Tax Matters

The Newsletter of the New Mexico Tax Research Institute

Issue No. 2013-09 **March 17, 2013**

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

IN THIS "60-DAY SESSION ENDS" ISSUE OF *TAX MATTERS:*

INTO THE LEGISLATIVE SESSION

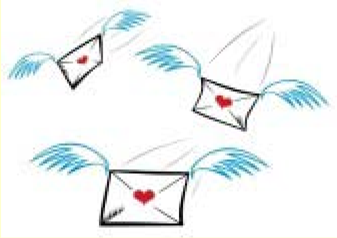
The 2013 Regular Session of the New Mexico Legislature convenes at noon on Tuesday, January 15, and ended at noon (or a little after) on Saturday, March 16. The deadline for bill introduction was Valentine's Day - Thursday, February 14. Legislation not acted on by the governor is pocket vetoed on April 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.

Session Ends… What the Hell Just Happened?



The 2013 New Mexico legislative session finally came to a close Saturday. It was 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. The Governor, who had few successes with respect to her agenda this year, indicated in press conferences following that she would sign both the budget bill (with a few line item vetoes perhaps), as well as the tax bill. We suspect more capital outlay (aka "pork") will survive the veto pen as well as a result of the last minute compromise.

The Package

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 early years, and likely breaks even or is a tax reduction in the out years as a result of phased-in tax reductions and revenue enhancements. The package can be broken down as follows:

Corporate Income Tax

The corporate income tax act is amended to reduce the top corporate tax rate from it's present law 7.6% to 5.9% over five years. The reduction begins in 2014, with a rate reduction to 7.3%m 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 of two 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. 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 lowered 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.

[NMTRI note: we ranted last week about the likelihood of not getting what anybody wants and being told to like it. We also lamented, in the context of Chairman Sandoval's property tax lightning "fix", how we can never simply undo our biggest blunders, rather we fix things in non-optimal ways that aren't as good as what we had before we touched them. While this package does not represent the comprehensive tax reform we'd hoped for, it actually delivered what the business and economic development interests were begging for – a single weighted sales factor apportionment option for manufacturers combined with a meaningful rate reduction that gets New Mexico's rate closer to its peers (note: this does not necessarily mean NM's economic woes are over as tax cuts can make a difference in some cases, are more meaningful to some than others, but aren't ever the be all to end all and rarely pay for themselves). The HWJTC changes were necessary as the general fund was hemorrhaging, however it might still be left overbroad. The narrowing of the manufacturing deduction was a reasonable trade off/prioritization of expenses and soothed some legislative souls who were surprised by its breadth after passage. The combined filing requirement appeases those promoting it, but fails to provide the closure and certainty of real reform. The exception would appear to help Lowe's non-retail operations, but not the Gap's as they only employ 400 of so white collar professionals in their back office operation in Albuquerque. Ironically, the exception might help the apparent historical primary target of combined filing promoters, Wal-Mart, escape the requirement if they have or can muster the necessary employment levels. Local governments are given lots of time to adjust, but probably make out the worst. Reversing the embarrassing and horrifically expensive policy blunder of the Richardson administration that was the food/medical GRT deductions with the local government hold harmless provisions would have restored order to the tax policy universe. Apparently that complaint of ours is still valid as this approach is more painful, but also more politically palatable. Also notably, the proposal raises general fund revenue.]

Other Stuff

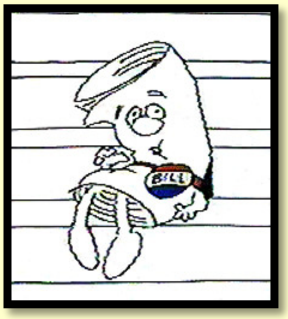
Several property tax proposals were passed, including forcing the Taxation and Revenue Department to conduct annual delinquent property sales in every county, provision for those relying on the 65 and older valuation freeze to prove eligibility every five years rather than every year, proposals to allow a narrowly crafted voter approved mil levy for public education, and a special break for renewable energy equipment. Administrative proposals to make the Tax Administration Act a little more taxpayer friendly, and to create explicit authority for the NMTRD and taxpayers to enter into filing agreements were passed, as was another proposal to require the preparation of a tax expenditure budget. Also passed was a proposal to limit the income tax credit for taxes paid to other states, to the amount that would have been imposed by New Mexico.

In the arena of non-property taxes, the proposal for the locomotive fuel deduction wanted so desperately by BNSF (Union Pacific already gets it). Proposals to carve out dialysis facility receipts from the GRT in some cases, as well as certain sales of certain durable medical equipment and supplies (by certain people) also passed both houses. Senator Wirth's proposal to extend the sustainable building tax credit passed both houses, as did Senator Ingle's proposal to avoid double taxation of blended biodiesel. Lastly, proposals expanding the volumes small breweries and wineries can produce and still benefit from the lower tax rates afforded them also passed.

The Governor has already vetoed one of the proposed higher-ed property tax proposals, along with Majority Whip Maestas's film proposal (not to be confused with his "dummy" bill HB641, which is the vehicle that became the "package" described above. Stay tuned to see what happens to the rest. The table of passed tax related legislation is below.

[NMTRI note: apart from the "package" above, not a lot else really happened of great significance. Some of the administrative stuff is necessary and the rest innocuous. Only a small number of the "good bills" we'd handicapped previously managed to clear both houses (but we'd picked them all). Property tax measures are always easier to pass since they don't impact the general fund, and "breaks" for some are simply paid for by others without impacting tax revenues to governments. It will be interesting to see if the Governor vetoes the tax expenditure budget proposal (again, as Richardson did too). Most offensive is the notion that two for-profit taxpayers could sell durable medical equipment, with one being subject to a tax as high as almost 9% while the other pays zero – it's an equity issue]

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/HAFC-HJC-DP/a-HTRC-DP/a-HAFC-w/drn-Passed/H-SCORC/SJC-SCORC-DP-SJC-DP-Passed/S
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/HTRC/HAFC-HTPWC-DP-HTRC-DP-HAFC-DP-Passed/H-SCORC/SFC-SCORC-DP-SFC-DP-Passed/S
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
HB 299 Taylor	**Tax Administration Act Changes: HB 299** 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	HBIC/HTRC/HAFC-HBIC-DP/a-HTRC-DP-HAFC-

	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.	w/drn-Passed/H-SCORC/SFC-SCORC-DP-SFC-DP-Passed/S
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
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. Also provides for the transferability of the already refundable credit. 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 manufacturers, and phases the food and medical hold harmless distribution out over 15 years, provides additional rate authority, and excludes smaller counties and municipalities	Not prntd-HRC-w/drn – ref HBIC-DNP-CS/DP-Passed/Htbld/S-w/drn – fl/a-Passed/S-h/cncrd

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/HTRC-HHGIC-DP-HTRC-DP-Passed/H
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/HTRC-HCPAC-DP-HTRC-DP-Passed/H
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
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
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 Policy Committee.	SCORC/SFC-SCORC-DP-SFC-DP/a-Passed/S-HTRC-DP-Passed/H
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/HTRC-HTPWC-

		w/drn-HTRC-DP-fl/a-Passed/H-s/cncrd
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
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/SCORC/SFC-SCONC-DP-SCORC-DP/a-SFC-DP/a-Passed/S-HENRC/HTRC-HENRC-DP-HTRC-DP-Passed/H
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
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 five years rather than have to substantiate eligibility each year.	SJC/SFC-SJC –DNP-CS/DP-SFC-DP/a-HHGIC/HTRC-HHGIC-DP-HTRC-DP/a-Passed/H-s/fld concr-h/fld recede-CC-h/rpt adptd-s/rpt adptd
SB 406 Sapien	**Divided & Combined Property Tax Collection: SB 406** In cases where real property is being combined or divided and there is	SJC/SFC-SJC-DNP-

	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.	CS/w/o rec-SFC-DP-fl/aa-Passed/S-HJC/HTRC-HJC-w/drn-HTRC-DP/a-fl/a-Passed/H-s/concrd
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
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

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're bad in that they create inefficiencies, distortions, and sometimes inequities. It's a more rationale 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 need to raise the money we need for government (and there's obviously plenty of debate to be had on that subject) 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 QUOTABLE

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

~Woody Allen

COMMENTS: Your suggestions and comments on this newsletter, the conferences (past or future), the Distinguished Lectures Series, our research or any aspect of NMTRI's operation and programs are welcome. Please send them to richard.anklam@nmtri.org, call 505-269-6791 or mail them to P.O. Box 91657, Albuquerque, New Mexico 87199-1657. We genuinely solicit your input and thank you for your support.

NEW MEXICO TAX RESEARCH INSTITUTE

"The power to tax involves the power to destroy" - McCulloch v. Maryland, 17 U.S. 316 (1819), Chief Justice John Marshall.

"Taxes are what we pay for civilized society" Campañía General de Tabacos v. Collector, 275 U.S. 87, 100 (1927), Justice Oliver Wendell Holmes, dissenting.

Join NMTRI today!