

# ***Tax Matters***

*The Newsletter of the New Mexico Tax Research Institute*

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## **IN THIS “LEGISLATIVE SESSION” ISSUE OF *TAX MATTERS*:**



- **Into the Legislative Session**
- **Don't Forget the Principles**
- **Tax-pectations for the Session**
- **List of Tax Related Legislation**
- **Knick Knacks**
  - **Tax & Rev Gets New Secretary**
  - **Preliminary O&G Study released**
- **Tax Quotable**

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## INTO THE LEGISLATIVE SESSION – IT BEGAN - JANUARY 15, 2019



The 2019 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 15, and ends at noon (or somewhere thereabouts) on March 16. The deadline for bill introduction is February 14. Legislation not acted on by the governor is pocket vetoed on April 5. 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 June 14.

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. There is still talk of tax reform, and the Governor wants to address crime issues, but the fiscal crisis is over for the moment – mostly thanks to very strong oil prices and 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 sessions and it's possible they'll quietly fund government and go home, without significant other accomplishment (or damage).

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 own 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 the legislature's website <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.

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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.



## **Tax-pectations for the Session**

The 60-day legislative session has arrived. In addition to a new year, we have a new governor, Michelle Lujan Grisham, and lots of new House members – mostly Democrats following the blue wave that hit many parts of the country in November. The Senate was not up for election, however the Governor is asking for more than one name from the counties served by former Senator (and now Lieutenant Governor and Acting Secretary of Education) Howie Morales. Sen. Cisco McSorley also resigned recently to become the Director of Probation and Parole Division of the Department of Corrections. He was replaced by the Gubernatorial appointment of former CD1 congressional candidate Antoinette Sedillo Lopez.

Rep. Brian Egolf remains the top-dog in the House as Speaker, however changes in post-election composition of the House necessitated many changes in House committee chairs. Rep. Jim Trujillo remains House Taxation and Revenue Committee Chair, and Rep. Patricia Lundstrom remains chair of the House Appropriations and Finance Committee. Members voted Rep. Jim Townsend as Minority Leader, with Rep. Rod Martinez remaining as Minority Whip.

The Senate leadership remains as it was, with Sen. Mary Kay Papen as President Pro-Tem, Sen. Wirth as Majority Leader, and Sen. Ingle as Minority Leader. Committee chairs are also as they were, beginning with Sen. John Arthur Smith presiding over the Senate Finance Committee and Sen. Clemente Sanchez at the helm of the Senate Corporations and Transportation Committee.

Being an open 60-day session with new a new governor, new legislators, and lots of new money on the table, they're expecting a record number of bills to be introduced. There are already 301 House bills and 290 Senate bills introduced. As tax bills go, we're already tracking 18 House and 15 Senate bills (for a total of 32) so far.

Although oil prices declined recently and have bounced around as they tend to do, the general fund revenue forecast is still bullish and calls for over \$1.1 billion in “new money” available for appropriation in the upcoming year – a 17% increase over the current. Collections in the prior and current year will also be above forecast, resulting in plenty of money to provide for sufficient reserves and for additional one-time expenditures to restore fund balances, catch up on needs, etc. 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 a budget of \$7.137 billion, with spending increases including state worker salary increases (1%), and larger increases for public safety workers and teachers. The governor is also calling for more money for education, health and family related programs, and economic development programs like LEDA, JTIP, and of course the film incentive program. Legislators have proposed spending measures of their own. Both sides want some similar things, although they differ in amount and approach. For instance, the Governor wants to pay off the quarter billion-dollar backlog in film credits immediately, whereas the LFC does not appear to be so anxious. She also wants to fund LEDA to the tune of \$70M, whereas LFC is looking at much less. All will be fodder for horse-trading and compromise as the various interests invariably come to agreement.

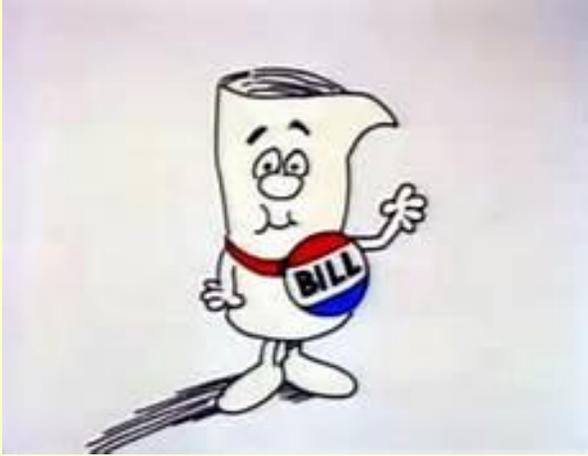
## *Tax Reform Anyone?*

Despite calls for reform and repeated self-flagellation on the part of policy makers over how we've created too many exemptions, deductions and credits, the fact that is that the majority of the tax proposals in the table below are exactly that. Some represent continuation or modifications of existing provisions, while others are new ideas. Some represent the tax populism or pandering to constituent bases we complained about at the end of the last session. We are seeing – and still expect to see – more tax increase proposals, despite the fiscal surplus we're currently enjoying (some good, some not so much).

All that said, tax reform conversations are also back on the table. Tax reform, of course, is in the eyes of the beholder and the hard things necessary for comprehensive reform may prove too difficult, especially without the financial crisis that may sometimes be necessary to convince lawmakers that it's time to push through reforms. This year, the legislative effort at fairly comprehensive reform is the "tax package" found in [HB 6](#). It's been introduced by HTRC Chairman Trujillo, as well as Rep. Stapleton Williams, Martinez, Maestas, and Herrera. It's been given the golden ticket of just one committee assignment – to Chairman Trujillo's own committee – and will be heard tomorrow morning. It will likely end up with a few amendments and then find itself on the House floor. Then the lobbying begins and it's anyone's guess whether it will survive intact, unravel into smaller pieces, or disappear completely. Elements of the bill are likely to survive, and even perhaps be introduced separately in the House and/or Senate. We're also likely to see one or more reform bills introduced in the Senate as well. We'll do a deeper dive into the reform bills and other tax proposals in our next newsletter, but SB 6 imposes mandatory combined filing, market base sourcing, remote seller ("marketplace") rules with destination based sourcing and local option compensating tax, personal income tax changes/increases, repeal of some gross receipts tax deductions – including nonprofit purchases of tangible personal property, increased gasoline and special fuel taxes, increased motor vehicle registrations, partial repeal of hold-harmless payments, provides for hospital taxation, changes brackets and increases personal income tax, and decreases the gross receipts tax rate... not a narrow proposal.

*[NMTRI note: tax reform is hard, and the overall conditions make it harder. Previously, as a state we were so broke we practically had negative reserves and were sweating the rounding error in fiscal estimates. This year, we're awash in cash and some may begin to entertain doubts that there is anything wrong with the system. Tax reform "light" is more likely. The good and bad of that is sometimes we get one or two good things done, but in so doing can also eliminate the political pressure or will to fix the system.]*

## **Thanks For Reading**



Join us weekly through the session as we try to provide balanced policy analysis, commentary and discussion 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.

### **Bills with significant tax implications in the 2019 Regular Legislative Session:**

Note – Income Tax bills are effective tax years beginning on or after January 1, 2020 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.

<b>Bill Number &amp; Sponsors:</b>	<b>Title and Link to bill language &amp; Description</b>	<b>Assignments-Location:</b>
HB 6 J Trujillo, Stapleton Williams, Martinez, Herrera, Maestas	<b>Tax Changes <a href="#">HB 6</a></b> The House’s first stab at a tax reform bill. Includes provisions for mandatory combined corporate income tax filing, market base sourcing, remote sales gross receipts taxation with destination based reporting and local option compensating tax (effective in the future), local option compensating tax, hospital taxation, hold harmless changes and GRT repeals, fuel tax and motor vehicle registration increases, and GRT rate reduction.	HTRC-HTRC
HB 41 M Garcia	<b>Rural Health Practitioner Tax Credit Changes: <a href="#">HB 41</a></b> 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.	HHHC/HTRC -HHHC
HB 155 Dow	<b>Local Economic Development Taxes: <a href="#">HB 155</a></b> Increases municipal and county infrastructure gross receipts tax rate maximums to 5/8%, increases minimum amount expended on ED program support or implementation, and requires new additional county option authority be subject to referendum.	HCEDC/HTR C-HCEDC
HB 163 J Trujillo	<b>Tax Deduction for Nonresident Beneficiary: <a href="#">HB 163</a></b>	HJC/HTRC- HJC

	Creates a deduction from trust income for the portion of income set aside for distributions to non-New Mexico beneficiaries. Excluded from the deduction is income that would be subject to NM income tax if earned by a nonresident.	
HB 162 J Trujillo	<b>Insurance Premiums Tax Provisions:</b> <a href="#">HB 162</a> Makes the Insurance Premiums Tax subject to the provisions of the Tax Administration Act, adds distributions to the law enforcement and fire protection funds, and requires the Superintendent of Insurance information necessary for the TRD to administer the premiums tax.	HHHC/HTRC -HHHC

HB 165 Sweetser	<b>Modifying High Wage Jobs Tax Credit: <a href="#">HB 165</a></b> Makes significant changes to the requirements including eligibility requirements (JTIP eligibility only), increases the cap on a qualifying wage to \$150K, and reduces the credit percentage to 8.5%. Also, the qualifying job can be eligible for the credit for seven years.	HCEDC/HTR C-HCEDC
HB 176 J. Trujillo	<b>Broadband Telecomm Facility Gross Receipts: <a href="#">HB 176</a></b> 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.	HCEDC/HTR C-HCEDC
HB 179 C Trujillo	<b>Feminine Hygiene Product Gross Receipts: <a href="#">HB 179</a></b> Creates a new gross receipts tax deduction for “feminine hygiene products”, along with separate reporting requirements.	HHHC/HTRC -HHHC
HB 184 M. Garcia	<b>Apprenticeship Program Income Tax Credits: <a href="#">HB 184</a></b> Until 2024, creates a personal and corporate income tax credit of up to the first \$1000 in wages paid to a “qualified apprentice” (up to \$2000 if the apprentice received a high school diploma or GED within four years prior to the service). The credit may not be taken for more than five years and may be carried forward three years and prorated for qualified apprentices working seven months or more.	HLVMC/HT RC-HLVMC
HB 185 J Trujillo	<b>Electric Motor Vehicle Excise Fees and Tax Credits: <a href="#">HB 185</a></b> Creates personal income tax credits for electric and hybrid vehicles, and charging devices, for those with incomes below certain thresholds, and increases fees on electric and hybrid vehicles (\$25 and \$15, respectively).	HENRC/HTR C-HENRC
HB 188 Brown	<b>Motor Vehicle Excise Tax to State Road Fund: <a href="#">HB 188</a></b> Shifts the MVX from the general fund to the road fund over three years (25% road/75% GF in 2020, 75% Road/25% GF in 2021, and 100% road fund).	HTPWC/HTR C-HTPWC
HB 201 Brown	<b>County Road Fund Tax Refund Donation: <a href="#">HB 201</a></b> Provides for a personal or corporate income taxpayer to contribute a portion of their tax refund to the road fund of the county of their choice. It also provides a nonrefundable personal or corporate income tax credit for a donation made to county road funds of up to \$1 million.	HTPWC/HTR C-HTPWC
HB 211 Gonzales/Cr owder	<b>County and Municipal Gas Tax Changes: <a href="#">HB 211</a></b> Renames the County and Municipal Gasoline Tax Act to the County and Municipal Fuels Tax Act, and expands its use and authorization to all municipalities and counties and increases the amount of the tax to up to 10 cents per gallon.	HLLC/HTRC -HLLC

HB 219 Small, Dow, Romero	<b>Make Angel Investment Tax Credit Refundable: <a href="#">HB 219</a></b> Prospectively changes the five-year carryforward provision in present law of unused credit balances to allowing unused balances to be refunded to the taxpayer.	HCEDC/HTR C-HTRC
HB 221 McQueen	<b>Home Energy Efficiency Income Tax Credit: <a href="#">HB 221</a></b> Beginning 1/1/19 and until 2025, creates a refundable personal income tax credit, capped in the aggregate to \$1M/yr, until 2023 and \$2M for 2023 and 2025, for expenditures that increase energy efficiency by 20% or more: 30% not to exceed \$3K; and by 40% or more: not to exceed \$4K. The recipient cannot be related to the contractor doing the work and the assessed savings will be determined via guidelines issued by EMNRD.	HENRC/HTR C-HENRC
HB 247 Chandler	<b>Increase Corporate Income Tax Rates: <a href="#">HB 247</a></b> Effective tax years beginning on or after 2020, creates a new tax bracket for income over 500,000 and under \$1M at a rate of 6.4%, and raises the tax for incomes above \$1M from 5.9% to 6.9%, and then raises that rate to 7.6% in 2021.	HCEDC/HTR C-HTRC
HB 257 Ezzell	<b>Enviro Services Gross Receipts Uses: <a href="#">HB 257</a></b> Broadens the applicable use of the gross receipts tax increment for municipal environmental services to be applicable to disposal of demolition debris and for use in storm water runoff control, and expands the base of those that can impose it to communities with property tax values in 2008 in excess of \$600M versus \$750M.	HJC-HJC
HB 261 Romero/Tho mson	<b>Increase Cigarette Taxes: <a href="#">HB 261</a></b> Slightly more than triples the cigarette and tobacco products taxes, and distributes the additional revenues to public schools rather than health related expenditures.	HHHC/HTRC -HHHC
SB 6 Wirth/Harper	<b>Tax Determination of In-State Sales: <a href="#">SB 6</a></b> Eliminates language in the distribution rules in the Tax Administration Act 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.	SCORC/SFC- SCORC
SB 7 Wirth	<b>Occupancy Tax for Affordable Housing: <a href="#">SB 7</a></b> Provides that up to on half of the occupancy tax imposed by a municipality pursuant to the Lodgers Tax Act attributable to “short term occupancy rentals” may be used for affordable housing.	SCORC/SFC- SCORC
SB 11 Cisneros	<b>Gross Receipt for Certain Nonprofit Organizations: <a href="#">SB 11</a></b> Adds prime contractors of federally designated national laboratories to the list of exceptions to the general gross receipts tax exemption for nonprofits (effectively targeting Los Alamos National Laboratories for taxations under the GRT).	SCORC/SFC- SCORC

SB 39 Stewart	<b>Solar Market Development Tax Credit: <a href="#">SB 39</a></b> 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.	SCORC/SFC- SCORC
SB 71 McSorley	<b>Medical Cannabis Gross Receipts: <a href="#">SB 71</a></b> It just doesn't matter.	Tabled Indefinitely
SB 72 McSorley	<b>Increase Cigarette Tax and Distributions: <a href="#">SB 72</a></b> It just doesn't matter.	Tabled Indefinitely
SB 98 O'Neill	<b>Additional Upper-Tier Income Tax Brackets: <a href="#">SB 98</a></b> Adds an upper tax bracket of 8.2% for singles taxable income above \$250K, and married households with taxable income in excess of \$375K.	SCORC/SFC- SCORC
SB 106 Sapien	<b>Short-Term Occupancy Tax: <a href="#">SB 106</a></b> For purposes of the occupancy tax imposed by municipalities pursuant to the Lodgers Tax Act, eliminates the exclusion for three or fewer units	SCORC- SCORC
SB 113 Stefanics	<b>Local Economic Development Taxes: <a href="#">SB 113</a></b> Increases municipal and county infrastructure gross receipts tax rate maximums to 5/8%, increases minimum amount expended on ED program support or implementation, and requires new additional county option authority be subject to referendum.	SCORC/SFC- SCORC
SB 129 Candelaria	<b>Tax Protests &amp; Admin Hearing Office: <a href="#">SB 129</a></b> Changes a number of provisions in the Tax Administration Act designed to reduce protest volume make informal resolution of disputes easier and faster.	SCORC/SJC- SCORC
SB 166 Sanchez	<b>Increase Cigarette &amp; E-Cigarette Taxes: <a href="#">SB 166</a></b> Adds definitions of e-cigarette devices, liquids, and "little cigars" to the tobacco products tax act and subjects them to tax; increases cigarette taxes to 10 cents per cigarette; and creates a reduction in tax in the amount of 25 or 50% depending on if and what type of modified risk tobacco order has been issued by the U.S. Secretary of Health.	SPAC/SCOR C/SFC-SPAC
SB 183 Ortiz y Pino	<b>Increase Working Families Tax Credit: <a href="#">SB 183</a></b> Doubles the rate of credit from 10 to 20% of the federal earned income tax credit.	SCORC/SFC- SCORC
SB 220 Wirth	<b>Certain Property Tax Increase Limits: <a href="#">SB 220</a></b> Increases the income limit for those eligible for the property tax limitation (freeze) for disabled individuals over 65 to \$35K of "modified" gross income in tax years 2020 and after.	SPAC/SCOR C-SPAC
SB 242 Ortiz y Pino	<b>Medical Cannabis Gross Receipts &amp; Deductions: <a href="#">SB 242</a></b> Adds "medical cannabis" to the oxygen and oxygen services gross receipts tax deduction found in 7-9-73.2.	SCORC/SFC- SCORC

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## KNICK KNACKS

### NM Tax & Rev Get New Secretary TODAY!



Stephanie Schardin Clarke has been named by Governor Michelle Lujan Grisham as the Secretary-Designate to the New Mexico Taxation and Revenue Department. We're grateful the agency has a leader, promise our help, and congratulate her on the appointment. Stephanie has been in NM state government for years and has an excellent reputation for being a smart, hardworking, ethical professional and we wish her the best!

### NMTRI Publishes Preliminary New Study

NMTRI is working finalizing the latest oil and gas study in *New Mexico: A Comparative Analysis – the Oil and Gas Industry's Fiscal Contribution to State Governments*. The most comprehensive of its kind to date, the study conducted by accomplished accounting and consulting firm Moss Adams LLP compares the state and local contributions of the oil and gas industry in New Mexico and eight other states – all in terms of production value. Not shockingly New Mexico was amongst the highest in tax burden and received the largest overall contribution relative to production – nearly 22% - directly as a result of New Mexico's large portion of production on state and federal trust land. Moss Adam's did yeoman's work to compile the voluminous data involved in this mammoth undertaking. The general report can be found on our website [HERE](#), and the longer comprehensive draft report is [HERE](#). We'll discuss the report's results in much greater detail in the next edition.

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## TAX QUOTABLES

“Like mothers, taxes are often misunderstood, but seldom forgotten.”

~ *Lord Bramwell*

“Tax reform is taking the taxes off things that have been taxed in the past and putting taxes on things that haven't been taxed before.”

~*Art Buchwald*

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**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!