Tax Matters

The Newsletter of the New Mexico Tax Research Institute

Issue No. 2020-04 **February 23, 2020**

New Mexico Tax Research Institute 505-842-5833
P.O. Box 91657 Richard.Anklam@nmtri.org
Albuquerque, New Mexico 87199-1657 *www.nmtri.org*

IN THIS "SESSION ENDS" ISSUE OF *TAX MATTERS:*

- **The Last Gasp…What Just Happened?**
- **Table of Tax Bills on Governor's Desk**
- **HOLD THE DATE – NMTRI Annual Tax Policy Conference May 14-15 at the Sandia Resort and Casino**
- **Don't Forget the Principles**
- **Knick Knacks**
- **Tax Quotables**

INTO THE LEGISLATIVE SESSION – IT BEGINS - JANUARY 2020

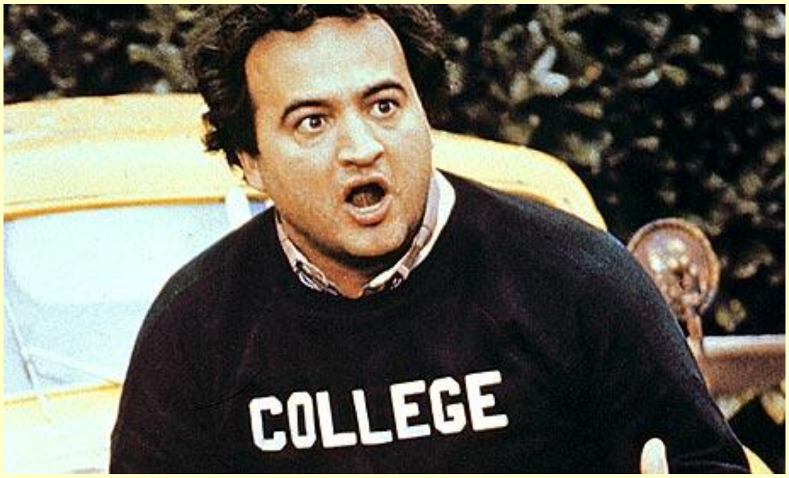
The 2020 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 21, and ended at noon on February 20. The deadline for bill introduction was February 5. Legislation not acted on by the Governor will be pocket vetoed on March 11. The effective date of legislation that's not a general appropriation bill, a bill carrying an emergency clause, or other specified effective date takes effect on May 20. Being a "short" or 30-day "budget" session, non-budgetary legislation and items not related to the budget were limited by the call of the Governor.

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 the 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.

The Last Gasp… What Just Happened?



While it didn't exactly come in like a lion, the 2020 legislative session in New Mexico pretty much went out like a tired and angry lamb. The pace was never very fast, but it didn't seem to be dragging either. One thing that slowed conversations down was some drama over the budget, which was late coming out and not what the Senate seemed to expect.

[NMTRI Note: At least in recent history, the legislature sometimes takes its time, but it does tend to gets it biggest job – the budget – done. Although, like certain automatic bodily functions (pick your favorite), passing a budget pretty much has to happen on a regular basis, so it's not necessarily the accomplishment some make it out to be. (And nobody wanted a special session.) Also, while we sometimes take a slightly cynical perspective of the process, it's important to remember the process itself is, by design, slow and tedious. The legislative process is less like the grease, and more like the sand, in the wheels of progress – and that's not always a bad thing. For every good idea there are lots of not-so-good ones, and political expediency often yields the worst legislation. Even good policy requires extensive vetting to be well crafted and properly implemented. So, thank your elected officials and more importantly the tireless efforts of the rarely thanked staff, for their hard work and a job well done.]

From a numerical or fiscal perspective, as expected, not a lot happened. We only counted nine tax bills that made it to the Governor's desk, six House bills and three Senate bills. If you lump in fees, then there were eleven bills. The House Taxation and Revenue Committee (HTRC) is continuing its policy of tabling bills with fiscal impacts pending a budget, but with a late budget the committee can end up needing to have its "good bill" day before they know what they can "spend." This year, the committee released extenders under the theory that such bills don't cost anything (they do). But DFA, LFC and legislators appear to be sweating the details as much or more than usual – which is a good thing.

Anyway, there were a couple bills that we weren't really following (till they passed) but impact the Taxation and Revenue Department and others, and those bills are included. Scroll past the commentary below for the list.

What Didn't'Happen?

Of course, real sweeping tax reform didn't happen, and no one expected it to. Reform never happens in the gross receipts tax (GRT). The corporate tax changes last year represent the only thing in recent memory that could qualify as reform. Despite there being numerous proposals to reduce the personal income tax, partly or entirely, on Social Security, military, and other retirement incomes – nothing ultimately came of it. Arguments for these measures varied from economic development to helping poor retirees to fairness. But the cost turns out to be exorbitant and the benefits, beyond political feel-good type benefits, are questionable. But since the proposals are populist perennial favorites, you will likely see them again. Another proposal by Senators John Arthur Smith and Clemente Sanchez to defer new higher personal income tax brackets from taking effect for five years sailed through each of their respective committees, but that bill wasn't heard on the Senate floor – and no one expected it to be.

There was a serious attempt on the part of Representatives Jason Harper and Javier Martinez to create a new manufacturing equipment deduction to take the place of the investment tax credit. This is good tax policy—because it reduces "pyramiding" of tax on products produced in the state and applies more broadly than the credit. But the credit also needs to continue to be available to existing IRB recipients and the bill was amended in HTRC. The questions of cost made some nervous, though, and ultimately political in-fighting between the chambers conspired to deny that form of good tax policy this year.

So, What DID Happen?
Gross Receipts Tax Measures – More Retail Base Erosion

We have repeatedly lamented the curious incongruity of tax policy conversations during the interim - including - concerns over tax and fiscal policy; the effectiveness of incentives; accelerated narrowing of the tax base through a proliferation of exemptions, deductions and credits; raising of rates; provisions exacerbating pyramiding and regressivity; loss of competitiveness and ability to create jobs; and lack of fairness and equity. During that interim process, lawmakers and policy wonks alike often engage in self-flagellation over changes that have blown holes in our tax base while doing little to actually make the structure more reliable, predictable, or less distortive or anti-competitive. But these same folks will, at other times, set off to dismantle the tax base in strange and inconsistent ways, or create additional burdensome requirements on taxpayers and tax collectors without the necessary mechanisms to make them useful. The narrowing of the tax base often makes "pyramiding" since simply carving out consumption from the base puts upward pressure on tax rates without significantly addressing the tax on business inputs. Higher rates not only impact pyramiding, but increase the regressive load on vulnerable households.

Unfortunately, this year wasn't any different, although the damage was done through extenders of present law provisions, as the legislature did not "spend" that much on taxes despite the flush budgets. For example, they passed the extender for the deduction for certain durable medical equipment ("DME") sales/leases by certain sellers in Rep. Javier Martinez' HB 109.
But there weren't any new GRT deductions or exemptions created this year.

They also passed out a measure extending the "Small Business Saturday" GRT deduction. It's similar to the back-to-school holiday but with different rules. It was a bi-partisan bill from Rep.

Doreen Gallegos and Sen. Neville and intended to help smaller retailers, HB 170. The bill was amended on the House floor to reduce the extension from eight to five year. It provides a GRT deduction for certain small businesses on small business Saturday – the day after Thanksgiving – for certain items under $500. It is also limited to businesses primarily doing business in New Mexico—making it almost certainly unconstitutional.

A gross receipts tax credit for the national labs was passed in the form of Rep. Akhil's HB 255. It was co-sponsored by our other three legislators from the labs and functions much like the Small Business Laboratory Tax Credit. It creates a tax credit for the labs that offsets the costs of providing technical assistance to certain technology maturation projects that the labs can't directly fund. The proposal also creates a fund to cover the cost of the credit. The fund is funded by a GRT distribution and reverts to the general fund after the credit program ends (reduced to 3 years from 5 by amendment).

The 2019 HB 6 cleanup bill found in Rep. Harper and Martinez' HB 326 was passed. The bulk of the cleanup was mostly oriented to the coming GRT sourcing rules, however an election for single sales factor apportionment for certain energy producers as manufacturers was erroneously stricken in HB 6 and restored in this bill. Clarifications resulting for last year's de-earmarking bill regarding local government tax increments bill were also included. Finally, the bill was amended in the Senate Finance Committee to include the provisions from Senator Sapien's SB 184, which extends and expands the investment credit. It gets extended 10 years, broadened to be at a rate equal to the applicable gross receipts or compensating tax rate applicable to the purchase when it is; and changes the broadens the investment/employment requirements.

[NMTRI Note: HB 326 represents an attempt to correct errors, improve policies, and present another "exposure" draft – if you will – for the upcoming GRT sourcing rule changes. This is a significant and essential issue, obviously, but not always met with as much interest or enthusiasm as you might hope. As for the investment credit extension and expansion – both were needed and it's still shocking it didn't happen last year. The extension of the populist tax holiday is a "shiny object" policy issue and such things shouldn't be encouraged, but since it benefits all New Mexico small businesses, your author plans to stock up on ammunition at his favorite Los Ranchos store.]

Other Tax Related Bills

Rep. Brown got an expansion of the lodgers tax approved in her HB 117. It expands the uses for which lodgers tax can be spent and for ordinances passed after 7/1/2020, it expands the lodgers tax to something defined as "temporary lodging," and carving it out from the normal exception for stays beyond 30 days.

In addition to the DME GRT deduction extender, HTRC Co-Chair Javier Martinez also carried and passed the measure to extend Biomass Income Tax and Corporate Income Tax Credits in his HB 146. It extends the present law personal income tax credit found in 7-2-18.26 and the corporate income tax credit found in 7-2A-26 to January1, 2030. They otherwise expired on January 1, 2020.

Sen. Stewart introduced a regular blast from the past in her income tax credit proposal for rooftop solar, SB 29. Her bill effectively reinstates the sunsetted Solar Markets Development Tax Credit, by creating a new Solar Markets Development Income Tax Credit. It provides, in its amended form, for an income tax credit in the amount of 10% of the cost of the purchase and installation of a residential, commercial, industrial, or agricultural solar system before 1/1/2028. The credit cannot exceed $6,000 per installation, can be carried forward for five years, and the overall credit program is capped at $8 million per year (cap administered by EMNRD).

Sen. Shendo's SB 116 expands the scope of the TRD's interagency confidentiality provision in 7-1-8.8 to include the sharing of return information for the administration of the healthcare quality surcharge, as well as provisions regarding sharing with DPS, EMNRD, and DOT. It was RSTP endorsed committee bill, but still somehow mildly controversial and mostly misunderstood, it appeared.

Another RSTP endorsed committee bill carried by Sen. Shendo was passed in the form of his SB 117, which clarifies the enabling language in 7-36-21.3, providing for property tax valuation limitations for those disabled **or** 65 and over in the year one turns 65. It's a clean-up provision from a prior year bill also.

Rep. Powdrell carried and passed a proposal to move the approval and credit reporting requirements for the Angel Investment Credit from the Economic Development Department to the Taxation and Revenue Department. It can be found in her HB 158.

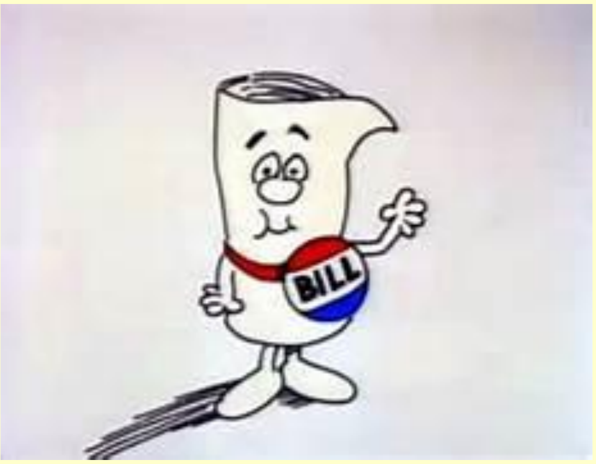
For those interested in fees, the Tobacco Products Tax Act was amended to include more licensing and other regulatory requirements to include significant fees. They can be found in Sen. Linda Lopez' SB 131. If interested, take a look at the LFC FIR – it's easier to digest than the bill and can be found here, explaining reporting and filing requirements. Another controversial fee related proposal was passed in Sen. Candelaria's SB 57. It creates a phased-in spay and neuter program fee, but exempts prescription pet food and small manufacturers.

[NMTRI Note: The lodgers tax proposal is an example of different issues and concerns raised by disparate interests being followed by good-faith efforts work through and address those issues and concerns. That said, it's a difficult issue and we're not sure they got the words exactly right. As for bio-mass – well, we'll skip the obvious BS joke].

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.

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 Passing Both Houses in the 2020 Regular Legislative Session:

Note – Income Tax bills are effective tax years beginning on or after January 1, 2018 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 109 J Martinez	**Tax Deduction for Medical Equipment: HB 109** Extends the expiring (7/1) gross receipts tax deduction found in 7-9-73.3 until 7/1/2030.	PASSED
HB 117 Brown	**Lodgers Tax Exemption: HB 117** Expands the uses for which lodgers tax can be used and for ordinances passed after 7/1/2020, expands the lodgers tax to include all motel-like rentals in excess of 30 days and to rentals of apartments and homes with some income and other exceptions.	PASSED
HB 146 J Martinez	**Expand Biomass Income Tax Credit & Reporting: HB 146** Extends the present law personal income tax credit found in 7-2-18.26 to 2030.	PASSED
HB 158 Powdrell-Culbert	**Transfer Angel Investment Credit Review: HB 158** Moves the approval and credit reporting requirements from the Economic Department to the Taxation and Revenue Department.	PASSED
HB 170 Gallegos/Neville	**Extend Small Business Saturday: HB 170** Extends the present claw "tax holiday" or gross receipts tax deduction for certain small businesses on small business Saturday – the day after Thanksgiving – for certain items under $500.	PASSED
HB 255 Akhil, Chandler, Sanchez, Harper	**Technology Readiness Gross Receipts: HB 255** Creates a limited gross receipts tax credit for laboratory services to certain companies similar to the laboratory partnership tax credit; creates a fund and GRT distribution. The credit sunsets in 3 years	PASSED
HB 326	**Tax Changes: HB 326**	PASSED

Harper/ Martinez	Attempts to make technical cleanup to last year's House Bill 6, particularly remote seller provisions and re-insertion of a provision allowing certain generation to eligible for the single sales factor election for manufacturers. Senate amendment added provisions extending and expanding the investment credit.	
SB 29 Stewart/ McQueen	**Solar Development Income Tax Credit: SB 29** Creates a personal income tax credit for the cost of installing solar thermal or photovoltaic systems in residential, commercial or agricultural applications. The program cost is capped at $10M per year, and the credit has a maximum of $6000 and can be carried forward for up to 5 years.	PASSED
SB 116 Shendo	**Enable TRD to Share Data for Tax Programs: SB 116** Expands the scope of the inter-agency confidentiality provision in 7-1-8.8 to include the sharing of return information for the administration of the healthcare quality surcharge, as well as provisions regarding sharing with DPS, EMNRD, and DOT. (RSTP committee bill)	PASSED
SB 117 Shendo	**Valuation Increases for Low-Income Disabled: SB 117** Clarifies the enabling language in 7-36-21.3, providing for limitations for those disabled or 65 and over in the year one turns 65.	PASSED

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

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

LATEST FROM THE STATE LAWMAKERS AROUND THE COUNTRY

Marketplace Update

Within the last two legislative sessions most sales-tax states have adopted legislation to require marketplace facilitators to collect and remit on behalf of their customers. These laws were quickly enacted to enhance revenues from increased sales tax compliance following the *Wayfair* decision. The remaining states will likely consider legislation this session. The National Conference of State Legislatures with input from the business community and other state organizations has created a thoughtful model bill. It is approved by the Executive Committee Task Force on State and Local Tax and has not been considered by the NCSL Executive Committee or NCSL's full membership. It contains a narrower definition of *marketplace* *facilitator*, preferred by the business community, among other uniform features. Its widespread adoption would create greater uniformity. The trend appears to be, however, that states want to see how their own, hard-worked, versions perform before considering amendments.

SALT Deduction:

IRS T.D. 9862 disallows a federal deduction on account of a gift to a charity to perform a governmental activity, e.g., funding schools, when the state or locality reimburses the donation at or near 100%. Notably, however, the regulation is silent with respect to allowing a passthrough entity to take a charitable deduction in response to a state or local incentive; these deductions ultimately inure to the financial benefit of the passthroughs owners. IRS silence has led to a consensus in the taxpayer community that such deductions are permitted. States are looking closely at optional and mandatory taxation at the passthrough level to effectively allow the members/owners to fully deduct state and local taxes.

TAX QUOTABLES

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

~ *Winston Churchill*

"We stand today at a crossroads:
One path leads to despair and utter hopelessness.
The other leads to total extinction.
Let us hope we have the wisdom to make the right choice."

~*Woody Allen*

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.

NEW MEXICO TAX RESEARCH INSTITUTE

Join NMTRI today!

"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.