

# ***Tax Matters***

*The Newsletter of the New Mexico Tax Research Institute*

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



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## INTO THE LEGISLATIVE SESSION – IT BEGAN JANUARY 21, 2014



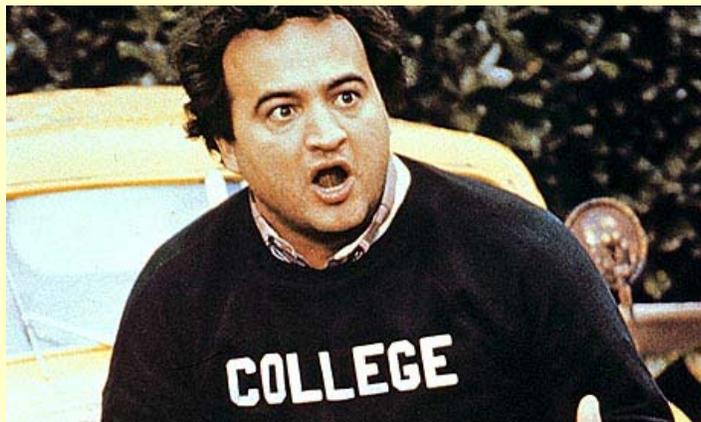
The 2014 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 21, and ended at noon on February 20. Legislation not acted on by the governor was pocket vetoed on March 12. The effective date of legislation that's not a general appropriation bill, a bill carrying an emergency 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 governor's action (or inaction) on passed bills, 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.

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## Legislative Post Mortem... What Just Happened?



While it didn't exactly come in like a lion, the 2014 legislative session in New Mexico pretty much went 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.

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.

### ***What Becomes Law... or better yet what doesn't?***

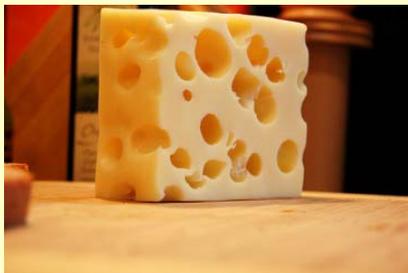


There were only eleven tax proposals passed in the 2014 regular session, and the legislature didn't pass any direct tax increases. So, not unexpectedly, the governor liked – or at least didn't hate what she saw as she signed every tax related piece of legislation on her desk - save one.

#### ***Rate Authority***

The closest thing to a tax increase making it to the Governor's desk was the proposal found in Sen. Nancy Rodriguez's [SB 268](#) because it creates additional gross receipts tax (GRT) rate *authority* (1/12 or 1/16%) for counties to offset the 1/12% the state will be clawing back from county governments for three years (excluding Bernalillo and Sandoval counties, who fund their hospitals with GRT increments and don't get sole community provider funds). The proposal 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 bill was an apparent compromise that reduces GRT clawback and rate increase potential/authority relative to the original proposal, but also reduces payments to hospitals and limits federal matching funds that would have otherwise been garnered. The bill was line-item vetoed to eliminate the three year sunset on the clawback, but not the tax increment. This issue will continue to draw attention in future legislative sessions.

#### ***Gross Receipts and Compensating Tax Measures***



Both aircraft related gross receipts tax deductions that passed were signed into law. 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 services. The bill was amended in committee 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 by the bill is a *legislative report every year on the cost and effectiveness of the entire deduction*, – 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.*

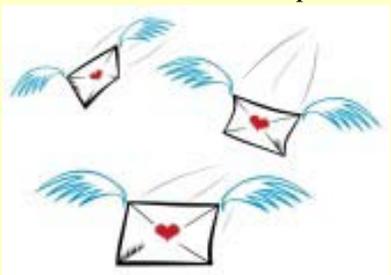
The other aircraft related proposal, Rep. Wooley's [HB 24](#), extends the existing gross receipts tax deduction for aircraft refurbishment of commercial or military aircraft to the *sale* of commercial or military aircraft as well. It also eliminates any compensating tax due on aircraft commercial aircraft used in the state (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 already can't tax— 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, beginning in 2019. *This deduction also does not sunset.*

Non-aircraft related gross receipts tax measures signed included two healthcare related GRT deduction expansions – a favorite carve-out of the legislatures. 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 deduction. *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. 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 was 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 confidentiality requirements and associated penalties apply to employees of the Taxation and Revenue Department and not taxpayers). The proposal also requires that same legislative report every five years on the cost and effectiveness of the credit. *The deduction effectively sunsets on 6/30/2020.*

#### *Other Tax Related Proposals Signed*



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

Rep. Gonzales has two proposals that were signed into law and impact non-GRT taxes. His [HB 30](#) adds 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 creates a deduction from the Petroleum Products Loading Fee for biodiesel that will ultimately be 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).

Sen. Ivey-Soto's [SB 140](#) passed both houses. It provides authority and process to revise 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.

The only other tax related Senate bill passing both houses and signed by the Governor 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. New Mexico law will now more closely track both federal NOL treatment as well as that of the majority of states.

### ***What Got Vetoed?***

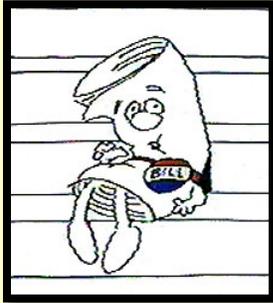
Senator Wirth's [SB 117](#) provides that single member LLCs ("SMLLCs") are treated the same as their 501(c)(3) owners for purposes of related gross receipts and compensating tax exemptions and deductions. The proposal enjoyed unanimous votes in both houses. The veto was not political, but the apparent result of technical concerns raised late in the process regarding the potential for unintended consequences could have resulted in leakage, abuse, and intentional tax engineering. The Governor's veto message can be found [here](#).



The only other notable action was the Governor's line item veto of an appropriation for the study and review of New Mexico's tax structure. The notion was to allow experts to continue dialogue and research on tax structure improvements while deferring serious or painful conversations until after the next election cycle – essentially the result of the Sharer/Taylor tax reform conversations held in the prior session and the interim. The reason for the veto is unclear, but so was how the resources would be deployed or what good would result. The result is clear now. What else is clear is the fact that few have the interest in the hard work and political risk necessary to actually undertake broad based tax reform in New Mexico.

*[NMTRI note: Gentle readers - while some changes may have had merit and others perhaps not so much, it was mostly a whole lot of nothing going on from a tax perspective this year. We narrowed the base a bit more and virtually guaranteed future rate increases, while perhaps making the aircraft business a bit more competitive for a few. Some changes were more technical corrections, while others, like the TIDD base year change – were to address one unlucky TIDD's less than optimal timing. The NOL provision actually represents fair policy as opposed to a "gift to the fortunate few." It will still cost money down the road though. Senator Wirth's vetoed proposal should come back next year, although the Taxation and Revenue Department may implement his intended idea– which is consistent with Federal trends – through regulation. If you're a glass half-full person as is your humble author, then you know that while things could have been much better, things could have been much much worse.]*

**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

<b>Bill Number/ Sponsor:</b>	<b>Title: Link to bill language: Description</b>	<b>Assignments- Location:</b>
HB 14 White/Cisneros	<b>Aircraft Parts &amp; Maintenance Gross Receipts <a href="#">HB 14</a></b> 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- <b>SNGD</b>
HB 16 Carl Trujillo	<b>Liquor Tax Distribution to DWI Grant Fund: <a href="#">HB 16</a></b> 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- <b>SGND</b>
HB 24 Wooley	<b>Commercial or Military Aircraft Gross Receipts: <a href="#">HB 24</a></b> 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- <b>SGND</b>
HB 30 Gonzales/Keller	<b>Alternative Fuel Tax Definitions &amp; Payment: <a href="#">HB 30</a></b> 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/HTR C/HTPWC- DP/a-HTRC- DP-Passed/H- SFC-w/drn -

		Passed/S- <b>SGND</b>
HB 32 Gonzales	<b>Dialysis Facility Gross Receipts: <a href="#">HB 32</a></b> Adds dialysis centers to the laundry list of “qualified practitioners” eligible for the deduction for the sale of services to Medicare. Endorsed by the interim Revenue Stabilization and Tax Policy Committee.	HHGIC/HTR C-HHGIC- DP-HTRC- DP-fl/a- Passed/H- SCORC/SFC- SCORC-DP- SFC-w/drn- Passed/S- <b>SGND</b>
HB 288 Gonzales	<b>Biodiesel Tax Deduction: <a href="#">HB 288</a></b> 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/HTR C-HTPWC- DP/a-HTRC- DP-fl/a- Passed/H- SFC-w/drn- Passed/S- <b>SGND</b>
SB 88 Papen	<b>Infusion Therapy &amp; Med Supply Gross Receipts: <a href="#">SB 88</a></b> 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- <b>SGND</b>
SB 106 Leavell	<b>Exclude NOL Carryover For Up To 20 Years: <a href="#">SB 106</a></b> 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- <b>SGND</b>
SB 117 Wirth	<b>Sole Member LLC Tax Status: <a href="#">SB 117</a></b> 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- <b>VETO</b>
SB 140 Ivey-Soto	<b>Tax Increment District Base-Years: <a href="#">SB 140</a></b> 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- <b>SGND</b>
SB 268 Rodriguez	<b>Sole Community Provider Federal Compliance: <a href="#">SB 268</a></b> 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/S FC-SCC- germane- SPAC-DNP- CS/DP-SFC- DP/a-SFC- DP/a-fl/aa- Passed/S- HTRC-DP- Passed/H- <b>SGND</b>

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## KNICK KNACKS

### **HOLD THE DATE AND MARK YOUR CALENDARS NOW – 11<sup>TH</sup> 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 24-25<sup>th</sup>. It looks like we’ll have Tax Analyst’s Deputy Publisher David Brunori, COST President Doug Lindholm, the Tax Policy Center’s (a joint venture of the Urban and Brookings Institutes) Eric Toder and Norton Francis, the Pew Institute’s Kasha Murray, SSTP’s new executive director Craig Johnson, the Federation of Tax Administrator’s Helen Hecht, and perhaps even Prof. Rick Pomp in the lineup. You will be inundated with more details and registration options shortly! We look forward to seeing you there!

### **Marketplace Fairness Act Heard... again.**

Originally scheduled on the same day as a snow and ice storm, the rescheduled hearing was last Wednesday. It does not appear any “new ground” was broken and their still doesn’t appear to be

any expectation of passage anytime soon. Still, there was a chance to let all sides be heard. Most of the testimony can be streamed from the ustream.tv website [here](#).

### ***NMTRI Website Back – sort of...***

For the last several editions you've seen the note below pasted in Knick Knacks. The NMTRI website was migrated to a new platform very recently. However, the links to content and subpages were lost and have to be rebuilt. The homepage recent content (recent newsletters and studies) should be available in the next 24 hours, although it may take a few weeks to have access to all prior content restored.

*[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 or 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].*

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## **TAX QUOTABLES**

"There may be liberty and justice for all, but there are tax breaks only for some."  
~Martin A. Sullivan

"Its income tax time again, Americans: time to gather up those receipts, get out those tax forms, sharpen up that pencil, and stab yourself in the aorta."  
~ Dave Barry

"There's nothing wrong with the younger generation that becoming taxpayers won't cure."  
~ Dan Bennett



**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" Campaña General de Tabacos v. Collector, 275 U.S. 87, 100 (1927), Justice Oliver

Wendell Holmes, dissenting.  
Join NMTRI today!