

Tax Matters

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INTO THE LEGISLATIVE SESSION – IT BEGAN - JANUARY 15, 2021



The 2021 Regular Session of the New Mexico Legislature convenes at noon on Tuesday, January 19, and ends at noon (or somewhere thereabouts) on March 20. The deadline for bill introduction is February 18. Legislation not acted on by the governor is pocket vetoed on April 9. The effective date of legislation that is not a general appropriation bill, a bill carrying an emergency clause or other specified effective date takes

effect on June 18. Being a “long” or 60-day “budget” session, non-budgetary legislation and items not related to the budget are fair game for introduction and are not limited by the call of the Governor. It is an interesting time. Foremost is the economy and the COVID-19 epidemic. There is still talk of some tax reform, tax relief, and tax increases. So, while there’s plenty to fight about and money to fight over, unknowns around how the session will operate seems to be adding confusion but perhaps reducing some tension.

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.

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-pectations for the Session

The 60-day session has arrived. In addition to a new year, Governor Michelle Lujan Grisham has COVID to deal with... and lots of new House and Senate members – mostly Democrats in the Senate following the blue wave that hit again, although the House gained red seats.

This year, it is the House that remains consistent. Rep. Brian Egolf remains the top-dog in the House as Speaker, and Sheryl Stapleton-Williams remains Majority Floor Leader, while Majority Floor Whip continues to be Doreen Gallegos. Rep. Jim Townshend remains Minority Floor Leader, while Rod Montoya continues as Minority Whip. Javier Martinez also continues as House Taxation and Revenue Committee Chair, while Patricia Lundstrom remains chair of the House Appropriations and Finance Committee.

It is the Senate where we've seen significant change. After a changing Senate composition, Mimi Stewart emerged as President Pro Tempore, while Peter Wirth remains the Majority Floor Leader. Linda Lopez is the new Majority Whip. Sen. Greg Baca is the new Minority Floor Leader, with Craig Brandt becoming the new Minority Whip. Key committee chairs are also changed, as George Munoz will now preside over the Senate Finance Committee and Sen. Benny Shendo will be at the helm of the new Senate Tax, Business and Transportation Committee, the new re-congealed Corporations and Transportation Committee. Sen. Ivey-Soto is the new chair of the Senate Rules Committee.

Being an open 60-day session in the midst of a pandemic and limiting public health orders and new legislators and Senate leadership, we're expecting an interesting but different session, with no real idea of how many bills will be introduced or how quickly they can be processed. It's said that House members are limited to five bills a piece, however Governor's bills are not included in that number.

The forecast was strengthened some on stronger than anticipated oil prices and stronger PIT and gross receipts revenue than initially expected. That, coupled with strong reserves, means there is less immediate pressure on the budget. The December consensus revenue estimate can be found on the LFC website [here](#).

In her Executive budget (found [here](#) on the Governor's DFA website) Governor Lujan Grisham has proposed spending of around \$7.3B. It doesn't differ greatly from the legislative proposal, which does differ in that it proposes \$300M in unemployment insurance trust fund support in the absence of federal. Both sides want some similar things, although they differ in amount and approach.

What Happened this Week?



Not a whole lot is the short answer. The Senate took some time off so there aren't any new Senate bills. They reconvened Tuesday morning. The House was a little more active, and we now have a few more House bills (and tax proposals). Below you will see the tax proposals thus far. There are now 213 House bills in the hopper, but still only 132 Senate bills introduced thus far. As tax bills go, we are already tracking 15 House and 8 Senate proposals (for a total of 23) so far. Some

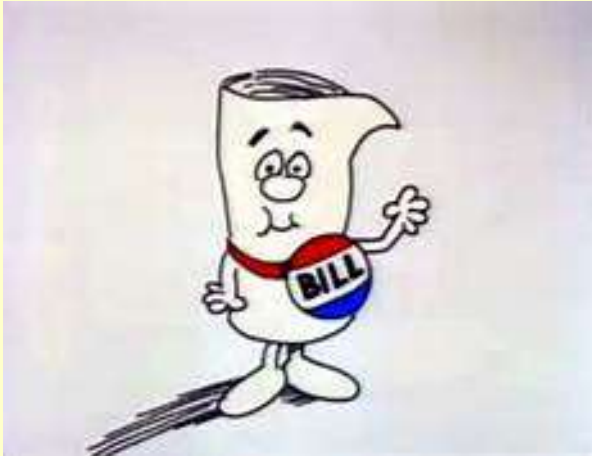
represent continuation or modifications of existing provisions, while others are new ideas. As in prior years, there are more than one proposal to exempt social security income from personal income tax, and more than one to increase personal income tax rates again. There is also a proposal to expand the long forgotten Low Income Comprehensive Tax Rebate (LICTR) program. Others attempt to provide business and individual relief in response to COVID-19, while others propose tax increases.

Additionally, we're expecting two more or less "technical cleanup" bills from the Taxation and Revenue Department and endorsed by the Interim Revenue Stabilization and Tax Policy Committee ("RSTP"). One has already been introduced in the form of Rep. Chandler's [HB 90](#). It proposes changes to the Tax Administration Act. A second RSTP endorsed "cleanup" bill was introduced in the form of [HB 98](#), sponsored by HTRC Chairman Martinez and Jason Harper. There also remains the possibility of other cleanup legislation to be introduced as a result of federal changes or recent state legislative efforts.

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. Of course, tax proposals – particularly bad ones – tend to be regurgitated (so to speak) from year to year. 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.

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Bills with significant tax implications in the 2021 Regular Legislative Session:

Note – Income Tax bills are effective tax years beginning on or after January 1, 2022 unless otherwise noted. “TYBA” = Tax years beginning on or after. Bills with an emergency clause are effective upon signature if enough votes are obtained. Bills with no effective date Other notes: “CS” indicates committee substitute; “a” indicates amended.

Bill Number/ Sponsor:	Title: Link to bill language: Description	Assignments- Location:
HB 15 Ortez	Sustainable Building Tax Credit: HB 15 Renames and sunsets early the new sustainable building tax credit, and replaces it with the newer 2021 sustainable building credit.	HENRC/HTR -HENRC
HB 26 G. Andres Romero	Exclude Greenfields from Certain Taxes HB 26 Creates a definition of “greenfield area” TID Act and creates an exclusion from provisions for such areas if not voted and approved by DFA prior to 7/1/21.	HLLC/HENR C-HLLC
HB 42 Chandler	Low-Income Comprehensive Tax Rebate Changes: HB 42 Broadens brackets and increases eligibility thresholds of modified gross income for purposes of the low income comprehensive tax rebate (LICTR).	HCPAC/HTR C-HCPAC
HB 45 M. Garcia	Change Rural Healthcare Practitioner Tax Credit: HB 45 Expands the categories of healthcare practitioners eligible for the \$5K credit to include those previously eligible for the \$3K credit.	HHHC/HTRC -HHHC
HB 49 Brown/ Dow/ Armstrong/ Pettigrew/Ez ell	Exempt Social Security from Income Tax: HB 49 Exempts Social Security from income taxation but does not allow an overlapping deduction with that provided for the elderly in 7-2-5.2.	HLVMC/HT RC-HLVMC
HB 89 Chatfield/ Armstrong/ Chandler	Healthy Soil Tax Refund Contribution: HB 89 Provides for the taxation and revenue department to allow individual income tax filers to designate a portion of a refund due them to NMSU regents for the support of the healthy soil program.	HAWC/HTR C-HAWC
HB 90 Chandler	Tax Penalties and Remedies: HB 90 Makes various changes to the Tax Administration Act as endorsed by the Interim Revenue Stabilization and Tax Policy Committee.	HSEIC- HSEIC-ref- HTRC- HSEIC
HB 98 Martinez/Har per	Omnibus Tax Bill: HB 98	HTRC

	Makes mostly technical changes, including most notably changes to the healthcare practitioner GRT rules, a provision allowing grocers to deliver groceries tax free, and increased thresholds for garnishments.	
HB 104 Allison	Expand Rural Health Tax Credit for Pandemic: HB 104 Expands the categories of healthcare practitioners eligible for the \$3K personal income tax credit to include those “essential health care workers who provide assistance to other health care professionals during the coronavirus disease 2019 pandemic.”	HHHC/HTRC -HHHC
HB 118 Johnson	Homeless Youth Employment Tax Credit: HB 118 Deletes the purpose language and expands eligibility of the foster youth employment income tax credit in various ways including add homeless you to the those eligible.	HHHC/HTRC -HHHC
HB 122 Armstrong	Health Insurance Premiums Surtax: HB 122 Increases the health insurance premiums tax from one to three and seventy-five hundredths percent and distributes 50% of the increase to a newly created Health Care Affordability Fund.	HHHC/HTRC -HHHC
HB 148 Chandler	Unemployment Contribution Rate Change: HB 148 Beginning 1/01/2022 until 1/01/2024, adds 2/10% to the rates unemployment insurance tax rates otherwise required by statute.	HLVMC/HT RC-HLVMC
HB 167 Lujan/Chandler/Ferrary	Increase Cigarette and Tobacco Products Tax: HB 167 Increases the cigarette tax > 600% and the tobacco products tax a little more than 300% July 1, 2021.	HHHC/HTRC -HHHC
HB 174 Anderson	Double Certain Tax Exemptions: HB 174 Increases from a maximum of \$8K to \$16K the personal income tax credit for those 65 or older blind.	HHHC/HTRC -HHHC
HB 181 Scott/Townsend/Pettigrew/Montoya	Oil & Gas Tax Changes: HB 181 Exempts from the oil and gas severance tax the value of carbon dioxide when that carbon dioxide is used in an enhanced oil recovery project. CO2 doesn’t appear to be subject to the severance tax in this case.	HENRC/HTRC C-HENRC
SB 1 Wirth/Candelaria/Hemphill	Restaurant Gross Receipts Tax Deduction: SB 1 From March through June, 2021, creates a separately reported gross receipts tax deduction as well as associated municipal and county “hold harmless” tax distributions for receipts from the sale of prepared food or non-packaged beverages. Also creates a 2021 \$600 personal income tax rebate for those who claimed the working families tax credit in 2020 and had less than \$31.2K in adjusted gross income.	STBTC/SFC- STBTC
SB 25 Pirtle	Waiver of Penalties on Certain Taxes: SB 25 Temporarily suspends penalty and interest on gross receipts and compensating tax liabilities not paid until two months following the expiration of the public health order, provided that any liabilities are paid by the third month following the end of the public health order.	STBTC/SFC- STBTC
SB 26 Padilla	Gross Receipt Tax Deduction for Data Centers: SB 26 Creates a new GRT deduction for the sale or lease of certain property and the value of other “eligible costs” related to the project can be factored into the credit against compensating taxes due.	STBTC/SFC- STBTC

SB 56 O'Neill	New Personal Income Tax Bracket: SB 56 Adds an upper tax bracket of 8.2% for singles taxable income above \$187.5K, and married households with taxable income in excess of \$375K.	STBTC/SFC- STBTC
SB 62 Ortiz y Pino	Healthcare Preceptor Income Tax Credit: SB 62 Creates a personal income tax credit in the amount \$1000 for certain healthcare professionals acting as uncompensated preceptors. The credit may be carried forward indefinitely.	STBTC/SFC- STBTC
SB 78 Padilla	Exempting Social Security from Income Tax: SB 78 Exempts Social Security from income taxation but does not allow an overlapping deduction with that provided for the elderly in 7-2-5.2.	STBTC/SFC- STBTC
SB 89 Tallman	Amend Personal Income Tax Brackets: SB 89 Changes and expands existing tax brackets up to 6.5% for incomes above \$150K (individuals) and \$300K (married/HOH).	STBTC/SFC- STBTC
SB 98 Tallman	Economic Incentive Development Reports: SB 98 Requires recipients of certain incentives to report (no penalties) to Taxation and Revenue Dept., and TRD to report on tax expenditures and deviations with certain parameters and requirements.	STBTC/SFC- STBTC

KNICK KNACKS

This week, shamelessly borrowed from the Federation of Tax Administrators newsletter:

LATEST DIFFICULTIES IN GOVERNING DURING A PANDEMIC

There have been 280 legislators nationwide publicly confirmed to have been infected with the coronavirus.

The 13th Missouri lawmaker has tested positive for coronavirus so Missouri's House called off the week's session.

Idaho Gov. Little has supported delay of the legislative session but leadership has chosen instead to alternate chairmanships to provide for continuity of work in case a chair is sidelined by a positive test.

Two Arkansas legislators tested positive after the session began last week; so far 23 have tested positive.

LATEST FROM THE LAWMAKERS

Illinois legislators finished their lame-duck session without decoupling from business tax benefits in the CARES Act.

The Governor's Council on Tax Reform in Kansas calls for a marketplace facilitator law and applying the sales tax to digital goods.

Colorado's House has sent the Senate a bill that would allow taxpayers with an SSN to claim an EITC. The program expansion is in effect for 2021 already; the bill would apply the plan to TY 2020.

New York Gov. Cuomo's budget calls for a short-term income tax rate increase for the top rate from 8.82% to 10.97%, applying to income of more than \$5 million. Also, those taxpayers would be given the option of prepaying two years of the new liability in exchange for a deduction equal to the prepayment. The fiscal note on the temporary tax rate is about \$1.5 billion.

Massachusetts Gov. Baker has line-item pocket vetoed a transportation bill to eliminate a plan to create a tiered fee structure for ride-hailing providers. The commonwealth will keep its current flat rate of 20 cents per ride.

New Mexico's legislative leaders are pushing for a 4% increase in general fund spending and keeping state agency funding at current levels even after federal relief is exhausted. The unemployment trust fund is short at least \$450 million in the current fiscal year and New Mexico's budget plan seeks to pay down \$300 million of that debt.

Wisconsin Gov. Evers is lobbying to increase the state's EITC by tying the state to the new, higher federal credit amounts.

New Jersey Gov. Murphy warned his legislature in his State of the State address that budget and tax cuts would not promote the state's economic recovery.

Arkansas Gov. Hutchinson wants to reduce the sales tax rate on used cars from 6.5% to 3.5%, for purchases between \$4,000 and \$10,000. His budget proposal would lower the top individual income tax rate from 5.9% to 4.9% for the first five years the taxpayer lives in Arkansas. The rate dropped from 6.9% to 5.9% for all taxpayers on Jan. 1.

A bill in Delaware would increase the top income tax rate from 6.6% to 8.6% and create three new brackets.

MANY HAPPY RETURNS (BUT NOT JUST YET)

The IRS will open its computer system to accept individual income tax returns on Feb. 12. The filing season typically begins after MLK Day, but later dates for some or all taxpayers are increasingly common because of late changes to the

tax code, government shutdowns or anti-refund fraud measures. This year the delay is due to programming required in administering the \$1,200 and \$600 economic impact payments. Taxpayers who are using a Free File service can file now, though those returns will not be forwarded to the IRS until Feb. 12. Most states also use the IRS's Modernized eFile system (MeF). Preparers send e-filed federal and state returns to the IRS in a unified transmission, and the IRS spins off the attached state return and delivers it to the state. (MeF can also accept state-only returns.)

TAX QUOTABLES

"Tax reform means, 'Don't tax you, don't tax me. Tax that fellow behind the tree.'"

~Russell Long

"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!