

# ***Tax Matters***

*The Newsletter of the New Mexico Tax Research Institute*

Issue No. 2017-08

March 19, 2017

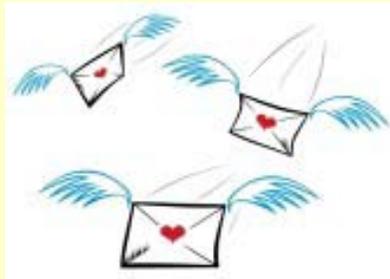
New Mexico Tax Research Institute  
P.O. Box 91657  
Albuquerque, New Mexico 87199-1657

505-842-5833  
[Richard.Anklam@nmtri.org](mailto:Richard.Anklam@nmtri.org)  
[www.nmtri.org](http://www.nmtri.org)

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



- **Into the Legislative Session**
- **Tax-pectations for the Session**
- **List of Passed Tax Legislation by the Legislature**
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## INTO THE LEGISLATIVE SESSION – IT BEGAN - JANUARY 17, 2017



The 2017 Regular Session of the New Mexico Legislature convened at noon on Saturday, January 17, and ended at noon on March 18. Legislation passed but 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. It was 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.

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.

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## 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. This year, all of the oxygen in the room was 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 - 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](#).

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 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 ended Saturday at noon with the end of the 60-day session.

### What Happened this Week



With the last week of the session beginning the House of Representatives had 577 bills and the Senate had 538. The last 67 House bills and 49 Senate bills are what are referred to as “dummy” bills. They often carry a title of “for the public peace, health, safety, & welfare” and contain little or no substance. They tend to be introduced by committee chairs on the introduction deadline and can serve as vehicles for legislation after the introduction deadline passes with an amendment or committee substitute.

In this last week, things went from fast to slow. Representative Harper's tax reform proposal in his [HB 412](#) was heard in a joint meeting of the Senate Corporations and Finance Committees, where public commentary was taken on the House floor substitute version of the bill. Anticipated and prepared technical amendments weren't put on at the time, although many were the subject of public commentary. Nonprofit and education concerns were louder, as of those interests became more sensitive to the proposal. All anticipated that, in addition to technical changes, a few other tweaks might be made as a part of an anticipated budget and tax deal. But none of that happened as, apparently, the parties involved couldn't reach satisfactory agreement.

Meanwhile, the Senate wanted to send something to the governor that was reform related, so they amended Rep. Larragana's [HB 191](#) – a proposal to create a tax stabilization reserve to help smooth revenue boom/bust cycles by skimming off excess oil and gas emergency school tax revenues – and added a measure requiring delayed repeal or review of many of the exemptions and deductions addressed in [HB 412](#). The bill also required separate reporting of some existing deductions. Presumably, this was meant to be a substitute for Rep. Harper's reform measure. On the Senate floor, Senator Pirtle's committee substitute language pertaining to the GRT wage deduction, as it pertains to guaranteed payments to partners, was considered a friendly amendment and added to the bill. The amended measure was concurred by the House after they eliminated few pet giveaways from the review/repeal list. In the meantime, [House Bill 2](#) – the budget, and the committee substitute for Vice Chair Carl Trujillo's [HB 202](#) with the tax raisers were sent to the Governor's office for actions, in addition to [HB 191](#).

### *So How Might it Have Worked?*

It's hard to say how it might have turned out if things had gone more smoothly. There were both technical changes necessary and certain to be made to Harper's bill, in addition to other negotiated changes perhaps, and more expected down the road. The Governor would then, presumably, been line-item vetoing those tax/revenue increases she couldn't live with in [HB 202](#). That would have achieved some form of tax reform along with budget solvency—or at least a way to fund the passed budget. Since that didn't happen, the governor didn't get the reform she wanted. We assume no tax increase options will be signed, and therefore the budget passed by the legislature doesn't work.

In short, we expect a special session to be called in the near future. All that said, we still don't actually know what revenue options the Governor would have exercised – outside remote sales collection requirement – and we don't know exactly what the reform package would have looked like when done. So, even if the special session ends up being a re-write of the regular session, we're not exactly sure what that will look like. Even when the same recipe is followed, the soup could taste different with so many cooks.

### *What Else?*

The list below contains a list of the tax related proposals making their way to the Governor's desk. No great surprises – and nothing that's going to help the budget crisis. Those anxious over the companion Pan Am Center tax breaks, in [HB 249](#) and [SB 94](#), needn't have worried, as they both passed. Likewise for the companion short-term occupancy tax proposed changes to the municipal lodgers tax- the AirBnB proposals - in [HB 266](#) and [SB 254](#)).

Senator Munoz's [SB 247](#), passed. It 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 its tax. It was joined by Sen Shendo's [SB 181](#), which adds the Higher Education Department to the definition of "claimant agency" for purposes of refund offset in the NMTRD tax refund offset program.

The Taxation and Revenue Department apparently did as well as anybody, managing to get two bills passed to the Governor’s desk. Rep. Trujillo’s [HB 408](#) makes technical corrections, eliminates 210 day “gotcha” provision in refund claim statute, and makes other minor technical changes. Senator Wirth’s [SB 391](#) creates a corporate income tax add-back for all expenses or costs paid directly or indirectly to a captive real estate investment trust. We’ll dive deeper into signed legislation – if any – in the future.

*[NMTRI note: we’ll assume the TRD legislation will pass and have always been ok with reasonable add-backs – as this is. This was the first add-back enacted, as other efforts in the past have failed (this particular proposal received mostly unanimous votes). As for reform, we hope we can achieve real reform one day. HB 412 had already had much of its consumption base expansion gutted - for populist reasons in some cases (making its rate reduction and improvement potential more limited). So, HB 191, while giving a nod to reform, doesn’t quite get there in most views, but at least gazes in the right direction. More concerning were the changes the House wanted on concurrence (and this is in addition to the unwillingness of all to subject food and other significant deductions to scrutiny coupled with an utter failure to address hold-harmless expense). Maybe it was just nod to constituents. If this is the extent to which we can consider reform, so that something as unprincipled as tax holidays remain immune from reconsideration, then we may simply be digging a deeper hole. Populist tax policy is expensive. It’s “the reason we can’t have nice things.” And it’s the likely reason real and successful tax reform may be as elusive as a healthy private sector economy. Perhaps federal tax and fiscal reforms will save us. Sometimes there’s no motivation to fix something until it’s really broken. Maybe the trick is to just find more feel-good ways to narrow the GRT base and put our fiscal house in jeopardy ... ]*

#### House and Senate Tax Related Bills in the other Chamber

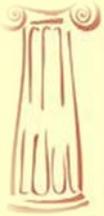
<b>Bill Number/ Sponsor:</b>	<b>Title: Link to bill language: Description</b>	<b>Assignments- Location:</b>
HB 8 Dodge/Lunds trom	<b>Eliminate Cigarette Tax Distribution <a href="#">HB 8</a></b> Eliminates the 1.25% distribution to the NMFA from Cigarette Tax revenues. Associated bonds have been retired.	Passed
HB 63 Crowder/Go nzales	<b>Local Option Fuel Tax: <a href="#">HB 63</a></b> 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.	Passed
HB 176 Ezell, Nibert, Wooley	<b>Muni Enviro Services Gross Receipts: <a href="#">HB 176</a></b> Expands the uses of and renames the municipal environmental services gross receipts tax increment (to “municipal infrastructure and environmental gross receipts...)	Passed
HB 191 Larranaga	<b>Oil &amp; Gas School Tax to Stabilization Reserve Fund: <a href="#">HB 191</a></b> Proposes to distribute excess revenues from the oil and gas emergency school tax (over a 5 yr avg. and other limits) to a tax stabilization reserve fund. Amended to require study /repeal of many GRT credit/exemptions/deductions.	Passed
HB 202 Carl Trujillo	<b>Tax of Business Without Physical Presence: <a href="#">HB 202</a></b> Narrows engaging in business for purposes of the GRT to not include	Passed

	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. The committee substitute added the healthcare taxation scheme with a 60% deduction found in, increases the motor vehicle excise tax from 3-4%; imposes a new commercial vehicle license tax.. Senate amendments narrow the healthcare tax provisions to hospitals only, freeze corporate changes, increases gasoline, PPL and special fuels taxes.	
HB 249 Martinez, Ferrary, Small,	<b>College Special Event Gross Receipt:</b> <a href="#">HB 249</a> 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.	Passed
HB 266 Carl Trujillo	<b>Short-Term Rental Occupancy Tax:</b> <a href="#">HB 266</a> Effectively expands the lodgers tax act by striking the limitation that three or more units be available (expanding scope to single-unit rentals)	Passed
HB 408 Carl Trujillo	<b>Tax Liability Changes &amp; Definitions:</b> <a href="#">HB 408</a> Makes technical corrections, eliminates 210 day "gotcha" provision in refund claim statute, makes completeness of a claim solely determined by the Department.	Passed
		Passed
SB 94 Papen	<b>Nonathletic Event Gross Receipts:</b> <a href="#">SB 94</a> 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.	Passed
SB 181 Shendo	<b>Colleges As Tax Refund Intercept Claimants:</b> <a href="#">SB 181</a> Adds the higher education department to the definition of "claimant agency" for purposes of refund offset in the NMTRD tax refund offset program.	Passed
SB 247 Munoz	<b>Liquor Tax and County Definition:</b> <a href="#">SB 247</a> 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.	Passed
SB 254 Sapien	<b>Short Term Rental Occupancy Tax:</b> <a href="#">SB 254</a> Effectively expands the lodgers tax act by striking the limitation that three or more units be available (expanding scope to single-unit rentals).	Passed
SB 390 Steinborn	<b>Film Tax Credit "Production Facility":</b> <a href="#">SB 390</a> Reduces from 50 to 45 the number of acres required to be a production facility for purposes of the film production tax credit.	Passed
SB 291 Wirth	<b>Captive Real Estate Investment Trust Income</b> <a href="#">SB 391</a> Creates a corporate income tax add-back for all expenses or costs paid directly or indirectly to captive real estate investment trust.	Passed

## 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. Join us weekly through the session as we try to provide balance policy analysis, commentary and discussions of the tax and budget proposals that implicate tax policy in New Mexico.

## 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.

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**HOLD THE DATE AND MARK YOUR CALENDARS NOW –  
14<sup>TH</sup> 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 27-28<sup>th</sup>. You will be inundated with details shortly! We look forward to seeing you there!

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**TAX QUOTABLES**

"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*

"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*

"A government big enough to provide everything you want is big enough to take everything you have."

*~Thomas Jefferson*



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



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

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

Wendell Holmes, dissenting.  
Join NMTRI today!