

Tax Matters

The Newsletter of the New Mexico Tax Research Institute

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INTO THE LEGISLATIVE SESSION – IT BEGINS - JANUARY 16, 2018



The 2018 Regular Session of the New Mexico Legislature convenes at noon on Tuesday, January 16, and ends at noon (or somewhere thereabouts) on February 15. The deadline for bill introduction is January 31. Legislation not acted on by the governor is pocket vetoed on March 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 May 16. Being a "short" or 30-day "budget" session, non-budgetary legislation and items not related to the budget are not fair game for open introduction and are limited by the call of the Governor. It is an interesting time. There is still talk of tax reform, and Governor wants to address crime issues, but the fiscal crisis is over for the moment – mostly thanks to very strong oil price/production in the Permian. So, while there's plenty to fight about and money to fight over, it doesn't appear as tense as some and it's possible they'll quietly fund government and go home, without significant other damage or accomplishment.

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.

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-pectations for the Session

The 30-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. Being a “budget only” 30-day session, only tax/budget issues and the controversy they bring are fair game, but so are other controversial issues where the Governor chooses to allow them. There are already pre-filed bills such as those we’ve seen from prior sessions (crime, abortion, etc.), and not all is just red meat.

This year however, most of the oxygen in the room will be consumed by matters of budget and taxes, as well as anything else the Governor wants to consider. The beginning of most 30-day sessions is faster than 60-day sessions, but still slower than one would like. Even the short session finds time for pomp and circumstance. This year however, the fact the state was in a deficit position before ending up in a surplus with almost reasonable reserves in 2018 now expected has taken the crisis out of the room. Stranger still, the forecast is likely to get stronger still when it’s likely revised in the near future (the primary driver there being higher than expected prices for oil and gas, along with oil production in the neighborhood of 30% ahead of forecast). The December consensus revenue forecast had the legislature \$199 million to the good for 2018, and that’s with reserves of around 9%. The December consensus revenue estimate can be found on the LFC website [here](#).

[NMTRI Note: The forecast will likely be revised upward during the session, and while cases for adjustments in both directions likely could be made, most news is good, at least in the short run, although the lion’s share goes to favorable oil price/volume, and that as we know is highly volatile].

In her Executive budget (found [here](#) on the Governor’s DFA website) Governor Martinez has proposed a budget of \$6.32B, with spending increases including state worker salary increases (1%) with public safety and teachers seeing larger increases of course, as well as more money for education, CYFD, and economic development programs like LEDA and JTIP. Legislators have proposed spending measures of their own, however the reasonably healthy – but not too healthy - state of the budget – suggests that there’s lots of room to get a budget deal but not a lot of leverage to force big deals or huge compromises. Both sides want some similar things, naked tax increases are still unacceptable (largely?) to the Governor, and meaningful cuts without offsets probably aren’t really in the cards either, although hospitals want to be taxed to increase funding Medicaid funding of the healthcare system.

Despite call for reform and repeated self-flagellation on the part of policy makers over how we’ve created too many exemptions, deductions and credit, the fact that the majority of the 21 House and Senate tax related proposals are new or expanded deductions and credits bemoans the problem and belies the fact that we have a little extra money to spend.

Tax Reform?

That means tax reform conversations are also back on the table. Senator Sharer has pre-filed a version of his broad proposal found in his [SB 49](#). Representative Harper has suggested that a

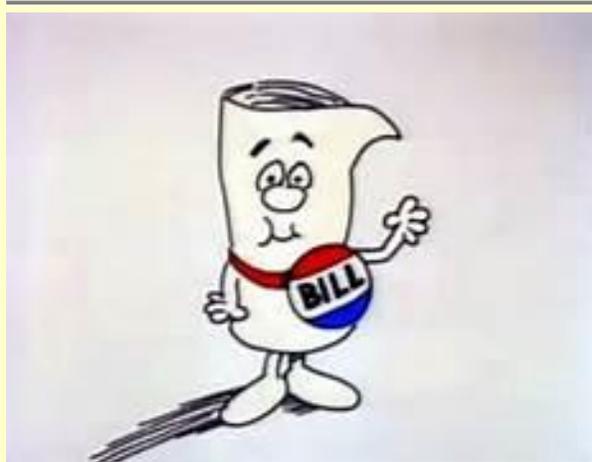
version of his prior proposals, probably in three different bills in response to concerns of overcomplication and politicization in such a large proposal. His bill(s) haven't yet been introduced. Remote sales is back on the table, likely in some reform proposals as well as stand alone (and yes, Friday the SCOTUS accepted cert. in the appeal of *South Dakota v. Wayfair, Inc.*, the case that could overturn *Quill*. So, that issue and approach are continuing to evolve, even though a legislative effort may be moot in the near future. The Legislative Finance Committee met yesterday to endorse a proposal essentially identical to Senator Cisneros' [SB 68](#) – Tax Cleanup and Reporting. It does a variety of things, including repealing a couple of statutory deductions and credits. It also weakens the statutory taxpayer confidentiality protections by allowing taxpayer confidential information to be shared with economists in outside agencies, as well as requiring separate reporting of a variety economic development and general structural measures, in many cases, albeit quite inconsistently, requiring taxpayers to “waive” confidentiality of any kind to keep in order to receive favorable (or avoid punitive) tax treatment. We expect another proposal or two under the moniker of tax reform to appear at some point as well.

[NMTRI note: tax reform is hard and the overall conditions make it harder. Tax reform light is more likely. The good and bad of that is sometimes we get one or two good things done, but can also eliminate the political pressure or will to actually fix the system. The RSTP bill, if confused with reform, would never be accused of being a profile in courage: eliminating two unused or unusable GRT deductions and a handful of income tax equivalents, while also deleting a GRT deduction, for chemicals and reagents (7-9-65), which impacts are largest industries). There's a story there: that deduction is an old anti-pyramiding provision that some would say has been exploited beyond intent recently – and it is regrettably worded, but is also the source of ongoing litigation. Not knowing who actually benefits presently as intended is a problem, so whether deleting the provision is appropriate or mallet-fisted tax policy is unclear. Given the pending litigation and protest backlog, regardless it is clear the issue has the potential to be a real fiscal bleeder. Since we've been saying it without effect for over a decade, we'll repeat that less unclear is the need/appropriateness to extort taxpayers into waiving confidentiality to avoid punitive treatment, and require unenforced complicated reporting on taxpayers that can result only in bad data and catholic guilt documentation burden on the small businesses foolish enough to attempt to comply. Burden on taxpayers and a beleaguered agency without benefit is of negative value, but that's how populism works in the world of tax policy. Franklin Jones always said to require no more of the taxpayer than you need and can use. We'd add if you're going to require it, require it for real... not that that's a good idea either way.]

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 Pre-filed in the 2018 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 35 C Trujillo/Ruiloba	Liquor Excise Tax Distributions HB 35 Distributes 45% of revenues to the local DWI grant fund, creates a drug court fund and distributes 5% to the drug court fund, and eliminates the 39% distribution to the lottery fund.	HPREF
HB 36 C Trujillo Maestas Barnes	Reinstate Solar Market Development Credit: HB 36 Reinstates retroactively the sun-setted credit, bifurcates benefits and program caps between individuals and business/agriculture (annual program caps at \$1.5M for business/ag/\$3.5M for residential, with a 10% credit capped at \$4K/residence and \$9K/business).	HPREF
HB 47 Rodella/Cisneros/Garcia	Tax Refund for National Guard Eligibility: HB 47 Eliminates language in the distribution rules in the TAA as well as in the tax refund designation language in the personal income tax act that limits contributions and distributions for purposes of assisting NM national guardsmen and their families when deployed overseas.	HPREF
HB 70 Little	Change Motor Vehicle Tax Distribution: HB 70 Over four years and in 25% increments, redistributes the motor vehicle excise tax from the general fund to the road fund.	HPREF
HB 77 Sarinana	Energy Storage Systems Tax Credit: HB 77 Creates a new tax credit program for qualified energy storage systems, not to lesser of \$5K or 30% of the qualified expenditures in the case of individuals, and 75K/30% in the case of businesses. Owners of some pass through entities would qualify. The overall program is capped at \$750/yr in credit approvals.	HPREF
HB 79	Thanksgiving Saturday Gross Receipts: HB 79 Creates another “tax holiday” (GRT deduction) for any “sale of tangible personal property at retail” by a business on the Saturday after Thanksgiving, but only for those businesses with 25 or fewer employees in NM.	HPREF

HB 83 J. Trujillo	Estate or Trust Distribution Tax Deduction: HB 83 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, that would otherwise not be subject to NM income tax if earned in NM by a nonresident.	HPREF
HB 87 Trujillo/Rodella	Solar Market Development Tax Credit: HB 87 Reinstates retroactively the sun-setted credit. Credits for business, residential and agriculture are limited to \$9000 and establishes an annual program cap of \$5 million.	HPREF
HB 88 Fajardo/Baldonado	Tax Delinquent Property Sales: HB 88 Requires that <i>all</i> delinquent properties be placed for sale by the PTD, rather than at least one, unless the director and country treasurer enter into a written agreement stating reasons, timing of recovery, and with copies sent to the Secretaries of DFA and TRD.	HPREF
HB 104 M. Garcia	Rural Healthcare Practitioner Credit Changes: HB 104 Moves the \$3K credit beneficiaries into the category of \$5K beneficiaries (eliminating the \$3K category). Also adds pharmacists, social workers, and anyone licensed pursuant to the counseling and therapy practice act the list of qualified healthcare practitioners that are eligible for the credit.	HPREF
HB 113 J Trujillo	Remove Film Tax Credit Annual Cap: HB 113 Eliminates the \$50M annual cap on film credit approvals.	HPREF
HB 128 Trujillo	Broadband Gross Receipts: HB 128 Creates a new gross receipts and compensating tax deduction for “broadband telecommunications network facilities components”, or equipment used by telecommunications companies to supply internet access and related services.	HPREF
SB 17 Cisneros	Gross Receipt for Certain Nonprofits: SB 17 Adds operators of federally designated national laboratories to the list of exceptions to the general gross receipts tax exemption for nonprofits.	SPREF
SB 15 Cisneros	Tax Refund for National Guard Eligibility: SB 15 Eliminates language in the distribution rules in the TAA as well as in the tax refund designation language in the personal income tax act that limits contributions and distributions for purposes of assisting NM national guardsmen and their families when deployed overseas.	SPREF
SB24 O’Neill	Auto Recycler Purchase Info to Tax & Rev: SB 24 Requires TRD to maintain and make available to auto recyclers a system whereby recyclers can check the stolen status of a vehicle before purchase. Also requires recyclers to electronically report to TRD within 48 hrs of the sale of a vehicle, notice of the sale and other information.	SPREF
SB 25 Morales	Increase Cigarette & E-Cigarette Taxes: SB 25 Slightly more than triples the tobacco products tax, and includes e-cigarette and other tobacco smoking <i>devices</i> not currently taxable outside the GRT (i.e. pipes, papers, etc.). Also, the proposal almost doubles the cigarette tax.	SPREF

SB 32 Sanchez	Cider Definition and Tax Rate: SB 32 Amends the definition of cider in the liquor excise tax act to allow for greater alcohol content, and creates a new preferential \$.08/gal tax rate for small wineries producing cider under 10,000 gallons, and \$.28/gal on the next 5K gallons (regular rate: \$.41/gal).	SPREF
SB 49 Sharer	Tax Reform: SB 49 Eliminate corporate and personal income tax, motor vehicle excise tax, eliminate most GRT exemptions and deductions.	SPREF
SB 68 Cisneros	Tax Code Cleanup and Reporting: SB 68 Proposes to eliminate some unused GRT and income tax deductions and credits, repeal the chemicals and reagents GRT deduction found in 7-9-65, and require certain taxpayers to separately state deductions or in some cases forego confidentiality, and weaken taxpayer confidentiality provisions to allow for taxpayer confidential information to be shared outside the TRD to certain economists.	SPREF
SB 79 Stewart	Solar Market Development Tax Credit: SB 79 Reinstates retroactively the sun-setted credit and changes program, caps the overall credit program at \$5M, and individual credits are limited to \$9K. Benefits are determined on a phased-in sliding scale of 10% of allowable costs if the system is installed prior to 1/1/21, and is reduced over time to 6% through 2033.	SPREF
SB 99 Burt/Griggs	Aircraft Training Construction Gross Receipts: SB 99 Creates a new gross receipts tax deduction for construction services performed to implement a fighter aircraft training mission in a Class B county (read: Holloman AFB).	SPREF

KNICK KNACKS

NMTRI Publishes Preliminary New Study

NMTRI is also working on finalizing the 2017 study endeavoring to answer the question of exactly how much does the oil and gas industry contribute to New Mexico coffers? Retired but always serving former chief economist from the New Mexico Taxation and Revenue Department and Department of Finance and Administration, Laird Graeser, has served as our primary researcher and has done yeoman's work to compile the voluminous data involved in such a mammoth undertaking. The 2014 and later years studies can be found on our website [here](#).

Here's the preliminary results for the general funds share of oil and gas contribution: The recovery from the high water mark of almost 35% in 2014 is not at all unexpected given what we've seen in that industry, falling to 32% in 2015 and 28% in 2016 (of a smaller general fund too). The preliminary report can be found on our website [here](#).

	FY17			FY 16			FY 15		
	Total Gen Fund	OGAS Portion	OGAS %	Total Gen Fund	OGAS Portion	OGAS %	Total Gen Fund	OGAS Portion	OGAS %
Gross Receipts	2,013.5	103.8	5.2%	1,975.4	103.7	5.3%	2,095.2	177.4	8.5%
Compensating	48.5	10.8	22.2%	46.9	18.9	40.2%	71.8	16.9	23.6%
Motor Vehicle Excise Tax	145.2	**	**	150.4	**	**	138.7	**	**
Personal Income Tax	1,380.7	94.0	6.8%	1,327.2	107.8	8.1%	1,339.7	128.8	9.6%
Corporate Income-net of refunds	70.2	9.8	14.0%	118.5	16.6	14.0%	254.5	35.6	14.0%
Oil & Gas School Tax, excluding Advance Payments	304.3	304.3	100.0%	236.8	236.8	100.0%	375.4	375.4	100.0%
Oil Conservation, excluding Advance Payments	16.8	16.8	100.0%	10.8	10.8	100.0%	19.2	19.2	100.0%
Natural Gas Processors	10.3	24.2	100.0%	20.4	23.3	100.0%	18.6	18.2	100.0%
Land Grant Perm. Fund Income	541.5	524.1	96.8%	555.1	537.0	96.7%	502.8	486.6	96.8%
Earnings on State Balances****	-3.2	-0.5	14.0%	21.6	3.4	15.9%	17.0	2.9	17.2%
Severance Tax Perm. Fund Income	200.4	174.4	87.0%	193.5	168.4	87.0%	182.7	158.1	86.5%
Federal Mineral Leasing	435.7	407.6	93.6%	390.0	363.1	93.1%	542.2	507.6	93.6%
Land Office Income	71.5	49.7	69.5%	47.8	26.4	55.2%	42.2	26.6	63.0%
Recurring Reversions *****	76.5	22.8	29.8%	55.2	18.2	33.0%	58.6	19.2	32.8%
All other recurring revenues*	574.0	0.0	0.0%	709.3	0.0	0.0%	562.5	0.0	0.0%
TOTAL RECURRING REVENUES	5,886.0	1,741.8	29.6%	5,859.0	1,634.5	27.9%	6,221.0	1,972.5	31.7%

TAX QUOTABLES

“Like mothers, taxes are often misunderstood, but seldom forgotten.”

~ *Lord Bramwell*

“Tax reform is taking the taxes off things that have been taxed in the past and putting taxes on things that haven't been taxed before.”

~*Art Buchwald*



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!