

Tax Matters

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IN THIS “LEGISLATIVE SESSION” ISSUE OF *TAX MATTERS*:

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HOLD THE DATE AND MARK YOUR CALENDARS NOW – 13TH ANNUAL NMTRI TAX POLICY CONFERENCE IS COMING!

The Thirteenth (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 28-29th. You will be inundated with details shortly! We look forward to seeing you there!

INTO THE LEGISLATIVE SESSION – IT BEGAN JANUARY 19, 2016



The 2016 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 19, and ends at noon on February 18. The deadline for bill introduction is February 3. Legislation not acted on by the governor is pocket vetoed on March 9. 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 18. Being a

“short” or 30-day session, non-budgetary legislation and items not related to the budget are not fair game and are limited by the call of the Governor. It is expected to be a very busy session, as there will be many high profile, contentious and painful issues on top of those dealing with the budget and revenue.

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.

So far, between “pre-filed” and those introduced in the first week of the session, there have been 395 bills introduced thus far. Of those, 220 are House bills, and the remaining 175 are from the Senate. If you can't wait to see what's already been introduced, click [here](#) to see the daily bill locator.

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.

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 rationale 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-pectations for the Session

The 30-day session has arrived. While primarily a budget session, meaning taxes and the controversy they bring are fair game, other controversial issues from prior sessions such as social promotion, driver's licenses for undocumented residents and Real ID, violent crime proposals, DUI proposals and the like are sure to come up and many already have. Still, there are many tax interests and agendas out there. As with last year, we anticipate fewer than normal tax increase proposals since it appears fairly clear that the Governor would not sign one

You don't have to be Nostradamus to get an idea of what sorts of tax legislation will be introduced. We're in an election cycle and there is not a lot of new money on the table. The Executive has proposed allocating some money to economic development, including expansion of the Angel Investors Tax Credit and the Technology Jobs Tax Credit, as well as money for a closing fund vis-a-vis the Local Economic Development Act. The legislative budget makes no such allocations, but both proposals put most new money in other places such as education. The devil is in the detail of course, so there's plenty of room for argument – but most fiscal fights this year won't involve taxes.

Of course, tax proposals – particularly bad ones – tend to be regurgitated (so to speak) from year to year. Political pandering continues as always too. So, merely recalling what's been introduced (but failed to pass) in recent years will give you some idea of what will be introduced again. For confirmation of that, all you need do is scroll down to the table of bills already introduced below.

All that said, we entered the session with an expectation that we'd have \$232 million in “new money” to spend this year, above and beyond last year according to the December consensus revenue forecast. That number was down from \$293 in the August forecast. Concern over falling oil prices has driven the mandate to revise the forecast once more before finalizing the budgets. Stay tuned and hold your horses! The new number should be published in the next day or two and it's not impossible at all that we'll be looking at no new money at all, at least none after we cover Medicaid. In any event, the likelihood of any of the items below with a negative fiscal impact passing is very poor at best.

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.

Bills with significant tax or revenue implications introduced in 2014 Legislative Session:



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 26 Barnes/Stewart	Solar Market Development Tax Credit Changes: HB 26 Amends an existing credit to combine photovoltaic and solar thermal programs in one with a single cap (\$5M rather than \$2M and \$3M, respectively). It extends the sunset from the end of 2016 to 2025, and phases the credit percentage down from 10% to 5% over time.	HEENC/HW MC-HEENC
HB 53 M. Garcia	Certain Taxes for Low-Income Assistance: HB 53 Creates a low income energy assistance fund and diverts 20% of the extraction taxes suspense fund for the purpose of its funding. The proposal requires the fund to distribute 80% to the human services department for purposes of their low income energy assistance program, and the remaining 20% to DFA for MFA’s winterization program.	HHC/HWMC -HHC
HB 54 Espinoza	Rural Health Tax Credit Rate & Eligibility: HB 54 Expands the existing rural health care practitioner credit to add licensed counselors, pharmacists, and social workers to the list of those eligible for the credit and raises the amount of the credit for non-doctorate level types from \$3K to the \$5K that those with doctorates receive.	HHC/HWMC -HHC
HB 79 McCamley	Working Families Tax Credit & Gains Deduction: HB 79 Expands the present law working families tax credit to 20% of the federal benefit from the current 10%. It also repeals the capital gain deduction.	HBEC/HWM C-HBEC
HB 107 Strickler	Reduced Tax Rate for Certain Oil & Gas Wells: HB 107 In the oil and gas severance tax, increases the price triggers where preferential most preferential rates apply to stripper wells from \$1.15 – 3.00/MCM, and from \$1.35 – 3.50/MCM for the next “bracket”. Similarly, for oil and other liquid, oil price triggers rise from \$15.00 – 60.00/barrel and from \$18.00 - \$65.00. Similar changes were made in the oil and gas emergency school tax.	HEENC/HW MC-HEENC
HB 119 Jim Trujillo	Estate or Trust Distribution Tax Deduction: HB 119 Creates an income tax deduction for undistributed income from trusts to nonresident beneficiaries, except income from real estate, oil and gas interests, and water rights.	HSCAC/HW MC-HSCAC

HB 126 M. Garcia	Reduce Certain Income Tax Rates: HB 126 Reduces the tax rates in the lower four tax brackets, and creates a new 7.1% bracket for income above \$500K in the case of joint and head of household filer, and in excess of \$250K of income for single filers.	HRPAC/HW MC-HRPAC
HB 128 C. Trujillo	Broadband Telecom Facility Gross Receipts: HB 128 Provides gross receipts and compensating tax exemption for broadband telecommunication facilities network components, fuel, and related construction services.	HBEC/HWM C-HBEC
HB 146 Roybal Caballero	No Income Tax on Social Security Benefits: HB 146 Effectively creates a deduction in the amount of social security benefits included in adjusted gross income beginning effective for tax years beginning on or after 1/1/16	HRPAC/HW MC-HRPAC
HB 152 Maestas Barnes	Water Conservation Product Gross Receipts: HB 152 Until 2027, creates a gross receipts tax deduction for the sale at retail of water saving tangible personal property for sales made beginning at midnight on the third Sunday of every March until midnight on Saturday of that week.	HAWC/HW MC-HAWC
HB 163 Carl Trujillo	Home Energy & Water Efficiency Tax Credit: HB 163 Until 1/1/22, creates a refundable personal income tax deduction in the amount of \$1200 for those who increase the energy efficiency of their home by 15% or more, \$2500 for increases of 25% or more, and \$4000 for improvements in excess of 35%. In the case of water efficiency, and the same percentage improvements the credit is \$500, %750, and \$1000, respectively. The maximum credit payout is capped at \$1M/yr until 2020, when it is increased to \$2M.	HEENC/HW MC-HEENC
HB 169 Youngblood/ Papen	Capital Gain Reinvestment Tax Credit: HB 169 Creates a nontransferable personal income tax credit in the amount equaling the lesser of the tax on the net capital gain or the amount of the investment, when net capital gains are reinvested in a qualified New Mexico business.	HBEC/HWM C-HBEC
HB 175 Gallegos/Do dge	Renewable Energy Tax Credit Eligibility: HB 175 Relative to the present law credit, the proposal broadens eligibility, adds geothermal to the list of qualified energy generators, and creates by type credit amounts that reduce over time through 2022.	HEENC/HW MC-HEENC
HB 184 Maestas Barnes	Small Business Tax Deduction: HB 184 Creates a new personal income tax deduction calculated as a percentage (up to 50%) of qualified small business income. The credit requires employment (up to 4 for businesses with gross income of \$750K to the cap of \$1M to be a qualified small business.	HBEC/HWM C-
HB 188 Gentry	Hotel and Restaurant Renovation Tax Credit: HB 188 Creates a personal and corporate income tax credit in an amount up to 25% for qualified expenditures on rehabilitation of existing restaurants (claimed within a year) and hotels (claimed within 3 years). Hotel renovation expenses must exceed \$2M while restaurants must exceed \$75K.	HBEC/HWM C-HBEC
HB 212 Powdrell-	Federal Energy Employee Health Gross Receipts: HB 212 Proposes a phased in expansion of the GRT healthcare deduction, to	HHC/HWMC -HHC

Culbert/Rode alla	include receipts from a compensation program by the federal Energy Employees Occupation Illness Program for the provision of medical and other palliative services by a home health agency.	
HB 220 Christine Trujillo	Repeal Capital Gains Deduction: HB 220 Repeals the “greater of 50% or \$1000” capital gains deduction effective 2017.	HBEC/HAFC -HBEC
SB 4 McSorley	Taxation of Nicotine Products: SB 4 Makes modifications to the Tobacco Products Tax Act to make a Tobacco and Nicotine Products Tax Act, which would include nicotine products.	SCC/SCORC/ SFC- germane- SCORC
SB 13 Stewart/Mae stas Barnes	Solar Market Development Tax Credit Changes: SB 13 Amends an existing credit to combine photovoltaic and solar thermal programs in one with a single cap (\$5M rather than \$2M and \$3M, respectively. It extends the sunset from the end of 2016 to 2025, and phases the credit percentage down from 10% to 5% over time.	SCC/SCONC/ SCORC/SFC- germane- SCONC
SB 16 Burt/Adkins	Uniformed Service Retiree Tax Credit: SB 16 Creates a phased in personal income tax deduction computed as a percentage of military retirement income with a cap. For 2017, the credit percentage would be 25% and capped at a maximum of \$6250. By 2020 the deduction is 100% and capped at \$25K.	SCC/SCORC/ SFC- germane-ref w/drn-ref SFC- SCORC/SFC- SCORC
SB 19 Payne	Disaster Response Tax & Licensure Exemptions: SB 19 Amends the personal income tax act to add certain emergency responders to the list of those allowed to allocate certain NM earned income to their state of domicile. Also creates a new section of the tax administration act designed to define certain declared emergencies and exempt from tax those in the state, and their assets, for only that purpose.	SCC/SCORC/ SJC-germane- SCORC
SB 22 Wirth/Harper	Taxation of In-State Sales of Intangible: SB 22 Strikes present law language providing that services and intangibles be sourced for sales, factor purposes, on a greater of cost of performance basis and inserts language requiring apportionment on a destination basis, creating a “market based sourcing” rule.	SCC/SCORC/ SFC- germane- SCORC
SB 31 Cisneros	Technology Readiness Gross Receipts Credit: SB 31 Creates a seemingly unintelligible gross receipts tax credit and a revolving fund initially funded from other sources, limited to \$2.5M per national laboratory for the purpose of promoting maturation of technology developed at the national labs.	SCC/SCORC/ SFC- germane- SCORC
SB 34 Kernan	Tax Rate Differential for Certain Oil: SB 34 Changes the present law exception to the oil tax for enhanced recovery projects to those that don’t employ carbon dioxide, and creates a second category of exception that does use carbon dioxide when the average annual WTI price is below \$60 (versus \$28 for those now without employment of carbon dioxide). Effectively, a \$60 price trigger is created to qualify to qualify for the beneficial treatment of an enhanced recovery projects if the project involves the application of carbon	SCC/SCORC/ SFC- germane- SCORC

	dioxide.	
SB 47 Clemente Sanchez	Utility Facility Property Tax Valuation: SB 47 Effectively expands the definition of “other justifiable factors” used in valuation of centrally assessed property intending to clarify obsolescence includes limitations on “use of property based on the available reserves committed to the property.” Also excludes property contributed or property and plant acquired with contributed funds from those power production related activities are centrally assessed by the NMTRD.	SCC/SCORC/ SFC-SCC
SB 77 Morales	Increase Tobacco Products Tax: SB 77 Increases the tobacco products tax from 25% of product value to 66%, adds electronic smoking devices to the list of tobacco products, and significantly increases the cigarette tax.	SCC/SCORC/ SFC-SCC
SB 90 Stewart	Delay Corporate Income Tax Rate Reduction: SB 90 Delays by a year the scheduled corporate income tax rate reductions beginning with the reduction scheduled for 2016 from 7.3-6.9% (which would happen in 2017 under the proposal).	SCC/SCORC/ SFC-SCC
SB 93 Clemente Sanchez	Energy Employee Health Program Gross Receipts: SB 93 Proposes an expansion of the GRT healthcare deduction, to include receipts from a compensation program by the federal Energy Employees Occupation Illness Program for the provision of medical and other palliative services by a home health agency.	SCC/SCORC/ SFC-SCC
SB 133 Clemente Sanchez	Small Business Investment Tax Credit: SB 133 Creates personal income tax credit not to exceed 25% of no more than \$250K of a qualified investment by an accredited investor. Investors would be limited to five investments per year, would have to seek a certificate of eligibility from the EDD, who would be capped at \$2M with respect to the certificates they could issue annually. Qualifying investments could be repeated for no more than 3 year.	SCC/SCORC/ SFC-SCC
SB 136 Munoz	Air Ambulance Tax Reporting: SB 136 Changes gross receipts tax sourcing rules for professional and air ambulance services to the location of the ultimate consumer (in the case of the professional services) to where the patient is picked up in the case of air ambulances.	SCC/SCORC/ SPAC-SCC
SB 139 Sharer	Gross Receipts Tax Professional Studies: SB 139 Appropriates \$500K to the Legislative Council Service to fund economic tax base studies with a professional economic consulting firm, the Arrowhead Institute and BBER.	SCC/SCORC/ SFC-SCC
Sharer SB 145	Tax Reform: SB 145 Reduces the GRT and personal income tax rates to 2.5%, repeals numerous exemptions and deductions, the compensating tax and many other tax programs.	SCC/SCORC/ SFC-SCC
SB 151 Ivey-Soto	High-Wage Jobs Tax Credit Eligibility: SB 151 Effective 7/1/16, reduces recently increased wage requirements for credit eligibility from \$60K to \$45K for jobs within 10 miles of the exterior boundaries of muni’s with populations in excess of 60K, and from \$40K to \$35K the more rural areas.	SCC/SCORC/ SFC-SCC

SB 166 Wilson Beffort	Clawback Repayment Tax Credit: SB 166 Creates a personal income tax credit for those who made federal clawback repayments of amounts previously reported pursuant to IRC Sec. 1341 can tax a refundable credit in an amount computed as the difference between the amount of tax due when including and not including the amount of the payment in income.	SCC/SCORC/ SFC-SCC
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TAX QUOTABLES

“Like mothers, taxes are often misunderstood, but seldom forgotten.”

~ *Lord Bramwell*

“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, 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” *Campañía General de Tabacos v. Collector*, 275 U.S. 87, 100 (1927), Justice Oliver

Wendell Holmes, dissenting.
 Join NMTRI today!