

Tax Matters

The Newsletter of the New Mexico Tax Research Institute

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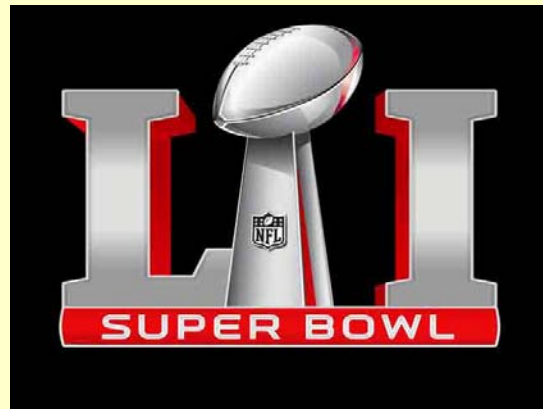
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IN THIS “LEGISLATIVE SESSION” SUPERBOWL EDITION OF TAX MATTERS:



- **Into the Legislative Session**
- **Tax-pectations for the Session**
- **List of Tax Related Legislation**
- **HOLD THE DATE – NMTRI Annual Tax Policy Conference April 27 and 28 at Sandia Resort and Casino**
- **Don't Forget the Principles**
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INTO THE LEGISLATIVE SESSION – IT BEGAN - JANUARY 17, 2015



The 2016 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 17, and ends at noon (or somewhere thereabouts) on March 18. The deadline for bill introduction is February 16. Legislation not acted on by the governor is pocket vetoed on April 7. The effective date of legislation that's not a general appropriation bill, a bill carrying an emergency clause or other specified effective date takes

effect on June 16. Being a “long” or 60-day session, non-budgetary legislation and items not related to the budget are fair game and not limited by the call of the Governor as they are in short 30-day sessions. It is already a very busy session, as high profile and contentious issues in the wake of an election cycle that re-installed the Democratic majority in the House, not to mention the significant turnover in general membership and Peter Wirth replacing Michael Sanchez as Senate Majority Leader – may make things even harder but more interesting.

New Mexico has an uncompensated volunteer legislature comprised of a 70 member House of Representatives and a 42 member Senate. Legislative sessions alternate between 30-day budget related sessions in even numbered years, and unconstrained 60-day sessions in odd-numbered years.

Click [here](#) to see the daily bill locator on the legislative website. We have our list of introduced tax related legislation in both chambers below.

The Legislative Council Service maintains copies of bills, compiles locators, and publishes lists of bill conflicts during the course of the session. Most information is available in a timely and electronic fashion from their rather robust website, which can be reached at <https://www.nmlegis.gov/>. The site has become increasingly functional and reliable over time. Information is reasonably up to date and legislation can be easily followed from home.



Tax-pectations for the Session

The 60-day session has arrived. In addition to a new year, we have several new members of both houses, as well as a new Democratic leadership in the House. Not being a “budget only” 30-day session, not just tax/budget issues and the controversy they bring are fair game, but so are other controversial issues, such as those we’ve seen from prior sessions that we’re sure to see again, like social promotion, crime, education, and minimum wage will come up.

This year however, all of the oxygen in the room will be consumed by matters of budget – or lack thereof – and taxes to a lesser extent. The beginning of most 60-day sessions is slow, and full of pomp and circumstance. This year however, the fact the state was in a deficit position for the current fiscal year we’re more than half-way through - even after the October Special Session – which was intended to fix just that – meant that the first week and half of this session were really a second special session on 2017 solvency. The December consensus revenue forecast had

the legislature \$141 million short for 2017, and 2018 has a deficit of \$93M under 2017 appropriations (“negative new money”), and that doesn’t address increasing Medicaid and other costs, not to mention the need to budget for some money in reserve so we don’t have to have yet another special session on solvency again soon. The December consensus revenue estimate can be found on the LFC website [here](#).

[NMTRI Note: The forecast may be revised and cases for adjustments in both directions likely could be made, but the only good news we’re aware of (slow strength in the Permian) has already been baked in – so don’t hold your breath on manna from heaven...]

The 2017 solvency discussions were fairly cordial, in part because they were collectively sweeping, swapping, and deferring every dollar they could to cover the current year deficit. Taxes and/or more really painful cuts were never really a part of that conversation, because it was too late for those to be effective tools in the current year. Now, there aren’t any pennies left in the couch, we’re already flying on fumes, and the conversation is going to be nothing but budget and taxes for 2018. In her Executive budget (found [here](#) on the Governor’s website) Governor Martinez’s proposes to further reduce spending across government, and proposes requiring state workers to contribute more for their retirement, saving the state the portion on whatever was swapped. She argues it can be done without new taxes and has threatened to veto any such increases. Democrats in particular have strongly suggested revenue enhancements must be a part of the solution. The debate has really just barely begun.

[NMTRI note: “loopholes” might be acceptable revenue enhancements for both parties, but what they are may be in the eyes of the beholder...]

What Happened this Week

With the deadline to introduce bills having over a week to go, the House of Representatives currently has 316 bills introduced, and the Senate has 324. Activity actually seems to have been somewhat light in the last week, with more attention on the Governor’s veto of a Senate feed bill that included court funding she thought they could get elsewhere, followed by signing a second measure, complete with court funding, that she line-item vetoed. Solvency bills for the year ending June 2017 were signed, with line item vetoes reducing some cuts but leaving general fund reserves at 1.8%. On the tax front, we only added a handful of new proposals between House and Senate.

For a time it seemed like not all bills that would normally be assigned to the House Taxation and Revenue Committee, under the new leadership of Chairman Jim Trujillo, were being so assigned, or they were followed by an assignment to House Appropriations when no appropriations were made. This week, the opposite seemed to happen as the last bills we added this week, Rep. Thomson and Armstrong’s proposal to increase cigarette taxes in [HB 283](#). Rep. McCamley’s proposal to increase personal income taxes by adding a 5.9% bracket, repeal the 50% capital gains exclusion, and increase the motor vehicle excise tax from 3 to 5% in his [HB 310](#). Rep. Rubio’s proposal to double the working families tax credit and eliminate the 50% capital gains exclusion in her [HB 311](#).

On the corporate income tax front, Senator Wirth and Rep. Harper rekindled their market-based sourcing bill for purposes of income apportionment in their [SB 274](#), which joins Senator Wirth’s mandatory unitary combined reporting bill, [SB 1](#), and Chairman Smith’s corporate change freeze ([SB 199](#)) as the primary corporate income tax proposals in the Hopper.

Senator Sharer has introduced a modified version of his gross receipts tax reform proposal in his [SB 123](#). Representative Harper's anticipated tax reform package generally presented at his interim tax committee has yet to be introduced. New Mexico First presented to a legislative committee on their recent town hall recommendations to do, among other things, study the NM the base.

Last week, Rep. Carl Trujillo introduced legislation designed to encourage gross receipts tax compliance on the part of remote sellers in his [HB 202](#), and this week co-sponsored an identical proposal in their [SB 264](#). We did see a new and curious tax/tax increase proposal from Majority Whip Padilla to increase tax on oil and gas production in New Mexico, as well as non-government electricity generation, in his [SB 288](#).

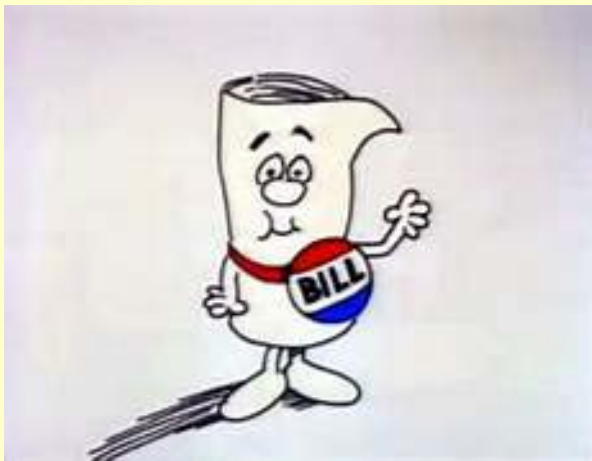
[NMTRI note: the slowdown in tax related legislation introduction activity may in part be a recognition of the revenue reality of the state. Other than a handful of proposals to increase or expand film and solar credits, a minor personal income tax reduction through eliminating the add-back of itemized deductions, and a proposed increase in the working families' credit, there are few proposals that cost money. Once upon a time, one committee assignment spoke to friends in high places and/or willful support. This year it could be inconsistency desire to speed things up for later bills. That said, the proposals, McCamley's in particular, looks a lot like a "reasonable" or "serious" stab at a progressive solvency effort from the revenue side...]

We expect Senator Wirth's combined reporting proposal to be heard Wednesday in Senate Corporations, and Representative Harper's reform proposal will likely be heard this week as well. Lastly, serious economic studies are never a bad idea...]

Thanks for Reading

Join us weekly through the session as we try to provide balanced policy analysis, commentary and discussions of the tax and budget proposals that implicate tax policy in New Mexico. Of course, tax proposals – particularly bad ones – tend to be regurgitated (so to speak) from year to year. So, merely recalling what's been introduced (but failed to pass) in recent years will give you some idea of what will be introduced again. For confirmation of that, all you need do is scroll down to the table of bills already introduced below.

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Bills with significant tax implications introduced in 2017 Regular Legislative Session:

Note – Income Tax bills are effective tax years beginning on or after January 1, 2018 unless otherwise noted. “TYBA” = Tax years beginning on or after. Bills with an emergency clause are effective upon signature if enough votes are obtained. Bills with no effective date. Other notes: “CS” indicates committee substitute; “a” indicates amended.

Bill Number/ Sponsor:	Title: Link to bill language: Description	Assignments- Location:
HB 8 Dodge/Lundsrom	Eliminate Cigarette Tax Distribution HB 8 Eliminates the 1.25% distribution to the NMFA from Cigarette Tax revenues. Associated bonds have been retired.	HRPAC/HW MC-HRPAC
HB 48 Maestas Barnes	Small Business Income Tax Deduction: HB 48 Creates a personal income tax deduction for Schedule C or E business income, of up to 50% up to \$250K in income (50% for the first \$50K, 40% for the 2 nd 50K, etc.)	HBIC/HTRC- HBIC-DP- HTRC
HB 55 C Trujillo	Liquor Tax to DWI Grant Fund & Drug Courts: HB 55 Makes permanent a previous temporary increase in distribution to the local DWI grant fund of 46%. The proposal also adds a 4% distribution to the administrative office of the courts.	HLELC/HTR C-HLELC- DP-HTRC
HB 61 Maestas Barnes	Extend Solar Market Tax Credit: HB 61 Reinstates the recently sunsetted Solar Market Development Tax Credit, but phases the credit amount down from 10% to 5% in 1% annual increments from 2019-2025.	HLEDC/HTR C-HLEDC- DP-HTRC
HB 63 Crowder/ Gonzales	Local Option Fuel Tax: HB 63 Renames and expands the County and Municipal Gasoline Tax Act to apply to all municipalities and counties, and allows the inclusion of special fuel (diesel) in the tax program.	HLELC/HTR C-HLELC- DP-HTRC
HB 68 Garcia/ T Salazar	Rural Healthcare Practitioner Tax Credit: HB 68 Changes the present law credit to expand the amount of credit and reduce the number of qualified practitioners	HHHC/HTRC -HHHC-DP- HTRC
HB 76 J Trujillo	Estate or Trust Distribution Tax Deduction: HB 76 Creates a deduction from trust income for distributions to non-New Mexico beneficiaries. Excluded from the deductions are those things, with the exception of business income, would otherwise not be subject to NM income tax if earned in NM by a nonresident.	HHHC/HTRC -HHHC-DP- HTRC
HB 82 McQueen	Extend Solar Market Tax Credit: HB 82 Reinstates the recently sunsetted Solar Market Development Tax Credit, but phases the credit amount down from 10% to 5% in 1% annual	HTPWC/HW MC/HAFC- HTPWC

	increments from 2019-2025.	
HB 89 McCamley Martinez	Cannabis Revenue & Freedom Act: HB 89 Creates several Acts and regimes for the purpose of regulating and taxing recreational cannabis. The tax portion imposes a statewide tax, distributed to public schools, in the amount of 15%. The proposal provides for 5% general purpose local option taxes for municipalities and counties that can be approved by the governing bodies without voter approval.	HCPAC/HBI C/HAFC- HCPAC
HB 96 Baldonado	Hospital Tax Levy Petitions for Action: HB 96 Provides that services called for in ballot measures may not begin less than seven years after the ballot measure, but must begin within four years unless otherwise stated. If services have not commenced timely, any elector or owner may petition the requirement of the services begin, alternative approved use of the funding, or request a refund of the taxes.	HHHC/HTRC -HHHC-DP- HTRC
HB 102 Rehm	Marijuana Tax Act: HB 102 Creates a new act that creates registration and recordkeeping requirements for marijuana production, distribution and sale. The proposal imposes a \$25/ounce tax on medical marijuana sales (the proposal does not address recreational sales/use)	HBIC/HTRC/ HAFC-HBIC
HB 117 Caballero	Supplemental Income Tax: HB 117 Effectively creates a higher tier tax bracket for those earning over \$100/150K (single/family) that increases the top rate .3% in 2017, .5% in 2019, .8% in 2019, and 1% in 2020 where it becomes permanent.	HLEDC/HTR C-HLEDC
HB 148 Alcon, Wooley, Johnson	Native American Income Tax Settlement Fund: HB 148 Creates an appropriation for the Native American veteran’s income tax fund” to pay claims past the time limit on state taxes withheld from native servicemen and/or spouses that wasn’t previously refunded.	HSIVC/HAF C-HSIVC
HB 152 Thomson	Tax Expenditure Budget: HB 152 Requires tax expenditure and dedicated revenue reports from the consensus revenue estimating group by October 15 of every year.	HSIVC/HTR C-HSIVC
HB 167 Little	Car Excise Tax To Road Fund: HB 167 In 25% increments over 4 years, the proposal moves 100% of motor vehicle excise tax distributions from the general fund to the road fund.	HTPWC/HTR C-HTPWC
HB 169 Little	Income Tax Deductions: HB 169 Eliminates the exclusion from personal income tax itemized deductions for state and local personal income or sales taxes paid.	HCPAC/HBI C/HTRC- HCPAC
HB 176 Ezell, Nibert, Wooley	Muni Enviro Services Gross Receipts: HB 176 Expands the uses of and renames the municipal environmental services gross receipts tax increment (to “municipal infrastructure and environmental gross receipts...)	HLELC/HTR C-HLELC
HB 184 Youngblood	Property Tax Revenue To Charter Schools: HB 184 Requires treasurers to report to charter schools and school districts the amounts share of tax due the charter school and requires the school district to distribute that share to the charter school if the money goes to it first.	HEC/HTRC- HEC

HB 192 Ely, McCamley	Film Tax Credits & Residency: HB 192 Removes the \$50M program cap and instead provides for the cap to be indexed to the CPI (i.e. 53.8M in 2018)	HBIC/HTRC- HBIC
HB 193 Ely	Solar Market Tax Credit Permanent: HB 193 Expands and makes permanent the recently sunsetted credit, increase the prior \$2M annual cap to \$5M, and increases the credit percentage from 10% to 15% for those making less than \$43,871 in taxable income. Extends the credit to corporate income taxpayers.	HBIC/HTRC- HBIC
HB 202 Carl Trujillo	Tax of Business Without Physical Presence: HB 202 Narrows engaging in business for purposes of the GRT to not include those without nexus and unregistered with less than \$100K sales in NM, changes the definition of place of business to include the buyers location in the case of those selling goods or services with no other place of business in NM	HBIC/HTRC- HBIC
HB 249 Martinez, Ferrary, Small,	College Special Event Gross Receipt: HB 249 Extends the gross receipts tax deduction for NMSU's Pan Am Center (only) and creates a new governmental gross receipts tax deduction for the same purpose.	HEC/HTRC- HEC
HB 266 Carl Trujillo	Short-Term Rental Occupancy Tax: HB 266 Effectively expands the lodgers tax act by striking the limitation that three or more units be available (expanding scope to single-unit rentals)	HBIC/HTRC- HBIC
HB 282 Thompson/A rmstrong	Increase Cigarette & E-Cigarette Taxes: HB 282 Triples the cigarette tax (\$2.25/pack vs. \$75); changes distribution percentages to most beneficiaries to maintain funding at present levels.	HTRC
HB 310 McCamley	Income and Capital Gains Taxes: HB 310 Adds a 5.9% bracket to singles with taxable income in excess of \$75K (single) or \$150K (married filing joint or HOH); repeals 50% exclusion for capital gains (retains \$1K exclusion); increases motor vehicle excise tax from 3% to 5%.	HTRC
HB 311 Rubio	Increase Working Families Tax Credit: HB 311 Doubles present law credit benefit of 10% of the federal earned income tax credit (which the NM credit piggybacks) to 20% of federal while also effective doubling the present law tax on capital gains by eliminating the 50% deduction for capital gains from income (the \$1000 exclusion is not eliminated).	HTRC
SB 1 Wirth	Unitary Group Combined Reporting: SB 1 Requires mandatory unitary combined reporting on a waters edge basis. Provides elections for alternate worldwide combined and nexus-consolidated filing groups.	SCORC/SFC- SCORC
SB 50 O'Neill	Additional Upper -ier Tax Buckets: SB 50 Restores the top 8.2% personal income tax rate for individuals/married filing separate with taxable income over \$187.5K, and married/HOH with taxable income in excess of \$375K.	SCORC/SFC- SCORC
SB 94 Papen	Nonathletic Event Gross Receipts: SB 94 Extends the gross receipts tax deduction for NMSU's Pan Am Center	SCORC/SFC- SCORC

	(only) and creates a new governmental gross receipts tax deduction for the same purpose.	
SB 95 Sanchez	Gas Tax Increase & Distribution: SB 95 Increase the gasoline tax by 10 cents and the special fuel (diesel) tax by 5%, reducing distribution percentages commensurately to hold consistent distributions to smaller fund beneficiaries	SCORC/SFC- SCORC
SB 100 Pirtle	Payments to Partners Gross Receipts: SB 100 Expands present law to specify guaranteed payments to partners (all) are exempt from the gross receipts tax.	SCORC/SFC- SCORC
SB 123 Sharer	Tax Reform: SB 123 Proposes a broad elimination of gross receipts tax exemptions and deductions, reduces rates.	SCORC/SFC- SCORC
SB 131 Smith, Gonzalez	Gas Tax, Road Fund & Distributions: SB 131 Increases the gasoline and special fuels taxes by 10 cents/gallon until 7/1/19, at which time the rate would be indexed to the chained price index. Distributions are adjusted, and a new fund is created. Half of new revenue is shared with local governments for road maintenance, and the other half can be used for up to five years for general fund reserves.	SCORC/SFC- SCORC
SB 132 Smith, Gonzalez	Gas Tax, Road Fund & Distributions: SB 132 Increases the gasoline and special fuels taxes by 10 cents/gallon until 7/1/19, at which time the rate would be indexed to the chained price index. Distributions are adjusted, and a new fund is created. Half of new revenue is shared with local governments for road maintenance, and the other half can be used for up to five years for general fund reserves.	SCORC/SFC- SCORC
SB 138 Candelaria	Enrolled Agents At Tax Protests: SB 138 Amends the Tax Administration Act to allow enrolled agents to represent taxpayers in matters beyond income taxes (present law limits representation to matters of income taxation).	SCORC/SFC- SCORC
SB 181 Shendo	Colleges As Tax Refund Intercept Claimants: SB 181 Adds the higher education department to the definition of “claimant agency” for purposes of refund offset in the NMTRD tax refund offset program.	SCORC/SFC- SCORC
SB 196 Campos	Small Business Investment Tax Credit: SB 196 Creates a personal income tax credit on qualified investments in NM not to exceed 25% of a qualified investment not to exceed \$250K. The credit may be carried forward for 5 years and the program has a \$2M annual payout cap (first come...)	SCORC/SFC- SCORC
SB 199 Smith	Delay Certain Tax Changes: SB 199 Restores last year’s corporate income tax rate and single sales factor election percentage (HQ) to last year’s levels, and freezes them until 2019.	SCORC/SFC- SCORC

SB 231 Morales	Increase Cigarette & E-Cigarette Taxes: SB 231 Slightly more than triples the tobacco products tax, and includes e-cigarette and other tobacco smoking devices not currently taxable (i.e. pipes, papers, etc.) into the present sin tax regime for non-cigarettes. Also, the proposal almost doubles the cigarette tax.	SCORC/SFC- SCORC
SB 232 Ortiz y Pino	Carbonated Beverage Gross Receipts: SB 232 Specifically excludes “carbonated beverages” from the definition of “food” for purposes of the GRT food deduction found in 7-9-92.	SCORC/SFC- SCORC
SB 247 Munoz	Liquor Tax and County Definition: SB 247 Increases the maximum rate that that may be imposed under the Local Liquor Excise Tax Act from 6 to 9%, and changes the population range and property tax values of counties that can impose the tax so that the imposing/beneficiary county (McKinley) may continue to do so at a higher rate.	SCORC/SFC- SCORC
SB 254 Sapien	Short Term Rental Occupancy Tax: SB 254 Effectively expands the lodgers tax act by striking the limitation that three or more units be available (expanding scope to single-unit rentals).	SCORC/SFC- SCORC
SB 264 White/Trujillo	Taxation of Internet Sales: SB 264 Narrows engaging in business for purposes of the GRT to not include those without nexus and unregistered with less than \$100K sales in NM, changes the definition of place of business to include the buyer’s location in the case of those selling goods or services with no other place of business in NM.	SCORC/SFC- SCORC
SB 274 Wirth/Harper	Tax Determination of In-State Sales and Services: SB 274 Strikes present law language providing that services and intangibles be sourced, for sales factor purposes, on a greater of cost of performance basis (where the property and payroll factors are) and inserts language requiring that those sales be sourced like tangible property where the buyer/customer is located.	SCORC/SFC- SCORC
SB 288 Padilla	Taxes and Surtaxes for Early Childhood Fund: SB 288 Creates an Emergency Oil and Gas Tax Surtax in the amount of 1/100 percent of value (essentially collected like the regular tax but without deductions such that the base differs. Imposes a \$.01/kw on electricity generated in NM but exempts governments and those generating for their own purposes or who don’t generate more than 500kw excess in 24hrs. Creates an early childhood education fund to be administered by CYFD for the purpose of supporting certain programs.	SCONC/SCORC/SFC- SCONC
SB 300 Munoz	Transfer of Liquor Excise Tax Credit: SB 300 Creates a nonrefundable personal income tax credit, which may be carried forward for up to five years, for liquor licenses purchased for over \$400K and transferred outside an eligible county (McKinley) to anywhere else. The amount of the credit is 60% of the amount paid for the license.	SCORC/SFC- SCORC
SB 314 McSorley	Raise Liquor Excise Tax for Certain Beverages SB 314 Raises liquor taxes by up to more than 750% depending on the category of alcohol (beer is increased the most, spirits second, NM beer least, etc),	SCORC/SFC- SCORC

	until 2021, at which time the tax is indexed to rise with consumer price index.	

**HOLD THE DATE AND MARK YOUR CALENDARS NOW –
14TH ANNUAL NMTRI TAX
POLICYCONFERENCE IS COMING!**



**NEW MEXICO
TAX RESEARCH
INSTITUTE**

The Fourteenth (can you believe it?) Annual NMTRI Tax Policy Conference and annual members meeting will be held at the Sandia Resort and Casino in Albuquerque April 27-28th. You will be inundated with details shortly! We look forward to seeing you there!

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

“People who complain about taxes can be divided into two classes: men and women.”

~ Unknown

“No matter what anyone may say about making the rich and the corporations pay taxes, in the end they come out of the people who toil.”

~Calvin Coolidge



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!