

# ***Tax Matters***

*The Newsletter of the New Mexico Tax Research Institute*

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## **IN THIS ISSUE OF *TAX MATTERS*:**

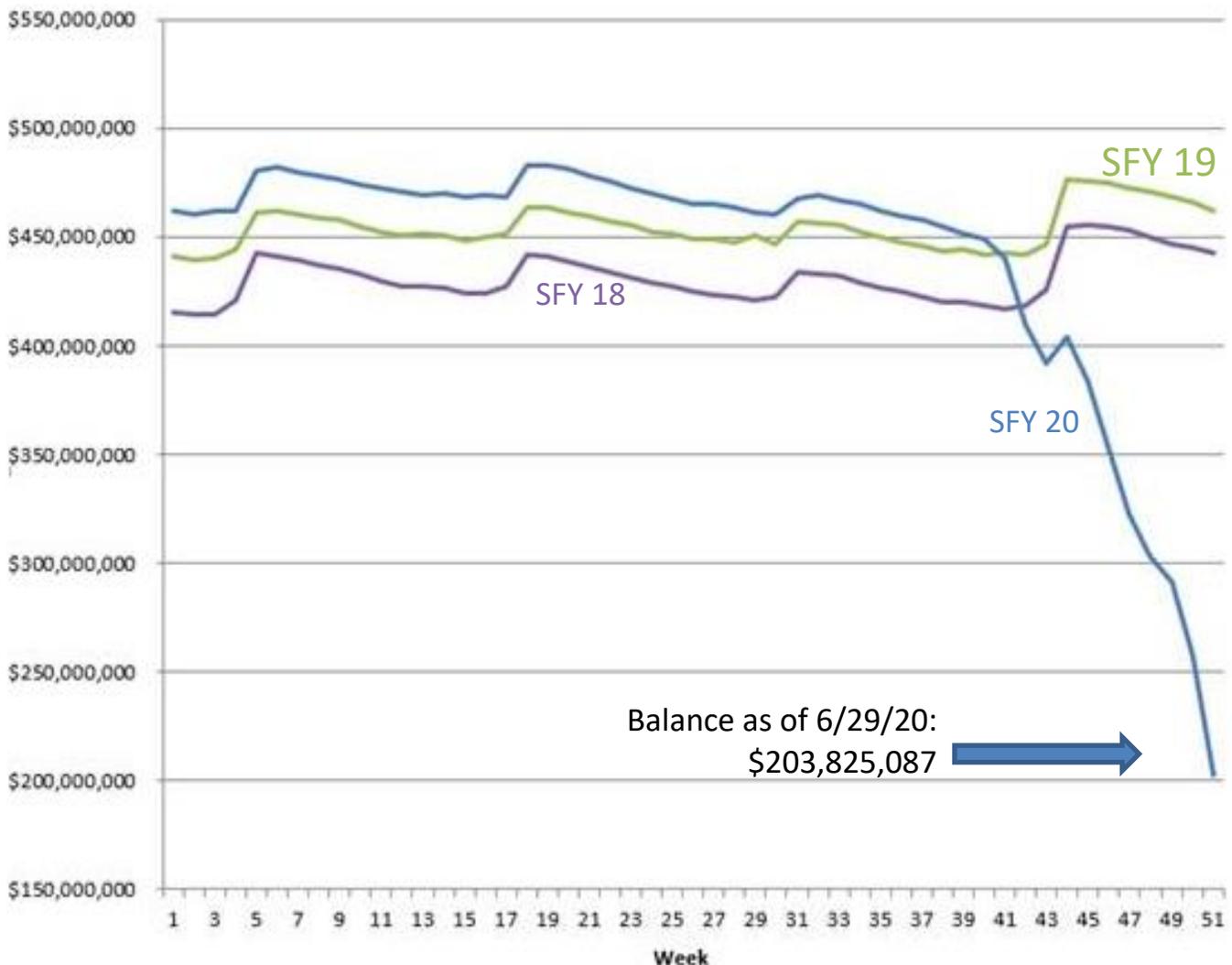


- **Unemployment Insurance Trust Fund Insolvent**
- **The Last Gasp...What Just Happened in the Special Session?**
  - **List and summary of passed legislation**
- **NMTRI Annual Board and Members Meeting**
  - **No conference for now, but working**
- **Don't Forget the Principles**
- **Knick Knacks**
- **Tax Quotables**

## NEW MEXICO REQUESTS FEDERAL ASSISTANCE

In a letter to U.S. Labor Secretary Scalia, State Workforce Solutions Secretary McCamley has formerly requested federal financial assistance from the federal government beginning in August. Beginning in September, it appears New Mexico will require \$125M a month (\$1.5B annualized) to maintain current benefits.

### Weekly Trust Fund Balance



Source: NMDWS

Due to CARES Act provisions, the federal loan is interest free until January, however if states don't take sufficient timely measures to pay back the loan (via higher taxes or other mechanisms), the federal government becomes a loan collector who punishes the state's businesses and employees with potentially painful tax increases (from .6% to as much as 6.4%). Provisions in SB 3 of the Special Session freeze state unemployment insurance rates for the next year.

Even if reserve levels are taken to the highest level, rates won't be sufficient to replenish the fund and pay off the debt without the imposition of interest and higher federal taxes.

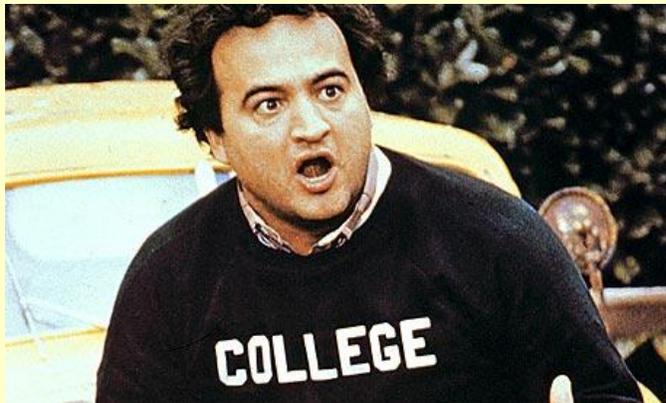
To understand how this is happening to a state with a solvency rate higher than the federally recommended minimum, understand that there were 960 New Mexicans on unemployment in March of 2020. In July 2020 that number became 150,000 New Mexicans.

Secretary McCamley is forming a working group of his folks, employers, business group leaders, and others (like NMTRI) to examine the options and alternatives. It is a moving landscape with uncertainty over federal aid on top of it, and the question of when and how fast we recover economically.

*[NMTRI note: like most pundits, we're not qualified to opine on the health related issues making the news lately, but this leaves no doubt that economic consequences of the current healthcare crises are very big, and like the virus, very real.]*

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## The Special Session...What Just Happened?



The 2020 Special Session of the New Mexico Legislature convened at noon on June 18 and ended shortly thereafter on June 22. The effective date of legislation that's not a general appropriation bill, a bill carrying an emergency clause, or other specified effective date takes effect on September 20. The Special Session was convened primarily to address the economic and budgetary crisis resulting from the COVID-19 pandemic. In New Mexico,

this because a perfect storm along with low oil prices spiking unemployment. Add to this the social issues of the last few months and the legislature had a lot to do.

In the end, the legislature passed and the governor signed seven bills:

- HB 1 – General Appropriations Act Sanding (Lundstrom)
- HB 5 – New Mexico Civil Rights Commission (Egolf/Bash/Ortiz y Pino)
- HB 6 – Temporary Tax Waivers and Distributions (Chandler/Akhil/Martinez/Wirth)
- SB3 – Small Business Recovery Act of 2020 (Candelaria/Sapien/Rue/Ely/Matthews)
- SB 4 – Temporary Election Changes (Ivey-Soto/Ramos/Trujillo/Johnson)
- SB 5 – Solvency Measures (Munoz/Ingle)
- SB 8 – Law Enforcement Body Cameras (Cervantes)

## **Non-tax non-fiscal passed/signed legislation:**

### HB 5 – New Mexico Civil Rights Commission (Egolf/Bash/Ortiz y Pino)

Creates a new commission for the purpose of evaluating and making recommendations on the creation of a civil right of action for violations of state constitutional rights and developing policy proposals for laws for the prohibition or limitation of qualified immunity by law enforcement.

### SB 4 – Temporary Election Changes (Ivey-Soto/Ramos/Trujillo/Johnson)

Creates a new section in the election code providing that county clerks can mail out early voting applications and authorizing creation of an election day polling location to operate as a mail-in ballot election precinct, rather than a voter convenience center under certain circumstances. Also allows independents but not party members the ability to change affiliation. The bill is delayed repealed to 12/31/2020.

### SB3 – Small Business Recovery Act of 2020 (Candelaria/Sapien/Rue/Ely/Matthews)

Would intercept severance tax permanent fund revenue and modify an existing small business load program currently administered by the Mortgage Finance Authority and SIC to expand an existing local loan program for businesses and nonprofits. It would also effectively freeze state unemployment insurance tax rates for a year and half

### SB 8 – Law Enforcement Body Cameras (Cervantes)

Would require certain law enforcement officers regularly working with the public to wear a body camera at all times on duty

## **The tax bill:**

### HB 6 – Temporary Tax Waivers and Distributions (Chandler/Akhil/Martinez/Wirth)

Creates temporary provisions waiving penalties and interest in certain state and local tax programs with due dates between April 15 and July 15, 2020. The bill increases the population-based distribution to municipal and county governments. In the corporate income tax, it points the state definition of net operating loss (“NOL”) carryover to that in the IRC as of January 1, 2018, effectively decoupling from CARES Act temporary NOL provisions and clarifying that NM does not provide for carrybacks (it didn’t anyway but the two could not be construed together). It also creates a new gross receipts tax exemption for receipts by eligible healthcare providers, except license hospitals, for CARES Act payments.

The bill contains an emergency clause and was effective 6/29/2020. That means CARES Act receipts prior to that date are not privy to the exemption and taxable to the extent they represent gross receipts.

Note on the temporary provisions to expand allowed tax programs and waive penalties and interest in certain state and local tax programs: New Mexico in some cases automatically ties to federal filing deadline changes, and the TRD Secretary had used her existing authority to waive penalties, however her authority does not include the ability to waive or forgive interest. This bill does so retroactively. It’s intended to provide relief from payment for up to a year – without any

penalty or interest – for taxes due in the months of March – July. Expanded tax programs include property tax and managed audits.

Tax Program	Waiver for Taxes that Became Due Between:	Taxes Must be Paid in Full By:
Personal and Corporate Income Tax	April 15, 2020 and July 15, 2021	April 15, 2021
Gross Receipts, Compensating, and Withholding Tax (CRS)	March 25, 2020 and July 25, 2020	April 25, 2021
Property Tax	April 10, 2020	May 10, 2021
Managed Audits	For managed audits performed between September 3, 2019 and January 3, 2020	December 31, 2021

### The budget/finance/solvency stuff:

#### HB 1 – General Appropriations Act Sanding (Lundstrom)

Enacts budgetary solvency measures to reduce and prioritize government spending relative to the recently passed budget, including across the board reductions of 1- 4% depending on the agency. It also provides for reductions in other recently passed program expansions and eliminates funding for recently passed pay increases (teachers still get 1%).

#### SB 5 – Solvency Measures (Munoz/Ingle)

Voids capital projects, authorizes transfers of surplus balances to the general fund, authorizes a “supersweep” of severance tax money to boost bonding capacity, and swaps some general fund appropriations.

<b>General Fund Summary Showing 2020 Special Session Actions</b>			
(million dollars)			
	<b>FY20</b>	<b>FY21</b>	<b>FY22</b>
<b>Revenue</b>			
Revisions	-\$439	-\$1,979	-\$1,709
Federal Funds		\$750	
<b>New Forecast</b>	<b>\$7,408</b>	<b>\$6,669</b>	<b>\$6,216</b>
<b>Appropriations</b>			
Non-recurring Revisions	-\$180	-\$167	New
Recurring Revisions		-\$414	Money:
<b>New Total</b>	<b>\$7,850</b>	<b>\$7,361</b>	<b>-\$992</b>
<b>Reserves</b>	<b>\$1,495</b>	<b>\$819</b>	
% of Recurring Appropriations	21%	11%	

Source: LFC Post Special Session Review

	FY20	FY21	FY22
General Sales Taxes	1%	-21%	7%
Income Taxes	-13%	-18%	3%
Oil & Gas Taxes and Royalties	-23%	-40%	12%
Permanent Fund Distributions	5%	6%	5%
<b>Total Recurring Revenue</b>	<b>-8%</b>	<b>-20%</b>	<b>6%</b>

**Non-recurring cuts:**

*Specials = \$45 Million*

*LEDA \$5 Million*

*Water Rights \$10 Million*

*HED Endowment \$10 Million*

*PED Reform Fund \$40 Million*

*Road project swaps \$75 Million*

*Capital Project Voids = \$14 million*

**Recurring Cuts:**

*“Sanding” = \$193 Million:*

*1% Public education*

*2% Department of Health*

*3% Human Services Department*

*4% all others*

*6% Public and Higher Ed Categorical programs*

*Compensation increase eliminated = \$157 Million*

*Federal Funds swapped for GF = \$162 Million: Public & Higher Ed, HSD*

*FY21 total General Fund spending flat vs. 7.5% pre-SS*

*If authorized, Federal Funds would provide a 4.7% increase of total spending in FY21 v FY20*

**Federal Funds/Temporary Fixes:**

*\$750 Million de-earmarking requires Federal approval*

*\$163 Million swaps: PED, HED, HSD – vetoed language*

*\$165 Million to Local Governments – vetoed language*

*\$23 Million to Tribal governments – vetoed language*

**Other Temp Provisions:**

*Early Child PF \$320 to \$300 Million*

*Fund sweeps = \$33 Million*

*If GF revenue insufficient, up to 2% sand of all agencies*

**Capital Outlay:**

*\$14 Million voids vs \$1.6 billion appropriated in last three years = 1%*

*Road maintenance cut \$45 Million (remains \$135 Million)*

*Road funding swap = \$75 Million  
“Supersweep” \$140 Million Severance Tax intercepted from Permanent Fund  
\$100 million 2020 projects “authorized but unissued”*

***Vetoes Restore \$27 million of Spending:***

*\$15 Million Federal Fund swap to PED and Early Child Dept.*

*\$5 Million LEDA cuts*

*\$1 Million JTIP cuts*

*\$5 Million Opportunity Scholarship*

*\$8.75 Million Public School Reform cuts*

*\$4 Million sweep Rural Infrastructure Loan Fund*

*Language on use of Federal Funds*

*[NMTRI Note: There’ll likely be a back-end loading of pain as the malaise is likely to continue for a while and we’ll be doing this with much less in reserves come January. That’s not to say there isn’t any good news... the price of oil has remained stronger than previously expected!]*

**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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## Remember This?

**HOLD THE DATE – NMTRI Annual Tax Policy Conference  
May 14-15 at the Sandia Resort and Casino. Be there or be  
square . . . well . . .**

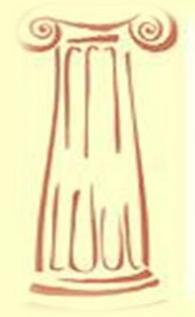
**We clearly don’t know when we can gather in person again. However, we are looking at alternatives and would love to hear from you on that subject.**

**We are convening a short annual board and member meeting August 5 at 3:00. The primary purpose is status report and board slate approval, but it is open to the public and anyone who wishes may attend. The Zoom detail is pasted at the end of the newsletter**

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## 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:

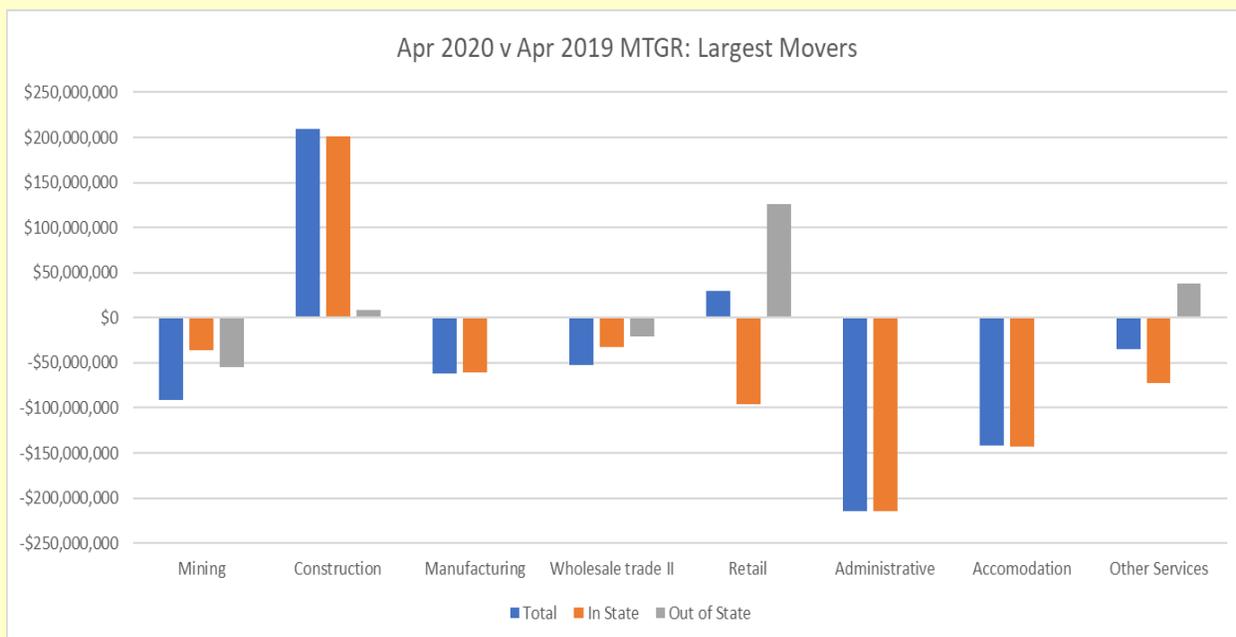


- State and local taxes should be adequate to provide an appropriate level of those goods and services best provided by the public sector, such as education, public safety, law enforcement, streets and highways, and the courts.
- State and local tax policy should do the least harm to the private economy.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

## KNICK KNACKS

*Did You See the article in the Albuquerque Journal about stronger than expected gross receipts tax collections?*

As it turns out, there was strength in some sectors. In April – the first and only fully shut down month – we saw two sectors – construction and retail – up from April 2019. The largely missed point, however, is the nature of the retail strength. Take a look at the chart below and notice that while retail GRT is up, it is because out-of-state GRT was up \$125M (in matched taxable gross receipts tax), against a reduction of \$100M reported in local jurisdictions.



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## TAX QUOTABLES

“Taxes, after all, are dues that we pay for the privileges of membership in an organized society.”  
-Franklin D. Roosevelt

“The same prudence which in private life would forbid our paying our own money for unexplained projects, forbids it in the dispensation of the public monies.”  
~Thomas Jefferson

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## ***Zoom Call Detail:***

You are invited to attend the **NMTRI Annual Membership & Board Meeting** on **Wednesday, August 5, at 3:00 pm**. Please read the details below carefully and let us know if you have any questions. Also, materials will be posted on our website prior to the meeting. Our call is being facilitated by Kelcy Flanagan of the New Society of Certified Public Accountants (copied above). If anyone experiences difficulties the day of the call, you may email or call her directly ((505) 908-1389). Please join me in thanking Kelcy for her invaluable assistance in keeping me from messing up the Zoom.

### **Please note the following:**

1. We recommend you log in **5 minutes early** to test your system.
2. Please [click here](#) to access the meeting on August 5 (also listed below). Please do not share this link with anyone.
3. Finally, please follow [this link](#) for “Zoom Attendee Tips”, which provides excellent guidance on joining and navigating the Zoom program.

### **To Access the Webinar on August 5 via computer:**

<https://us02web.zoom.us/j/86201681403?pwd=aE8wOWdTck-pjaldBc0pqa0wwSGVWUT09>

Alternate joining options are listed below; however, we do recommend that you join via computer for the best user experience.

#### **One tap mobile**

+12532158782,,86201681403#,,,,,0#,,840273593# US (Tacoma)

+13462487799,,86201681403#,,,,,0#,,840273593# US (Houston)

Meeting ID: 862 0168 1403

Passcode: NMTRI2020

#### **Dial by your location**

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

Meeting ID: 862 0168 1403

Passcode: 840273593

Find your local number: <https://us02web.zoom.us/j/kcCVsChsKK>



**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!