

Tax Matters

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INTO THE LEGISLATIVE SESSION – IT BEGAN - JANUARY 16, 2018



The 2018 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 16, and ends at noon (or somewhere thereabouts) on February 15. The deadline for bill introduction is January 31. Legislation not acted on by the governor is pocket vetoed on March 7. 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 16. Being a "short" or 30-day "budget" session, non-budgetary legislation and items not related to the budget are not fair game for open introduction and are limited by the call of the Governor. It is an interesting time. There is still talk of tax reform, and Governor wants to address crime issues, but the fiscal crisis is over for the moment – mostly thanks to very strong oil price/production in the Permian. So, while there's plenty to fight about and money to fight over, it doesn't appear as tense as some and it's possible they'll quietly fund government and go home, without significant other damage or accomplishment.

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.



Tax-pectations for the Session

The 30-day session has arrived. In addition to a new year, we have several new members of both houses, as well as a new Democratic leadership in the House. Being a “budget only” 30-day session, only tax/budget issues and the controversy they bring are fair game, but so are other controversial issues where the Governor chooses to allow them. There are already pre-filed bills such as those we’ve seen from prior sessions (crime, abortion, etc.), and not all is just red meat.

This year however, most of the oxygen in the room will be consumed by matters of budget and taxes, as well as anything else the Governor wants to consider. The beginning of most 30-day sessions is faster than 60-day sessions, but still slower than one would like. Even the short session finds time for pomp and circumstance. This year however, the fact the state was in a deficit position before ending up in a surplus with almost reasonably reserves in 2018 now expected has taken the crisis out of the room. Stranger still, the forecast is likely to get stronger still when it’s likely revised in the near future (the primary driver there being higher than expected prices for oil and gas, along with oil production in the neighborhood of 30% ahead of forecast). The December consensus revenue forecast had the legislature \$199 million to the good for 2018, and that’s with reserves of around 9%. The December consensus revenue estimate can be found on the LFC website [here](#).

[NMTRI Note: The forecast will likely be revised upward during the session, and while cases for adjustments in both directions likely could be made, most news is good, at least in the short run, although the lion’s share goes to favorable oil price/volume, and that as we know is highly volatile].

In her Executive budget (found [here](#) on the Governor’s DFA website) Governor Martinez has proposed a budget of \$6.32B, with spending increases including state worker salary increases (1%) with public safety and teachers seeing larger increases of course, as well as more money for education, CYFD, and economic development programs like LEDA and JTIP. Legislators have proposed spending measures of their own, however the reasonably healthy – but not too healthy - state of the budget – suggests that there’s lots of room to get a budget deal but not a lot of leverage to force big deals or huge compromises. Both sides want some similar things, naked tax increases are still unacceptable (largely?) to the Governor, and meaningful cuts without offsets probably aren’t really in the cards either, although hospitals want to be taxed to increase funding Medicaid funding of the healthcare system.

Despite call for reform and repeated self-flagellation on the part of policy makers over how we’ve created too many exemptions, deductions and credit, the fact that the majority of the 21 House and Senate tax related proposals are new or expanded deductions and credits bemoans the problem and belies the fact that we have a little extra money to spend.

What Happened this Week



We're less than a week into the session that started Tuesday, and are ten days away from the bill introduction deadline. We're currently tracking 21 tax related proposals, 12 House bills and 9 Senate, which is coincidentally the same number of bills that we listed last week. Little has happened as no bills have been introduced and recorded. The House bills have yet to receive committee assignments, whereas roughly half the Senate bills have been assigned to committees, whereas the remainder are waiting to be determined germane before

moving on to their respective committee assignments. The House Taxation and Revenue Committee has yet to meet, although they have no need to meet regularly as they're historically a last stop committee rather than first. The same can be said of Senate Finance and House Appropriations, which have been meeting – but to hear budgets and the as opposed to bills. We expect to see more committees coming to life – and more bill introductions – this week.

Of the 21 bills we mentioned, three revise the solar market development credit, albeit in three different ways (see [HB 35](#), [HB 87](#), and [SB 79](#)). All three do however attempt to make the credit retroactive. There is a related proposal to create a tax credit for energy storage devices in Rep. Sariñana's [HB 77](#) - Energy Storage Systems Tax Credit. Rep. Moe Maestas has a proposal to eliminate the annual \$50M film credit cap in his [HB 113](#). While not tax credits, the proposed gross receipts tax deductions in Senator Burt's [SB 99](#) (for construction services performed to implement a fighter aircraft training mission in a Class B county) and Rep. Carl Trujillo's [HB 128](#) (for "broadband telecommunications network facilities components", or equipment used by telecommunications companies to supply internet access and related services), appear intended for economic development purposes. The same could be said for the preferential tax treatment imposed on certain small producers of cider found in Senator Mimi Stewart's [SB 32](#). We still expect to see proposals to "fix" the high wage jobs tax credit, but we've yet to see it introduced.

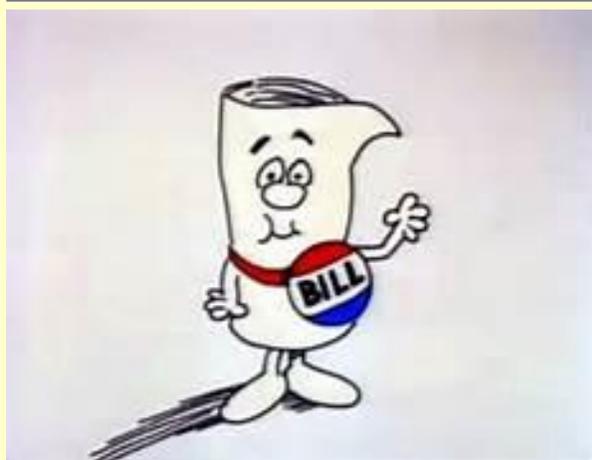
Thus far, it's been a snooze with the exceptions of the fanfare and speeches and receptions. Hopefully it stays that way while allowing for anything good to happen. If they do revise the consensus revenue forecast, that will likely happen this coming week, as it has to happen before budgets can be finished.

[NMTRI note: incentives are designed to encourage certain desirable activities or outcomes. Incentives promised and given after the fact or to things happening anyway are not incentives, but rather, rewards. In addition to being constitutionally questionable, they can't possibly have a positive return on investment because they didn't make anything happen. With real incentives, the hard debate is determining whether and to what extent they are effective – and that question is always really difficult to answer. With gifts, at least there shouldn't be a debate, but we should always be clear which we're talking about and dealing with.]

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 Pre-filed in the 2018 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 35 C Trujillo/Ruiloba	Liquor Excise Tax Distributions HB 35 Distributes 45% of revenues to the local DWI grant fund, creates a drug court fund and distributes 5% to the drug court fund, and eliminates the 39% distribution to the lottery fund.	HPREF
HB 36 C Trujillo Maestas Barnes	Reinstate Solar Market Development Credit: HB 36 Reinstates retroactively the sun-setted credit, bifurcates benefits and program caps between individuals and business/agriculture (annual program caps at \$1.5M for business/ag/\$3.5M for residential, with a 10% credit capped at \$4K/residence and \$9K/business).	HPREF
HB 47 Rodella/Cisneros/Garcia	Tax Refund for National Guard Eligibility: HB 47 Eliminates language in the distribution rules in the TAA as well as in the tax refund designation language in the personal income tax act that limits contributions and distributions for purposes of assisting NM national guardsmen and their families when deployed overseas.	HPREF
HB 70 Little	Change Motor Vehicle Tax Distribution: HB 70 Over four years and in 25% increments, redistributes the motor vehicle excise tax from the general fund to the road fund.	HPREF
HB 77 Sariñana	Energy Storage Systems Tax Credit: HB 77	HPREF

	Creates a new tax credit program for qualified energy storage systems, not to lesser of \$5K or 30% of the qualified expenditures in the case of individuals, and 75K/30% in the case of businesses. Owners of some pass through entities would qualify. The overall program is capped at \$750/yr in credit approvals.	
HB 79	Thanksgiving Saturday Gross Receipts: HB 79 Creates another “tax holiday” (GRT deduction) for any “sale of tangible personal property at retail” by a business on the Saturday after Thanksgiving, but only for those businesses with 25 or fewer employees in NM.	HPREF
HB 83 J. Trujillo	Estate or Trust Distribution Tax Deduction: HB 83 Creates a deduction from trust income for distributions to non-New Mexico beneficiaries. Excluded from the deductions are those things, with the exception of business income, that would otherwise not be subject to NM income tax if earned in NM by a nonresident.	HPREF
HB 87 Trujillo/Rodella	Solar Market Development Tax Credit: HB 87 Reinstates retroactively the sun-setted credit. Credits for business, residential and agriculture are limited to \$9000 and establishes an annual program cap of \$5 million.	HPREF
HB 88 Fajardo/Baldonado	Tax Delinquent Property Sales: HB 88 Requires that <i>all</i> delinquent properties be placed for sale by the PTD, rather than at least one, unless the director and country treasurer enter into a written agreement stating reasons, timing of recovery, and with copies sent to the Secretaries of DFA and TRD.	HPREF
HB 104 M. Garcia	Rural Healthcare Practitioner Credit Changes: HB 104 Moves the \$3K credit beneficiaries into the category of \$5K beneficiaries (eliminating the \$3K category). Also adds pharmacists, social workers, and anyone licensed pursuant to the counseling and therapy practice act the list of qualified healthcare practitioners that are eligible for the credit.	HPREF
HB 113 Maestas	Remove Film Tax Credit Annual Cap: HB 113 Eliminates the \$50M annual cap on film credit approvals.	HPREF
HB 128 Trujillo	Broadband Gross Receipts: HB 128 Creates a new gross receipts and compensating tax deduction for “broadband telecommunications network facilities components”, or equipment used by telecommunications companies to supply internet access and related services.	HPREF
SB 17 Cisneros	Gross Receipt for Certain Nonprofits: SB 17 Adds operators of federally designated national laboratories to the list of exceptions to the general gross receipts tax exemption for nonprofits.	SCORC/SFC-SCORC
SB 15 Cisneros	Tax Refund for National Guard Eligibility: SB 15 Eliminates language in the distribution rules in the TAA as well as in the tax refund designation language in the personal income tax act that limits contributions and distributions for purposes of assisting NM national guardsmen and their families when deployed overseas.	SPAC/SFC-SPAC

SB 24 O'Neill	Auto Recycler Purchase Info to Tax & Rev: SB 24 Requires TRD to maintain and make available to auto recyclers a system whereby recyclers can check the stolen status of a vehicle before purchase. Also requires recyclers to electronically report to TRD within 48 hrs of the sale of a vehicle, notice of the sale and other information.	SCORC/SFC- SCORC
SB 25 Morales	Increase Cigarette & E-Cigarette Taxes: SB 25 Slightly more than triples the tobacco products tax, and includes e-cigarette and other tobacco smoking <i>devices</i> not currently taxable outside the GRT (i.e. pipes, papers, etc.). Also, the proposal almost doubles the cigarette tax.	SEC/SCORC/ SFC-SEC
SB 32 Stewart	Cider Definition and Tax Rate: SB 32 Amends the definition of cider in the liquor excise tax act to allow for greater alcohol content, and creates a new preferential \$.08/gal tax rate for small wineries producing cider under 10,000 gallons, and \$.28/gal on the next 5K gallons (regular rate: \$.41/gal).	SCORC/SFC- SCORC
SB 49 Sharer	Tax Reform: SB 49 Eliminate corporate and personal income tax, motor vehicle excise tax, eliminate most GRT exemptions and deductions.	SCORC/SFC- SCORC
SB 68 Cisneros	Tax Code Cleanup and Reporting: SB 68 Proposes to eliminate some unused GRT and income tax deductions and credits, repeal the chemicals and reagents GRT deduction found in 7-9-65, and require certain taxpayers to separately state deductions or in some cases forego confidentiality, and weaken taxpayer confidentiality provisions to allow for taxpayer confidential information to be shared outside the TRD to certain economists.	SPREF
SB 79 Stewart	Solar Market Development Tax Credit: SB 79 Reinstates retroactively the sun-setted credit and changes program, caps the overall credit program at \$5M, and individual credits are limited to \$9K. Benefits are determined on a phased-in sliding scale of 10% of allowable costs if the system is installed prior to 1/1/21, and is reduced over time to 6% through 2033.	SPREF
SB 99 Burt/Griggs	Aircraft Training Construction Gross Receipts: SB 99 Creates a new gross receipts tax deduction for construction services performed to implement a fighter aircraft training mission in a Class B county (read: Holloman AFB).	SPREF

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

“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



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.

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