

Tax Matters

The Newsletter of the New Mexico Tax Research Institute

Issue No. 2018-08

March 11, 2018

New Mexico Tax Research Institute
P.O. Box 91657
Albuquerque, New Mexico 87199-1657

505-842-5833
Richard.Anklam@nmtri.org
www.nmtri.org

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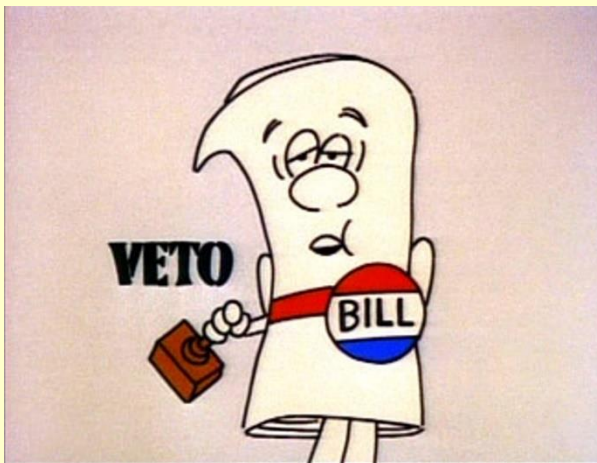
INTO THE LEGISLATIVE SESSION – IT BEGAN – JANUARY 16, 2018 – IT ENDED – FEBRUARY 15, 2018



The 2018 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 16, and ended at noon on February 15. Legislation not acted on by the governor was “pocket vetoed” on March 7. The effective date of legislation, other than a general appropriation bill or a bill carrying an emergency clause or other specified effective date, is May 16. Being a “short” or 30-day “budget” session, non-budgetary legislation and items not related to the budget were limited to 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.

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. 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.

Governor’s Time to Act Ends—Vetoes Bills



While it didn’t exactly come in like a lion, the 2018 legislative session in New Mexico pretty much went out like a lamb. The pace was never fast – some suggest intentionally. After the House and Senate managed to reach a budget deal there was a little drama, and with very little reason, since all sides started in fairly close agreement and the revenue forecast only went up. No significant “deals” were done with respect to tax reform either.

The Governor’s time to act ended Tuesday, and we were essentially correct in our assumption that she was done signing bills, as only one more provision we were tracking was signed, and it wasn’t really a tax bill but does implicate the NMTRD. The bipartisan proposal in [HB 52](#) by Rep.’s Youngblood and Ruiloba and Sen. Morales was signed last Monday. It requires the TRD to maintain and make available to auto recyclers a system whereby recyclers can check the stolen status of a vehicle before purchase. It also requires recyclers to electronically report to TRD, within 48 hours of the sale of a vehicle, notice of the sale and other information.

However, the Governor did move to veto a few bills, and allowed others to pocket veto as result of inaction on her part.

What Got Vetoed?

The exception to the nonprofit gross receipts tax (GRT) exemption for national laboratory prime contractors found in Sen. Cisneros' *Gross Receipt for Certain Nonprofits*, [SB 17](#), was vetoed. We knew she wasn't a fan of the direct targeting of Los Alamos Laboratory and would have preferred a larger nonprofit effort including hospitals or perhaps other reform. She said as much in her veto message. As a reminder, Los Alamos Laboratory was operated for years by a nonprofit prime contractor. But it's not that the lab wouldn't pay tax at all when operating in that form, it would just pay less tax. In general, the GRT rules would push the incidence of the tax to subcontractors, essentially reducing the base by the salaries and profit margin of the prime contractor. It's also possible some tax would be shifted into other jurisdictions, like Santa Fe, if the lab's prime contract changed again to a nonprofit.

The Governor also vetoed the nursing home bed tax proposal found in Sen.'s Neville and Ortiz y Pino's [SB 192](#). It was an apparent effort to leverage federal Medicaid dollars, which we do in other places. In her veto message, the Governor expressed concern about costs going up on private payers, and the costs of administering the new program. The bill passed both houses unanimously. It was similar to a 2004 proposal that included a log rolling provision that created a personal income tax credit for any out of pocket tax paid by residents. That measure was repealed two years later over concerns of federal clawback.

The only other bill she vetoed (that we're paying attention to) was a bi-partisan proposal from Rep.'s Ezell, Wooley, Townsend, and Nibert, [HB 197](#). Apparently created for purposes of economic development at the former Walker AFB in Roswell, it would have created a tax exempt Regional Air Center Special Economic District and an authority to own, operate, and govern the district. In her veto message, the Governor said:

“Roswell and the former Walker Air Force Base have great economic potential, which is why I support funding for the facility through capital outlay and the budget. However, I cannot support HB 197. Expanding government through the creation of such a district and authority is not the answer to capitalizing on economic opportunity. Transferring broad powers, including eminent domain, to a newly created quasi-governmental entity is a poor way of supporting economic development. Under this bill, the authority's membership would not be adequately held accountable to the public, as the public would not be afforded the right to elect or remove a member of the authority. Furthermore, the tax exemption language that was included is overly broad and could lead to unintended consequences. Additionally, there are other geographically specific tools already available to accomplish the objectives contemplated by this legislation.”

That proposal was not originally in our table, but it did contain a broad tax exemption, so it probably should have been. It drew three opposing votes in each of the House and Senate floors.

So What Was Pocket-Vetoed?

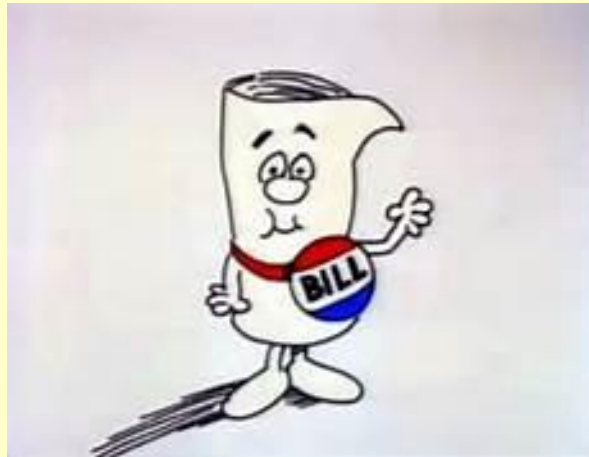
Senator Stewart's effort to reinstate the rooftop solar credit, her *Solar Market Development Tax Credit*, [SB 79](#), would have essentially reinstated the now sunsetted credit program, capped the overall credit at \$5 million, while limiting individual credits to \$9,000. Benefits were determined on 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. One of the two bills requiring auto recycler reporting and database creation and maintenance on the part of the NMTRD was pocket-vetoed (Sen. O'Neill's ([SB 24](#))), as was one of the two proposals attempting to address issue in the arena of delinquent property sales and collections (Sen. Baca's [SB 109](#)).

So What Else DID Happen (Again)?

Gross Receipts Tax Measures – More Retail Base Erosion

As we mentioned last week, The governor earlier signed the GRT proposal to fix in law the present treatment of sales of tangibles to governments and nonprofits (that is, it was the present treatment until recent NMTRD enforcement policy reversals). She also signed the legislation allowing alternative evidence in the absence of a nontaxable transaction certificate (NTTC), the tax holiday thing (businesses should still look for planning opportunities in that bad idea), the bill that moved insurance premium tax collection responsibility to the NMTRD (which will require cleanup but isn't effective this year), a GRT tax break for certain construction at Holloman AFB, the property tax proposal to address certain delinquent properties, a tax break for those who happen to hire foster children, and a new reporting requirement for employers to separately report annual employee income tax withholding.

[While we've whined about bad populist tax policy – and won't stop – this year wasn't horrible from a tax perspective. While we didn't move mountains to improve our tax structure, we did pass a few good proposals, and even the dumb stuff will only cost a handful of millions, which isn't likely to break the bank. We'll survive to fight another day. That said, we now have two virtually identical tax holidays, but for the details (the days offered are different of course, as is the list of stuff you can buy tax free, and the dollar limitations for purposes of administrative confusion). One is promoted as being for the plebe' – our poorest children going back to the burden of school, while the other is for "small" business, or big business with few employees in New Mexico. Our question, gentle reader, is which is it? We're not sure we can have it both ways, although neither is a possibility]



Bills with significant tax implications having passed both houses and awaiting the Governor's Action:

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.	Signed
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.	Signed
HB 52 Youngblood, Ruiloba, Morales	Auto Recycler Electronic Reporting to TRD: HB 52 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.	Signed
HB 79 Gallegos/Neville	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	Signed

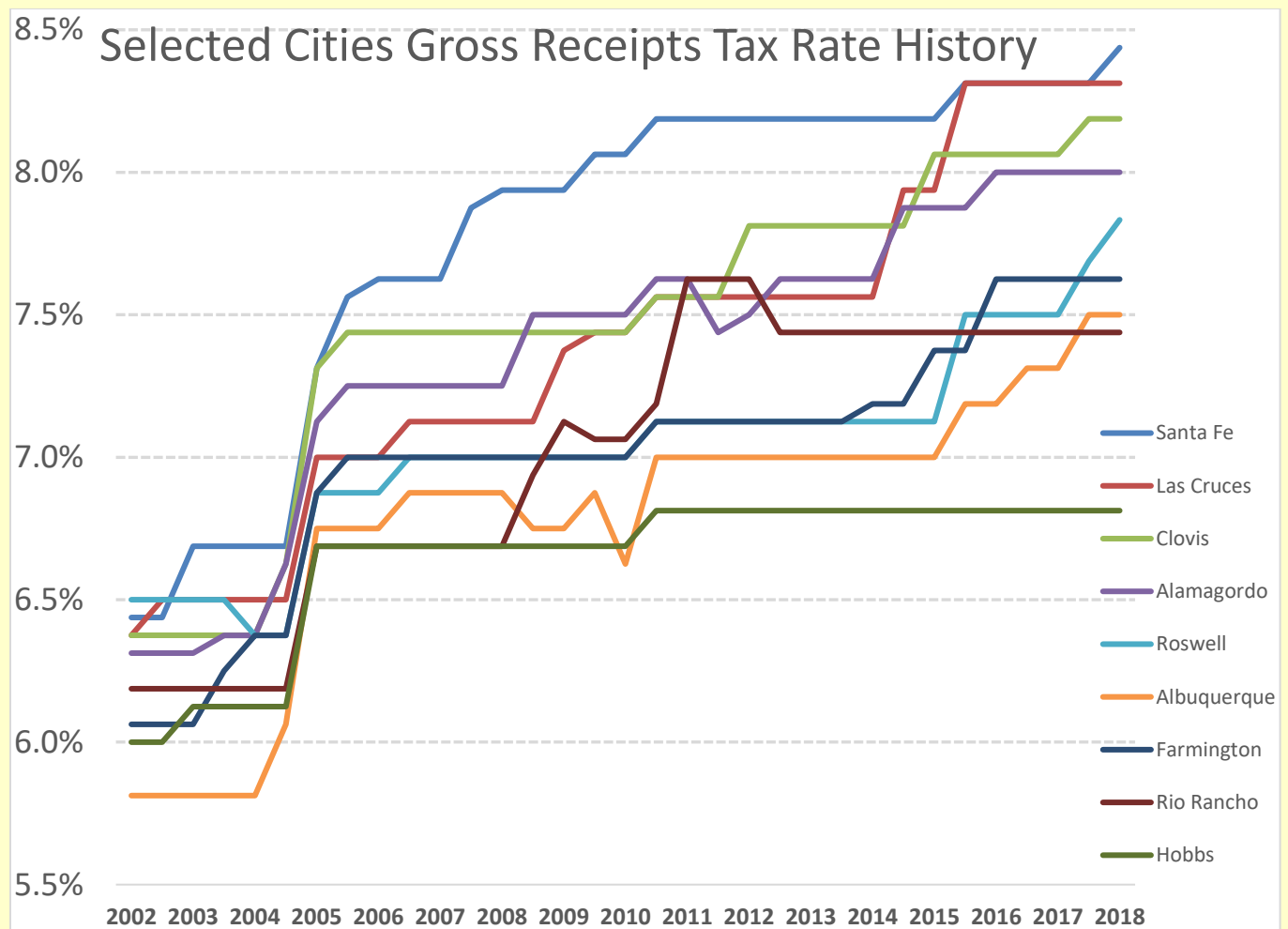
	in NM.	
HB 88 Fajardo/Baldonado	Tax Delinquent Property Sales: HB 88 Requires that <i>all</i> delinquent properties be placed for sale by the PTD, rather than at least one, unless the director and country treasurer enter into a written agreement stating reasons, timing of recovery, and with copies sent to the Secretaries of DFA and TRD.	Signed
HB 140 Alcon, Rodella, Johnson	New Mexico Housing Trust Tax Refund Contributions: HB 140 Provides for income tax payers to be able to designate a portion of their refund to the New Mexico Housing Trust fund for affordable housing activities.	Signed
HB 149 Alcon, Rodella, Johnson	Native American Income Tax Settlement Fund: HB 149 Eliminates the statute of limitations on refunds that can be paid to native American veterans who had income tax withheld that wasn't owed or claimed timely.	Signed
HB 194 Harper	Alternative Evidence for Tax Deductions: HB 194 Provides that alternative evidence can be used to substantiate deductions requiring most NTTCS, and eliminates some registrations and penalty provisions rendered less useful as a result of the changes.	Signed
HB 197 Ezell, Wooley, Townsend, Nibert	Regional Air Center Special Economic District: HB 197 For purposes of economic development at the former Walker AFB in Roswell, creates a tax exempt Regional Air Center Special Economic District and provides for the creation of an authority to own, operate, and govern the district.	VETO
HB 223 J Trujillo/C Trujillo	Insurance Premiums Tax Transfer: HB 223 Effectively transfers the tax collection and distributions responsibilities relative to the insurance premiums tax and surtax, to the Taxation and Revenue Department.	Signed
HB 245 L Trujillo/Gentry	"Construction Material" in Gross Receipts: HB 245 Clarifies the definition of construction for purposes of the gross receipts tax to incorporate long standing regulations distinguishing tangible personal property from construction materials/services.	Signed
HB 276 Small	Employer Statement of Withholding: HB 276 Requires employers to file annual statements of withheld income tax by employee.	Signed
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.	VETO
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.	Pocket Veto
SB 79 Stewart	Solar Market Development Tax Credit: SB 79 Reinstates retroactively the sun-setted credit and changes program, caps	Pocket Veto

	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.	
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).	Signed
SB 109 Baca	Tax Delinquent Property Sales: SB 109 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.	Pocket Veto
SB 192 Neville/Ortiz y Pino	State Healthcare Quality Surcharge Act: SB 192 Creates a new daily surcharge, as determined by the department of health, for non-Medicare beds in nursing homes. TRD administers the surcharge which is made a part of the tax administration act.	VETO
SB 231 Munoz	Foster Youth Employment Tax Credits: SB 231 Creates a new personal and corporate income tax credit for employing qualified foster youths. The credit is \$1/K per job time the fraction of the year worked (20+ hrs/week). The credit may be carried forward up to 3 yrs.	Signed

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.

What's Up with Gross Receipts Tax Rates?



The short answer is everything is up, at least rates in every jurisdiction since just prior to the populist-food-and-medical-exemption-hold-harmless -“original-sin” (or as we call it, the “gift that keeps on giving”). Since that left turn, we’ve enjoyed consistently rising tax rates, endless and fruitless (although necessary) tax reform debates, and bitter legislative battles over “hold harmless” rules. If one needed evidence that narrowing the base would just result in higher rates, you need look no further than the chart above. Not a single jurisdiction has been left unimpacted.

We have become more reliant on a single tax program than ever, while simultaneously making it more volatile and unstable by narrowing the base and focusing it more on volatile business cycles. Except for manufacturing (which we don’t have a lot of), we’ve made the tax increasingly a business-inputs tax, while simultaneously compounding the burden on NM households – particularly the most vulnerable – through the regressive nature of the tax. The state rate has been raised twice. In a failed effort to fund the food/med/hold harmless policy, it was first raised indirectly and in municipal areas only (roughly 80% of the tax base) by ½%, when we repealed the “municipal credit.” That credit, was designed to limit rate disparities from

municipalities to remainder of county areas – a desirable thing. Muni’s are more reliant on the GRT than counties, and disparities in rates create undesirable economic distortions. Later, in 2010, the statewide rate was raised from 5% to 5.125%. Within municipal boundaries, 1.225% of the 5.125% is distributed back to the municipality, with the state’s general fund getting the remaining 3.9%.

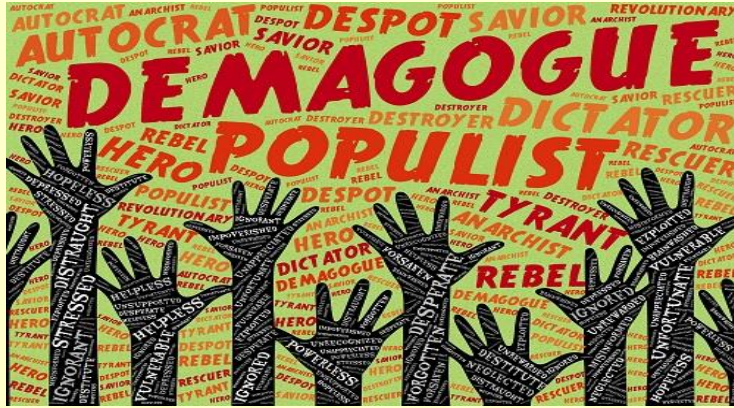
In general, rates can only change twice a year: on January 1 and July 1 of a given year. Last July marked a first for GRT rates: we finally broke 9%, with Taos Ski Valley imposing a rate of 9.25%. In January the Santa Fe county portions of Espanola became the second place to exceed 9% by imposing an overall 9.0625%. That violates the general rule that locations with tourism dependent economies have the highest rates – presumably under the theory that they get to export the tax to their tourists. While those who live there still have to pay the higher rates, of course, historically, the other highest rates tend to be found in locations like Taos, Santa Fe, Red River, and Ruidoso... although they’re still all below 9%. The highest remainder of county rates can be found in Taos county, where the rate is presently 7.3125%. Santa Fe county is second at 7%, with all other remainder of county areas falling below 7%. Lea and Lincoln counties share the lowest remainder of county rates at 5.5%

How much higher are they? The table below will tell you:

Municipality	Rate as of 1/1/2018	Percentage Increase (Jan 2002 – Jan 2018)
Santa Fe	8.4375	31%
Las Cruces	8.3125	30%
Clovis	8.1875	28%
Alamogordo	8.0	27%
Roswell	7.833	21%
Farmington	7.625	25%
Albuquerque	7.5	29%
Rio Rancho	7.4375	20%
Hobbs	6.8125	14%

Hobbs has seen the lowest rate growth, while Santa Fe has seen the most. Albuquerque, the economic engine of the state and half the population, has seen its rates rise by 29%. However, recent action by the city council and mayor imposing all three 1/8% hold harmless increments will set Albuquerque’s rate at 7.875% - or 35.48% higher – the largest percentage increase of any of the NM municipalities surveyed – coming to you on July 1 of this year. In the meantime, local jurisdictions have steadily imposed hold harmless and other available increments, sometimes in response to reduced revenues resulting from state-imposed policies, and sometimes not.

Not only does the state, with its high rates and broad base, rely more heavily than any other state on its sales tax, the local governments do the same. In Albuquerque for example, of the 7.875% about to be in effect, the state gets 3.9%, and city and Bernalillo county governments getting the remaining 3.975%, or a little more than half. That’s not common even in states that don’t fund K-12 operating budgets through their general funds.



[NMTRI note: Before we rant about the sin of our own stupidity and our apparent inability to do no harm, it's only fair to say that you can't tax what you don't have. We have a lot of needs, so we have to collect taxes and provide services to our citizenry. That said, we've mostly made things worse and for the wrong reasons. How you tax matters from a variety of perspectives.]

So, who are the winners from these recent trends? Politicians and those others who directly or indirectly benefit from the general tax populism that help create this mess, and, good and bad, those who managed targeted relief for themselves. Regrettably, the same populism causes us to ignore real problems under the auspices of having fixed them. The food deduction for example, combined with hold harmless provisions for local governments has a cost and the rate increases that followed this shift imposed that cost. This did not solve the problems of the poor nor did it reduce food insecurity. (Ironically the benefit distribution looks like the federal tax changes – skewed to the high end with the largest winners being wealthy households and tourists shopping at Whole Foods in places like Santa Fe, whereas a single mom on food stamps in Mesita gets the crumbs). It has also kept us from looking at the low income credit – LICTR – or at other more effective/better targeted programs under the false belief that we've already done enough (and to do otherwise would cause us to question our bad ideas and crippling policies).

So, who are the losers? Look in the mirror. We've made everything that's bad about the GRT worse in the last decade and a half. We've aggravated pyramiding, rendering New Mexico and our smaller businesses less competitive rather than more, while increasing burdens on the most vulnerable and hiding more tax burdens in everything we buy – even food. I guess, cynically, we could call that fair. This wasn't a horrible year for tax policy, but the ongoing trend in rates rising and consumption base narrowing is horrible.]

HOLD THE DATE AND MARK YOUR CALENDARS NOW – 15TH ANNUAL NMTRI TAX POLICY CONFERENCE IS COMING!



The Fifteenth (can you believe it?) Annual NMTRI Tax Policy Conference and annual members meeting will be held at the Hotel Albuquerque in Albuquerque May 10-11th. You will be inundated with details shortly, and the registration facility will be open soon! We look forward to seeing you there!

KNICK KNACKS

The Office of Administrative Hearings (AHO) is hosting an informal casual lunch meeting with practitioners to discuss the good and bad of tax protest issues. The casual lunch discussion will occur on Friday, April 27, 2018 between 11:30 and 1:00 in Porter Hall, Wendell Chino Building, 1220 S. St. Francis Drive in Santa Fe. People interest in attending should send an RSVP to John Griego of the Administrative Hearings Office, john.griego1@state.nm.us. The purpose is to give people involved in the tax protest hearing process to provide feedback to AHO about what works and what could be improved; discuss ideas to make the process more efficient and less litigious for everyone; and begin a discussion about developing a mediation component in the process.

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

“I hate paying taxes. But I love the civilization they give me”

~ *Oliver Wendell Holmes Sr.*

“An unlimited power to tax involves, necessarily, a power to destroy; because there is a limit beyond which no institution and no property can bear taxation.”

~ John Marshall



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” *Campania General de Tabacos v. Collector*, 275 U.S. 87, 100 (1927), Justice Oliver

Wendell Holmes, dissenting.

Join NMTRI today!