

Tax Matters

The Newsletter of the New Mexico Tax Research Institute

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IN THIS LAST “60-DAY SESSIONS” ISSUE OF *TAX MATTERS*:



- **Hold The Date – 10th Annual NMTRI Tax Policy Conference Coming 5/16**
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 - **The Package Revisited**
- **Table of Disposition of Tax Bills On Governors Desk**
- **Tax Quotables**

HOLD THE DATE AND MARK YOUR CALENDARS NOW – 10TH ANNUAL NMTRI TAX POLICY CONFERENCE IS COMING!

The Tenth Annual NMTRI Tax Policy Conference and annual members meeting will be held at the Hotel Albuquerque in historic Old Town Albuquerque on May 16-17th. You will be inundated with details and registration instructions shortly!

IN AND OUT OF THE LEGISLATIVE SESSION



The 2013 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 15, and ended at noon (or a little after) on Saturday, March 16. The deadline for bill introduction was Valentine's Day - Thursday, 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 session, non-budgetary legislation and items not related to the budget were fair game and not limited by the call of the Governor as they are in the short 30-day sessions.

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 <http://legis.state.nm.us/lcs/>. The site has become increasingly functional and reliable over time. Information is reasonably up to date and legislation can be easily followed from home or office.

The House passed a \$5.9 billion dollar budget that increases overall state spending by 4.9%. There wasn't much money left in the budget for taxes (so of course we opted for smaller proposals that erode the tax base (i.e. swiss cheese). A bigger/costlier "deal" was also done by using offsets or "tighteners" such as narrowing the high wage jobs tax credit, the manufacturing consumables deduction, and phasing out the local government hold harmless distribution... more on that below.

Time For the Governor to Act Ends... What Did She Do?



The 2013 New Mexico legislative session finally came to a close Saturday, March 16. The Governor's time to act on passed legislation ended Friday, April 4. So the guesswork is over and what's law and what isn't is public record. We mentioned in the last issue that Governor Martinez had already vetoed the tax proposals found HB 593 (Representative Salazar's narrow proposal allowing a 1.5 mill levy for Northern New Mexico Community College) and Majority Whip Maestas' film credit proposal in HB 379 (which was resurrected in his HB 641 which ultimately became the vehicle for the larger tax package described again below). She of course didn't stop there. She vetoed Senator Keller's SB 7- proposal requiring a tax expenditure budget (she vetoed a similar proposal in the prior year, as did her predecessor Richardson a few years before that). The Governor vetoed Senator Cisneros dialysis facility gross receipts tax deduction in SB 4 and Senator Papen's SB 269 that provided a similar deduction for a narrow class of sellers of durable medical equipment. Both proposals contained language that repealed the implicated gross receipts tax deductions, Sections 7-9-73.2 and 7-9-77.1 NMSA 1978, in their entirety beginning in 2017. According to the Governor's [message](#), she took issue with the repealers, which would have resulted in significant tax increases when effective.

The Governor failed to act on Senator Martinez's SB 285 (meaning it was "pocket vetoed"). His proposal was the same narrow property tax proposal for Northern New Mexico Community College that was contained in Representative Salazar's HB 593 that she'd vetoed earlier. She also allowed the time to run out on Senator Leavell's SB 284, which would have allowed certain solar facilities preferential depreciation rules.

[NMTRI note: proposals such as this don't reduce revenue to property tax revenue beneficiaries; rather they merely shift the tax burden to other taxpayers and have the potential to reduce bonding capacity]

So the "tax package," some administrative matters, and breaks for local alcohol producers and BNSF aside, not much else happened. The tax package is discussed again below, and the table following provides a final list of the disposition of passed tax related proposals.

[NMTRI note: we failed this session to make fun of the litany of license plate bills that plagues the Motor Vehicle Division like a cancer in general 60-day sessions. However, we were a little surprised to note that the a few plate bills were pocket vetoed. A locator report of passed legislation and actions taken (or not) can be found on the Legislative website [here](#).]

Back to "The Package"

The end of the session was certainly not without suspense. With only a half hour remaining before the 12:00 end, the Senate amended what was essentially the Senate Finance Committee's omnibus tax package into House Majority Whip Maestas's [HB 641](#). At what appeared to be little after noon on Saturday, the House concurred with the changes and the bill was passed. Governor Martinez signed the bill into law on March 3. Apparently the last minute nature of the compromise legislation had some crying foul. There was also some confusion as to the fiscal

impacts, as Secretary Clifford was asked to read a Taxation and Revenue Department fiscal impact report from a similar but not identical proposal on the House floor. The Senate received their LFC fiscal impact report just prior to the vote, and it contained snippets of language from a previous analysis that led some to think that local governments would still be able to tax food (some inoperable language remaining in the bill itself added to that same confusion – but this proposal does not provide for the separate local taxation of food or anything else). The LFC later updated its fiscal impact report [here](#).

The tax package that passed contained multiple provisions leaving something for most anyone to love or hate. Although it's not been referred as a tax increase, it does raise money in the first couple of years, begins to cost money in year three, and breaks even and begins to again raise money way off in the out-years (maybe 13-14 years out) as a result of phased-in tax reductions and revenue enhancements. The package can be broken down as follows:

Film Rebate

The proposal adds an additional 5% rebate (in addition to the present law 25%) for series productions intended for commercial distribution with a budget of \$50k/episode or more, or are directly attributable to wages and benefits of NM residents with budget of up to \$30M and shoots at least 10 principal photography days in NM at a qualified production facility, or shoots at least 15 principal photography days when budgets are in excess of \$30M. It also provides for the carryover and payout of unused credits (i.e. below the \$50M cap), and allows for payments to be made to pass through entities on the filing of informational returns.

Corporate Income Tax

The corporate income tax act is amended to reduce the top corporate tax rate from its present law 7.6% to 5.9% over five years. The reduction begins in 2014, with a rate reduction to 7.3% followed by 6.9% in 2015 and 6.6% in 2016. In 2017, the top bracket is collapsed into the middle bracket (presently 6.4%), with a 6.2% rate. For tax years 2018 and following, the top bracket becomes 5.9%. The bottom 4.8% bracket remains the same.

The bill also provides a phased-in election (over five years), binding for three years, for manufacturers to utilize a single sales factor income apportionment methodology. The present law double weighted sales factor with its “strings” is replaced in 2014 by the more straightforward election, which becomes triple weighted in 2015, multiplied by seven (over ten with the property and payroll factors times 1.5) in 2016, by eight (over 10) in 2017, and 100% weighted in 2018. The “throwback” rule is eliminated for those making the election.

Lastly, the bill requires mandatory unitary combined filing for those making retail sales from locations in New Mexico if any exceed 30,000 square feet under one roof. There is an exception for those that maintain non-retail locations where they employ in excess of 750 people.

High Wage Jobs Tax Credit

Long considered to be “bleeding” in several different ways, the credit was narrowed to exclude reorganizations (“suit changing”) from qualifying as new jobs, the “export” rule in the definition of “eligible employer” was modified to require that the out of state sales come from within the state (effectively excluding large retailers and other multi-state operations, however many natural resource companies will still qualify), “benefits” for purposes of credit calculation was redefined,

and the salary requirements for high wage job was increased from the present law \$28K rural/\$40K urban to \$40K/\$60K, respectively. A one year statute of limitations was also inserted.

Manufacturing Consumables GRT Deduction

The expansion of the phasing-in gross receipts tax deduction was both narrowed and expanded by the insertion of a definition of “consumable” into §7-9-46 as follows:

F. As used in Subsection B of this section, "consumable" means tangible personal property that is incorporated into, destroyed, depleted or transformed in the process of manufacturing a product:

- (1) including electricity, fuels, water, manufacturing aids and supplies, chemicals, gases, repair parts, spares and other tangibles used to manufacture a product; but*
- (2) excluding tangible personal property used in:
 - (a) the generation of power;*
 - (b) the processing of natural resources, including hydrocarbons; and*
 - (c) the preparation of meals for immediate consumption on- or off-premises."**

In so doing, the present law is expanded with the inclusion of repair parts and spares, but significantly narrowed with the exclusion of power generation and processing of natural resources.

Hold Harmless Local Government Distributions

When the gross receipts tax deductions for certain food and medical services not paid for by people were passed, they “hold harmless” mechanism was created whereby the deductions had to be separately stated (no penalty), and the Taxation and Revenue Department would then distribute the portion of tax attributable to local governments had the tax been paid, effectively insulating the local governments from the cost of the deductions and requiring the general fund to assume it’s share as well as the local governments. The bill phases out the hold harmless provision over fifteen years after a two year delay (presumably to allow further study), provides increased GRT rate authority for local governments to offset revenue losses, and excludes from these provisions municipalities with populations below 10,000, and counties with populations of less than 48,000.

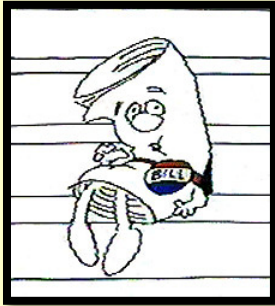
Effective Dates

As previously discussed, the various proposals in the bill become effective at different times. The hold harmless distribution is delayed two years and begins a straight-line 15 year phase-out on July 1, 2015. The film rebate changes are effective April 15, 2013, with the exception of the additional 5% for series productions, which begins January 1, 2014. The corporate rate change and single sales factor election for manufacturers are both phased-in over five years starting with tax years beginning on or after January 1, 2014, as does the mandatory unitary combined filing requirement. The changes to the gross receipts tax deduction for manufacturing consumables (currently in year one of a 5 year phase-in) become effective on July 1, 2013. The changes to the High Wages Jobs Tax Credit will become effective on June 14 (the applicability provision for

this section apparently contemplated an emergency clause – which this bill had – but failed to receive enough affirmative votes in the House to become effective. With an emergency clause, that section’s provisions would have become effective immediately upon the Governor’s signature).

[NMTRI note: it appears taxpayers still have a couple of months to exploit the numerous defects in the present law credit program.]

Bills with significant tax or revenue implications passing both houses and going to the Governor's office:



Note – in the table below, if no effective date is mentioned, the bill lacks one and would take effect upon enactment, June 14, 2013. Effective date for GRT bills is July 1, 2013 unless otherwise noted. Income Tax bills are effective tax years beginning on or after January 1, 2014 unless otherwise noted. “TYBA” = Tax years beginning on or after. Other notes: “CS” indicates committee substitute; “a” indicates amended

| Bill Number/ Sponsor: | Title: Link to bill language: Description | Assignments- Location: |
|----------------------------------|--|--|
| HB 37 R. Martinez | Annual Delinquent Property Tax Sales: HB 37 Requires the TRD to conduct delinquent property sales at least once a calendar year in counties in which properties on the delinquent property list are located. Endorsed by the interim Revenue Stabilization and Tax Policy Committee. | HJC/HTRC/H AFC-HJC- DP/a-HTRC- DP/a-HAFC- w/drn- Passed/H- SCORC/SJC- SCORC-DP- SJC-DP- Passed/S- Signed |
| HB 120 Lundstrom | Locomotive Fuel Gross Receipts: HB 120 Reduces the infrastructure investment necessary, after July 1, 2012 to qualify for the locomotive fuel deduction by fifty percent, from \$100 million to \$50 million. Also adds an NTTC requirement. | HTPWC/HTR C/HAFC- HTPWC-DP- HTRC-DP- HAFC-DP- Passed/H- SCORC/SFC- SCORC-DP- SFC-DP- Passed/S- Signed |
| HB 172 Trujillo | Limit Tax Credit Paid to Another State: HB 172 In the personal income tax, limits the amount of credit available for taxes paid to another state, to what the NM would have received (present law is allows a credit up to a fixed 5.5% in old pre-tax rate reduction statute) | HTRC/HAFC -HTRC-DP- HAFC-DP- Passed/H- SCORC/SFC- SCORC-DP- SFC-DP- Passed/S- Signed |
| HB 299 | Tax Administration Act Changes: HB 299 | HBIC/HTRC/ |

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| Taylor | Makes several “taxpayer friendly” changes to the Tax Administration Act by providing additional time to file and pay taxes after federal assessments, allow offset of tax paid by others if equitable recoupment standards are met, provide the department more abatement authority before seeking AG approval, limit the scope of the hearings officers duties in an apparent effort to improve independence, and make tax protests due in 90 days rather than allowing 30 days plus retroactive extensions of 60 days. | HAFC-HBIC-DP/a-HTRC-DP-HAFC-w/drn-Passed/H-SCORC/SFC-SCORC-DP-SFC-DP-Passed/S-Signed |
| HB 315 Strickler | Tax Payment & Manufacturer Gross Receipts: HB 315 Provides for the TRD and certain GRT taxpayers to enter into agreements whereby the buyer of certain goods or services agrees to pay the GRT on behalf of the seller (legal taxpayer) under the notion that the buyer has knowledge of the subsequent use of goods or services for purposes of compliance with certain GRT deductions (i.e. manufacturing consumables). | HBIC/HTRC/HAFC-HBIC-DP/a-HTRC-DP-HAFC-w/drn-Passed/H-SCORC/SJC-DP/a-SJC-DP-fl/a-Passed/S-h/cncrd-Signed |
| HB 379 Maestas | Film Credit Production Tax Credit Increase: HB 379 Provides for an additional credit of 5% (for a total of 30%) for certain television series productions that spend over \$500K and film more than six episodes in NM. Also provides for unexpended credit balances, beneath the credit cap of \$50M, be carried over to future years. Also provides for the transferability of the already refundable credit. | HTRC-DNP-CS-DP-Passed/H-SCORC/SFC-SCORC-DP/a-SFC-DP-Passed/S-VETO |
| HB 593 Salazar | County Higher Ed Facility Property Tax: HB 593 Authorizes a class B county to impose a property tax mill levy (voter approved), not to exceed \$1.50/1000 of property value, for purposes of acquiring and constructing/renovating/improving post-secondary four year institution facility. | HEC/HTRC-HEC-DP-HTRC-DP-Passed/H-SEC-DP-Passed/S-VETO |
| HB 641 Maestas | Public Peace, Health, Safety & Welfare Film Production Tax Credit Changes: HB 641 Provides for an additional credit of 5% (for a total of 30%) for certain television series productions that spend over \$500K and film more than six episodes in NM. Also provides for unexpended credit balances, beneath the credit cap of \$50M, be carried over to future years. Senate floor amendment reduces the corporate income tax rate from 7.6% to 5.9% over five years, provides a single weighted sales factor option for manufacturers, tightens eligibility requirements in the High Wage Jobs Tax Credit, narrows the GRT deduction for consumables used by | Not prntd-HRC-w/drn – ref HBIC-DNP-CS/DPPassed/HtblD/S-w/drn – fl/a-Passed/S-h/cncrd-Signed |

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| | manufacturers, and phases the food and medical hold harmless distribution out over 15 years, provides additional rate authority, and excludes smaller counties and municipalities | |
| SB 4 Cisneros | Dialysis Facility Gross Receipts: SB 4 Adds dialysis centers to the laundry list of “qualified practitioners” eligible for the deduction for the sale of services to Medicare. Endorsed by the interim Revenue Stabilization and Tax Policy Committee. | SCORC/SFC- SCORC-DP- SFC-DP/a- fl/a_Passed/S- HHGIC/HTR C-HHGIC- DP-HTRC- DP-Passed/H- Vetoed |
| SB 7 Keller/Varela | Tax Expenditure & Revenue Budget & Reporting: SB 7 Requires a tax expenditure report be compiled annually, to include complicated reporting requirements for desirable but virtually unachievable outcomes, particularly given resources provided (none). Endorsed by the interim Revenue Stabilization and Tax Policy Committee. | SCORC/SFC- SCORC- DNP-CS/DP- SFC-DNP- CS/DP-pl/a- Passed/S- HCPAC/HTR C-HCPAC- DP-HTRC- DP-Passed/H- Veto |
| SB14 Wirth | Extend Sustainable Building Tax Credit: SB 14 Extends the present law Sustainable Building Tax Credit (personal and corporate income tax), to 12/31/2023 (the credit is currently set to expire 12/31/13). | SCORC/SFC- SCORC- DP/a-SFC- DNP-CS/DP- fl/a-Passed/S- HTRC-DP- Passed/H- Signed |
| SB 81 Beffort | Liquor Tax Microbrew Volume Limit: SB 81 Expands the liquor tax benefit for microbreweries by expanding the definition of “microbreweries” to mean a person who produces fewer than 15 thousand barrels of beer per year, rather than the present law 5 thousand. Endorsed by the interim Revenue Stabilization and Tax Policy Committee. | SCORC/SFC- SCORC-DP- SFC-DP/a- fl/a-Passed/S- HBIC/HTRC/ HBIC-DP/a- HTRC-DP/a- fl/a-Passed/H- s/cncrd- Signed |
| SB 116 Smith | Liquor Tax Small Winegrower Volume Limit: SB 116 Expands the liquor tax benefit for winegrowers by expanding the definition of “small winegrower” to mean a person who produces fewer than 1.5 million liters of wine per year, rather than the present law 950 thousand liters. Endorsed by the interim Revenue Stabilization and Tax | SCORC/SFC- SCORC-DP- SFC-DP/a- Passed/S- HTRC-DP- |

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| | Policy Committee. | Passed/H-Signed |
| SB 160 Ingle | Biodiesel Definitions: SB 160 Adds definitions of “biodiesel” and “biodiesel blend”, and expands an existing deduction to include “biodiesel”, avoiding the significant potential for multiple taxation of biodiesel blend components. | SCONC/SFC- SCONC- DP/a-SF C- DP-fl/a- Passed/S- HTPWC/HTR C-HTPWC- w/drn-HTRC- DP-fl/a- Passed/H- s/cncrd- Signed |
| SB 269 Papen | Durable Medical Equipment Gross Receipts: SB 269 Expands the current gross receipts tax deduction for the sale of prescription drugs to include the sale or lease of prescribed durable medical equipment and supplies. It requires special/separate reporting on the part of taxpayers and the TRD, and is effective until July 1, 2023. Taxpayers may not take the deduction if they don’t participate in the Medicaid program or received less than 90% of their revenue from the sale or lease of the goods/services made deductible. Endorsed by the interim Revenue Stabilization and Tax Policy Committee. | SCORC/SFC- SCORC-DP- SFC-DP/a- Passed/S- HTRC-DP- Passed/H- Vetoed |
| SB 284 Leavell | Valuation of Renewable Energy Equipment: SB 284 Defines and provides for the valuation of renewable energy equipment for property tax purposes through 6/2028 to be cost less federal credits with a ten year depreciable life. | SCONC/SCO RC/SFC- SCONC-DP- SCORC- DP/a-SFC- DP/a- Passed/S- HENRC/HTR C-HENRC- DP-HTRC- DP-Passed/H- Pocket Veto |
| SB 285 Martinez | Local Gov’t Higher Ed Facility Property Tax: SB 285 Authorizes a class B county to impose a property tax mill levy (voter approved), not to exceed \$1.50/1000 of property value, for purposes of acquiring and constructing/renovating/improving post-secondary four year institution facility. | SCORC/SFC- DP-SFC- w/drn- Passed/S- HEC/HAFC/- HEC-DP- HAFC-DP- Passed/H- Pocket Veto |
| SB 289 Shendo | 5-Year Senior Property Tax Freeze: SB 289 Provides that that limitation on residential property value increases provided to those 65 and above, be privy to the limitations for a period of | SJC/SFC-SJC -DNP- CS/DP-SFC- |

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| | five years rather than have to substantiate eligibility each year. | DP/a- HHGIC/HTR C-HHGIC- DP-HTRC- DP/a- Passed/H-s/fld concr-h/fld recede-CC- h/rpt adptd- s/rpt adptd- Signed |
| SB 334 Ingle | Unemployment Fund Contribution & Formula: SB 334 Extends the present law contribution schedule 2 through December 31, 2014, and replaces the reserve ratio currently in a place with a benefit ratio system beginning 1/1/2015. | SCORC/SFC- SCORC- DP/a-SF C- DNP-CS/DP-- Passed/S- HLC/HAFC- HLC-DP- HADC-DP- Passed/H- Signed |
| SB 406 Sapien | Divided & Combined Property Tax Collection: SB 406 In cases where real property is being combined or divided and there is reasonable cause to believe assessment and collection will be jeopardized, allows county treasurers and assessors to immediately determine property value and provide notice of valuation, determine tax due for the taxable year and proceed with collection, and decline to process a plat pending compliance. | SJC/SFC- SJC-DNP- CS/w/o rec- SFC-DP-fl/aa- Passed/S- HJC/HTRC- HJC-w/drn- HTRC-DP/a- fl/a-Passed/H- s/concrd- Signed |
| SB 539 Smith | Remote Sellers Gross Receipts: SB 539 Adds to the GRT definition of engaging in business “selling goods or products delivered directly or indirectly to a customer located in New Mexico. | SCORC/SFC- SCORC-w/o rec-SFC-DP- Passed/S- Pocket veto |
| SB 557 Leavell | Rural Jobs Tax Credit Definitions: SB 557 Expands credit eligibility to those who would qualify for JTIP funding (as opposed to present law JTIP recipients), and narrows eligibility by limiting the availability of the credit in certain situations such as mergers as reorganizations. | SCORC/SFC- SCORC- DP/a-SFC- DP-Passed/S- Signed |

TAX QUOTABLE

"If we want to be like the rest of the world, we need to be considering these alternatives. As long as we constrain ourselves from having good taxes, we'll continue having bad taxes."

~Martin Sullivan (on the unwillingness of the US to discuss a value added tax)

"It's tax time. I know this because I'm staring at documents that make no sense to me, no matter how many beers I drink."

~ Dave Barry

"Its income tax time again, Americans: time to gather up those receipts, get out those tax forms, sharpen up that pencil, and stab yourself in the aorta."

~ Dave Barry



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.
Join NMTRI today!