IN THIS “SESSION ENDS” ISSUE OF TAX MATTERS:

➢ The Last Gasp…What Just Happened?
➢ Table of Tax Bills on Governor’s Desk
➢ TRD Issues Proposed GRT Regs on Sourcing/Wayfair
➢ Don’t Forget the Principles
➢ Tax Quotables
The 2021 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 19, and ended at noon (or somewhere thereabouts) on Saturday, March 20. The deadline for bill introduction was February 18. Legislation not acted on by the governor will be 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 were fair game for introduction and were not limited by the call of the Governor. It was an interesting time.

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](https://www.nmlegis.gov/) 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 robust website, which can be reached at [https://www.nmlegis.gov/](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.
As tax bills go, we were tracking 28 House and 34 Senate proposals (for a total of 62, not including the ones we have missed). Seven House and five Senate proposals made it through to the Governor’s desk (see the list below). That’s two more this week due to omissions (see further down).

Not counting an omitted bill (see below) **HB 11**, discussed previously, is still the only House tax bill we were tracking to be signed into law by the Governor. That’s the bill that appropriates $200M in general fund to an economic development recovery act fund for grants to certain small business for rent/lease payments, if certain conditions are met. It would have created gross receipts tax (GRT) revenue sharing with some varying state and local portions going to the LEDA fund on LEDA projects where >$350M in capital investment is made, however those provisions were stripped in committee. (So it ceased to be a tax bill, and efforts to resurrect those provisions failed but are apparently being resurrected in the special session).

Rep. Ortez’s **HB 15**, which renames and sunsets early the new sustainable building tax credit and replaces it with the newer 2021 sustainable building credit, is awaiting the Governor’s action. Also passed and awaiting the Governor’s action is **HB 89**, the proposal to allow personal income tax refunds to be earmarked to the healthy soil fund. Also passed were Taxation and Revenue Department proposals in the Revenue Stabilization and Tax Policy committee bill, **HB 98**. Rep. Harper’s manufacturing and certain business service gross receipts tax deduction proposal (see **HB 278**) also passed. It had contained a business-to-business service deduction which was stricken in the Senate Finance Committee, so it ended up just a manufacturing equipment deduction.

Representatives Martinez and Chandler’s **HB 291** was perhaps the most contentious tax bill of the session. It started with a basket of proposed personal income tax related increases and breaks, property tax valuation changes, and a few other provisions. It was amended to include steeper PIT bracket increases than those proposed by the House, and increased corporate income (from 5.9-7.6%, phased in). At the end, the proposed tax increases were stricken, other amendment attempts were defeated on the Senate floor, and the bill that passed simply retained the earlier proposed expansions of the Low-Income Comprehensive Tax Rebate (LICTR) and the Working Families Tax Credit.

Senator Wirth’s **SB 1** is still the only Senate tax bill to be signed into law thus far. It is the temporary gross receipts tax deduction for receipts of certain restaurants combined with the $600 personal income tax rebate for some individuals and families. The other three Senate bills to make it through alive are Senator Shendo’s **SB 218**, which reconciles provisions of the Multistate Tax Compact with recent changes to the Uniform Division of Income for Tax
Purposes Act (UDITPA), Sen. Bobby Gonzales’s SB 328, which removes the six-year limitation on the .25% water and sanitation gross receipts tax that otherwise must go before voters periodically, and Sen. Burt’s SB 410, which attempts to conform New Mexico law with recent federal changes to how large partnerships are treated for federal tax purposes (in audit and other circumstances).

The Governor still has until April 9th to act on the bills before they are pocket vetoed as a result of inaction.

What we Missed Last Time – Holy Tax Increase Batman!

We previously overlooked a bi-partisan bill primarily sponsored by Rep. Maestas designed to provide for alcohol deliveries (see HB 255). It’s tax related because it provides personal and corporate income tax deductions (up to $50K in alcohol sales for licensed dispensers as of 6/30/2021, and $25K for licensed retailers) for four years. It also includes a gross receipts tax deduction – also similarly limited to four years (and up to $50K or $25K, depending on license status). Any benefit of course depends upon the beneficiaries “tax appetite.” In the case of income tax, the benefit is limited by the taxpayer’s marginal tax rate(s) and liability, whereas the gross receipts tax benefit is limited by the applicable GRT rates. The tax breaks, apparently intended to partially offset the reduction in value of state liquor licenses, is estimated to cost $4.5M/year between the general fund and local governments (GRT share only). This bill has been signed into law by the Governor.

The other omission we feel less guilty about missing, although it was a big miss, since it got less of a hearing. The House floor amended the premiums tax provisions of HB 122 into Sen. Hickey’s SB 317, an otherwise unrelated proposal related to co-payments and behavioral health. The amendment creates a new fund and raise the premiums tax from 1% to 3.75% (highest in the country). The apparent notion is to assist some with the cost of private insurance by raising the cost on others in the same category, since the increase will be ultimately borne by the remaining individuals and families in the same lines. It also appears to apply to Medicaid premiums which should allow the state to garner additional federal matching dollars. The revenue is also intended to fund programs for the uninsured. The LFC estimates the amount of the tax increase to range from $153M - $166M in the first full year of implementation and growing after that. The revenue is shared between the general fund and the health care affordability fund, with the amount divided between the funds weighted initially to the latter but shifting to the former over time.

What about the Moto?

Last week, we indicated that the Governor had signaled that, after failing to pass legislation regarding marijuana legalization, she would call a special session, “roughly” March 31st, to reconsider legalization of recreational marijuana (you can see her press release here.) Last week, the Governor set the set the date for March 30 (this coming Tuesday). That press release can be seen here. She is also essentially asking for the LEDA provisions originally in HB 11 to be reconsidered.
We will be back soon with a continued deeper dive into the passed legislation and any updates on the upcoming special session.

[NMTRI note: The Governor has plenty of time to act on the remaining legislation, even after the special session. It could even be that some pending legislation could be used as leverage for the special session. Regarding the second bill we missed (above), raising the premiums tax, it’s weird that that the largest tax increase in recent state history never received a hearing or debate in a senate committee or on their floor. Even though what we call “debate” isn’t always exactly that – and hasn’t been improved by COVID and political conditions. Still, debate is important to the democratic process and we hope this isn’t a harbinger of how such significant issues are addressed in the future.]

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 has 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.

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 implications in the 2021 Regular Legislative Session that passed both houses:

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.

<table>
<thead>
<tr>
<th>Bill Number/Sponsor</th>
<th>Title: Link to bill language: Description</th>
<th>Assignments-Location</th>
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<tr>
<td>HB 11 Chandler/Egolf</td>
<td><strong>GRT &amp; Permanent Fund for LEDA Projects: HB 11</strong>&lt;br&gt;Appropriates $200M general fund to a economic development recovery act fund for grants to certain small business for rent/lease payments if certain conditions are met. It also creates permanent GRT revenue sharing provisions with some varying state and local portions going to the LEDA fund on LEDA projects where &gt;$350M in capital investment is made.</td>
<td>HCEDC/HTR S-HEDC-DP/a-HTRC-DNP-CS-DP-ref HAFC-w/drn – Passed/H-SFC-DP/a-fl/a-Passed S-H cncred-SGND</td>
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<td>HB 15 Ortez</td>
<td><strong>Sustainable Building Tax Credit: HB 15</strong>&lt;br&gt;Renames and sunsets early the new sustainable building tax credit, and replaces it with the newer 2021 sustainable building credit.</td>
<td>HENRC/HTR -HENRC-DP-HTRC-DNP-CS/DP-STBTC/SJC-STBTC-DP/a-SFC-DP-Passed/S-h/concrd</td>
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<td>HB 89 Chatfield/Armstrong/Chandler</td>
<td><strong>Healthy Soil Tax Refund Contribution: HB 89</strong>&lt;br&gt;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.</td>
<td>HAWC/HTR C-HAWC-DP-HTRC-DP-Passed/H-SCONC/STB TC-SCONC-</td>
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<td>HB 98</td>
<td>Omnibus Tax Bill: <strong>HB 98</strong>&lt;br&gt;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.</td>
<td>DP-STBTC-DP-Passed/S-HTRC-DNP-CS/DP-fl/a-Passed/H-STBTC/SFC-STBTC-DP-SFC-w/drn-Passed/S</td>
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<td>HB 255</td>
<td>Alcohol Deliveries: <strong>HB 255</strong>&lt;br&gt;Provides for certain permissible alcoholic beverage deliveries and creates personal and corporate income tax deductions (up to $50K in alcohol sales for licensed dispensers as of 6/30/2021, and $25K for retailers), for four years. It also includes a gross receipts tax deduction – also similarly limited to four years and up to $50K or $25K, depending on license status.</td>
<td>HCEDC/HTRC-w/o rec/a-HTRC-DNP-CS/DP-fl/a-aaa-Passed/H-SJC-DP-a-fl/aaaaa-Passed/S-h/cncrd</td>
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<td>HB 278</td>
<td>Manufacturing Services Gross Receipts: <strong>HB 278</strong>&lt;br&gt;Adds/changes definitions and creates gross receipts tax deductions for the sale or lease of manufacturing equipment. Also creates a deduction for certain professional services sold to certain businesses.</td>
<td>HTRC-DNP-Passed/H-STBTC/STC-STBTC-DP-SFC-DP/a-Passed/S-h/cncrd</td>
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<td>HB 291</td>
<td>Tax Changes: <strong>HB 291</strong>&lt;br&gt;Increases/adds brackets to the personal income tax, substantially narrows the capital gain exclusion, increases the rate of the low income comprehensive tax rebate and indexes it while expanding the base beyond the federal, and provides for a 10% increase in valuation of residential property that isn’t a primary residence.</td>
<td>HTRC-DNP-CS/DP-fl/a-Passed/H-STBTC/SFC-STBTC-DP-a-SFC-DP/a-Passed/S-h/concrd</td>
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<td>SB 1</td>
<td>Restaurant Gross Receipts Tax Deduction: <strong>SB 1</strong>&lt;br&gt;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.</td>
<td>STBTC/SFC-STBTC-DP-SFC-DP/a-fl/a-Passed S-HTRC-DP-Passed/H-Sgnd</td>
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<td>SB 218</td>
<td>Uniform Division of Income for Tax Purposes: <strong>SB 218</strong>&lt;br&gt;Conforms elements of the multistate compact with the income apportionment changes in HB 6.</td>
<td>STBTC/SFC-STBTC-DP-SJC-DP-Passed/S-</td>
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<td>SB 317</td>
<td><strong>No Behavioral Health Cost Sharing:</strong> SB 317</td>
<td>Hickey</td>
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<td>Increases the health insurance premiums tax from one to three and</td>
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<td>seventy-five hundredths percent and distributes differing percentages of</td>
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<td>the increase, depending on year, to a newly created Health Care</td>
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<td>Affordability Fund – for purposes of reducing the cost of premiums for some</td>
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<td>and funding programs for the uninsured</td>
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<td>SB 328</td>
<td><strong>Water and Sanitation Gross Receipts:</strong> SB 328</td>
<td>Gonzales</td>
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<td>Removes the six-year limitation on the .25% water and sanitation gross</td>
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<td>receipts tax that otherwise must go before voters periodically</td>
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<td>SB 410</td>
<td><strong>Adjustment of Certain Taxes:</strong> SB 410</td>
<td>Burt</td>
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<td>Makes changes and adds definitions to the Tax Administration Act and</td>
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<td>Withholding Tax Act in an effort to conform to recent federal partnership</td>
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TRD Issues Proposed GRT Regulations on new Sourcing/Wayfair Laws

Copied from the New Mexico Taxation and Revenue Department’s Thursday Press Release:

Michelle Lujan Grisham
Governor

Stephanie Schardin Clarke
Cabinet Secretary

March 25, 2021

Hearing scheduled April 29 on new Gross Receipts Tax regulations

The New Mexico Taxation and Revenue Department will hold a public hearing April 29 on proposed new regulations governing how businesses report their Gross Receipts Taxes.

The proposed regulations are needed to administer changes mandated by a 2019 law. Starting July 1, 2021, most goods and services sold in New Mexico will be taxed at the rates in effect in the jurisdictions where they are delivered, a method known as “destination-based sourcing.”

“This is going to be a significant change for many New Mexico businesses, and taxpayers are encouraged to take part in the hearings process,” said Taxation and Revenue Secretary Stephanie Schardin Clarke. “Once the regulations have been adopted, we will provide additional guidance.”

Most taxpayers now pay the GRT rate for the location of their business, and retail operations will continue to do so for most sales completed at their business locations. Also, some providers of professional services will continue to calculate tax using their place of business after July 1, and special rules will also apply to construction services, transportation network companies, and sales and leases of real estate.

The 2019 law also allowed New Mexico to collect Gross Receipts Tax on internet sales for the first time. Receipts from those sales are currently taxed at the statewide 5.125%
rate. Starting July 1, 2021, receipts from these sales will also be subject to local option gross receipts rates.

The Public Hearing will be conducted on the WebEx virtual meeting platform beginning at 12 p.m. April 29, 2021. Interested parties can attend by going to https://nm-tax.webex.com/nm-tax/j.php?MTID=mf62ce1c91ba6017f237a822566543bb Meeting number (access code): 132 352 9832 Meeting password: 04292021 or by telephone by dialing 1-844-621-3956.

Any oral comments made during this hearing will be recorded and any electronic written comments can be submitted during the hearing at policy.office@state.nm.us.

The proposed regulations can be found at https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/ and clicking on the hearing notice link. They also are available upon request by contacting the Tax Policy Office at policy.office@state.nm.us.

Written comments can be submitted by email to policy.office@state.nm.us or by mail to the Taxation and Revenue Department, Tax Information and Policy Office, Post Office Box 630, Santa Fe, New Mexico 87504-0630 or on or before April 29, 2021. All written comments received by the agency will be posted on www.tax.newmexico.gov no more than three business days following receipt to allow for public review.
DON’T FORGET THE PRINCIPLES

It’s important, particularly when dealing with tough economies, tough decisions, and the emotionally charged subject of taxes, to view the world in the context of principles. Taxes are good in that they raise the money we need to pay for the services we need. They can also be bad if they create inefficiencies, distortions, or inequities. It’s a more rational approach to look at our entire tax system rather than getting lost in the weeds focusing only on a particular rate or some item we choose to tax or not tax. We must raise the revenue we need for government (putting aside the debate over how much) while doing the least harm to the economy and to those things we need most (e.g. job creation) while being fair and protecting the most vulnerable in our communities. Accordingly, we’ve taken the opportunity to reprint our principles of good tax policy here:

State and local taxes should be adequate to provide an appropriate level of those goods and services best provided by the public sector, such as education, public safety, law enforcement, streets and highways, and the courts.

- State and local tax policy should do the least harm to the private economy. Therefore, tax bases should be as broad as possible so that tax rates can be as low as possible in order to raise the necessary revenues.

- State and local tax policy should be fair and equitable towards individuals and businesses similarly situated. Individuals with the same income level should be taxed the same. Businesses engaged in similar commercial activities should be subject to the same level of taxation.

- State and local tax policy should not be costly to administer and should be easily understood by taxpayers so as to minimize taxpayer compliance costs.

- The state and local tax burden should be evaluated on the basis of the impact of all taxes levied on a given taxpayer, not just a single tax or tax rate.

- Deviations from established tax policy in pursuit of economic development, social or other goals should be well-reasoned and pursued only when established tax policies are not significantly undermined and the results of such deviations can subsequently be measured and evaluated.
TAX QUOTABLES

[on filing of tax returns] “This is too difficult for a mathematician. It takes a
philosopher.”

~Albert Einstein

“It's tax time. I know this because I'm staring at documents that make no sense to me,
no matter how many beers I drink.”

~ Dave Barry

Success is the ability to move from one failure to another without loss of enthusiasm.”

~ Winston Churchill

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.

“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!