to the state's overall tax structure, not to mention differing fiscal impacts to state and possibly local government revenue. If the primary concern is the exporter's effective tax rate, a narrowly crafted solution that minimizes the fiscal impact might suffice. Alternatively, broader reform can be accomplished with tax rate reduction or broader revisions to the tax code, but this is a more costly way to lower the effective tax rate for a given sector. While narrower options may be less costly, they may also be seen as less certain and less equitable. Most tax policy issues and options present tradeoffs and conflicts between good tax policy principles. Still, the New Mexico Tax Research Institute attempts to view and evaluate tax policy within the context of such principles.

KNICK KNACKS

HOLD THE DATE AND MARK YOUR CALENDARS NOW – 11TH ANNUAL NMTRI TAX POLICY CONFERENCE IS COMING!

The ELEVENTH (can you believe it?) Annual NMTRI Tax Policy Conference and annual members meeting will be held at the Sandia Resort and Casino in Albuquerque April 24-25th. It looks like we'll have Tax Analyst's Deputy Publisher David Brunori, COST President Doug Lindholm, and perhaps even Prof. Rick Pomp in the lineup. You will be inundated with details shortly! We look forward to seeing you there!

House Members Dropping Like Flies

Now that the session is over and the House of Representatives is up for re-election, we expect to hear announcements regarding those who won't be seeking re-election. What's surprising is how many there are – 8 so far that we know of - that's over 11% - and some are highly influential and ranking. Those who have indicated they won't be returning include from the Democratic side of the aisle: House Appropriations and Finance Committee ("HAFC") Chair Kiki Saavedra, House Taxation and Revenue Committee ("HTRC") Chair Ed Sandoval, HTRC member Earnest Chavez, and Donna Irwin. From the Republican side of the aisle, those not returning include: HTRC member and former House Minority Leader Tom Taylor, current House Minority leader Don Bratton, HAFC member Bill Gray, and HTRC member Anna Crook.

[NMTRI Note: they will be missed]

[NMTRI note: the website host for the NMTRI website has been acquired, necessitating a migration of our site to a different provider platform. While the URL will remain the same, there may be some periods where the website will be inaccessible pr only partially accessible, links may fail, or the like. We apologize for any inconvenience. Please bear with us- any problems or interruptions should be very temporary].

TAX QUOTABLES

"I guess I think of lotteries as a tax on the mathematically challenged."

~Roger Jones

"The avoidance of taxes is the only intellectual pursuit that carries any reward."

~John Maynard Keynes

"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.

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.

Join NMTRI today!