

# ***Tax Matters***

*The Newsletter of the New Mexico Tax Research Institute*

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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 “GOVERNOR ACTS” ISSUE OF *TAX MATTERS*:**



- **Into the Legislative Session**
- **Still Time but Governor Signs Most Tax Bills**
- **Table of Tax Bills on Governor’s Desk**
- **HOLD THE DATE – NMTRI Annual Tax Policy Conference May 10-11 at the Hotel Albuquerque**
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**INTO THE LEGISLATIVE SESSION – IT BEGAN - JANUARY 16, 2018- IT ENDED – FEBRUARY 15, 2018**



The 2018 Regular Session of the New Mexico Legislature convened at noon on Tuesday, January 16, and ends at noon (or somewhere thereabouts) on February 15. The deadline for bill introduction was 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.

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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## Do You Believe in Fairy Dust?

While it didn't exactly come in like a lion, the 2018 legislative session in New Mexico pretty



much went out like a lamb. The pace was never fast – some suggest intentionally. After the House and Senate managed to reach a budget deal (there was a little drama with very little reason since all sides started in fairly close agreement and the revenue forecast only went up), spending measure

around tax could be passed.

Although the Governor's time to act isn't up, she did sign a spate of tax related proposals on Friday afternoon, so we thought we'd kick out a table of the activity. She essentially signed almost everything we're tracking – yes even the silly and wasteful tax holiday (as well as another likely feel good measure for foster children, and a construction tax break at Holloman that will only be effective if the "but for" question is answered affirmatively) – but in current form should become the huge planning vehicle it would have as introduced. At least to the uneducated and uninformed, it should "feel" good. We'll spend more time on it later, but "tax populism", like all populism, is something that should be resisted rather than embraced. It's neither right nor left, rich nor poor, as it afflicts all. It's a disease that we need to be immunized against, and the only vaccine is information and education. While tax populism doesn't necessarily require the nationalism, it does often use the "us versus them" theme so common in politics.

What hasn't been signed is almost as interesting as what has, but it's not clear whether the unsigned measures are dead, or just still awaiting her action... or some good old-fashioned lobbying/horse trading. Either way, at the end of the day she's acted favorably on most tax legislation that's passed. That doesn't mean it's been all good or bad.

*So What DID Happen?*

*Gross Receipts Tax Measures – More Retail Base Erosion*

The governor signed the GRT proposals to fix in law present law treatment of tangibles to governments and nonprofits (until recent TRD enforcement policy reversals and 7+ year retroactive enforcement of said activity), the alternative evidence allowance in the absence of an NTTC, the tax holiday thing (businesses should still look for planning opportunities in that bad idea), moving insurance premium tax collection responsibility to the NMTRD, a GRT tax break for certain construction at Holloman AFB, the property tax proposal to address certain delinquent

properties, a tax break for those who happen to hire foster children, and a new reporting requirement for employers to separately report annual employee income tax withholding.

### *So What Hasn't Been Signed?*

Only a couple of tax proposals are awaiting action: two bills requiring auto recycler reporting and database creation and maintenance on the part of the NMTRD are on the Governor's desk, as are the proposal to reinstate the rooftop solar tax credit, the "bed tax" proposal apparently designed to leverage Medicaid reimbursements requirements by adding an additional daily charge for Medicaid nursing home beds, and the narrowly targeted proposal to tax a nonprofit manager of Los Alamos National Laboratories directly should one win the next management contract.

*[NMTRI note: The Albuquerque Journal is reporting this morning that the Governor will sign the recycler proposals. The move to TRD of premiums tax collections only makes sense if one believes that agency to be more competent, but legislation to fix in place present law treatment of the sale of tangibles to governments and nonprofits and last year's efforts to clarify that we don't treat guaranteed payments or other remuneration to partners representing wages as gross receipts – both unnecessary under reasonable tax administration – do suggest otherwise. That said, there's little confidence in the Insurance Commissions abilities and the NMTRD is showing signs of improvement, to include a publicly promised regulation by the acting Secretary on the partnership issue.*

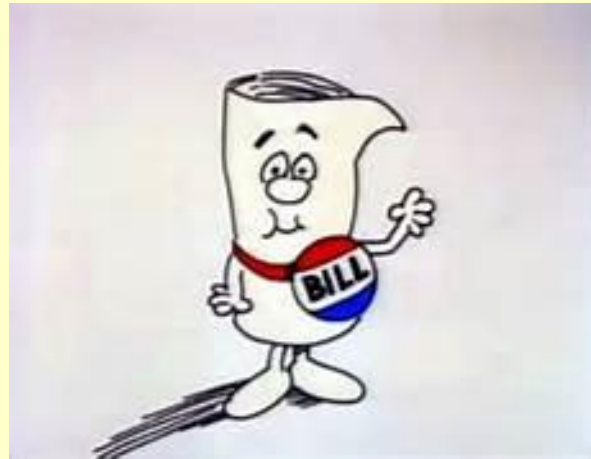
*We expect the Governor is done signing tax bills.*

*While it's easy to complain about right wing populism in the era of Trump politics, it's a bipartisan disease (remember Governor Richardson and even this year's legislature and Governor's actions of late), it's a growing problem. Left and right wing political rhetoric aling with intolerance of rational debate leave one reminded of Nazi Germany, Mussolini's Italy, or Hugo Chavez's blight on Argentina that continues to destroy lives and well being there. At least Communist China, like Russia, has a ruler for life – our Commander in Chief only pines for that at the moment. If the topic interests/scares the gentle reader the way it does this author, we suggest watching the video of Mario Varga Llosa at the CATO Institute (yes - especially my friends on the left - the CATO Institute – this isn't one sided or echo chamber stuff), here: <https://www.cato.org/events/challenge-populism> and another conversation here: <https://www.cato.org/events/populism-nationalism-trump-era.>]*

### **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.

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.



**Bills with significant tax implications having passed both houses and awaiting the Governor’s Action:**

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.

<b>Bill Number/ Sponsor:</b>	<b>Title: Link to bill language: Description</b>	<b>Assignments- Location:</b>
HB 35 C Trujillo/Ruiloba	<b>Liquor Excise Tax Distributions <a href="#">HB 35</a></b> 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.	Signed
HB 47 Rodella/Cisneros/Garcia	<b>Tax Refund for National Guard Eligibility: <a href="#">HB 47</a></b> 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.	Signed
HB 52 Youngblood, Ruiloba, Morales	<b>Auto Recycler Electronic Reporting to TRD: <a href="#">HB 52</a></b> 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.	Passed
HB 79 Gallegos/Neville	<b>Thanksgiving Saturday Gross Receipts: <a href="#">HB 79</a></b> Creates another “tax holiday” (GRT deduction) for any “sale of tangible personal property at retail” by a business on the Saturday after	Signed

	Thanksgiving, but only for those businesses with 25 or fewer employees in NM.	
HB 88 Fajardo/Baldonado	<b>Tax Delinquent Property Sales: <a href="#">HB 88</a></b> 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.	Signed
HB 140 Alcon, Rodella, Johnson	<b>New Mexico Housing Trust Tax Refund Contributions: <a href="#">HB 140</a></b> Provides for income tax payers to be able to designate a portion of their refund to the New Mexico Housing Trust fund for affordable housing activities.	Signed
HB 149 Alcon, Rodella, Johnson	<b>Native American Income Tax Settlement Fund: <a href="#">HB 149</a></b> Eliminates the statute of limitations on refunds that can be paid to native American veterans who had income tax withheld that wasn't owed or claimed timely.	Signed
HB 194 Harper	<b>Alternative Evidence for Tax Deductions: <a href="#">HB 194</a></b> Provides that alternative evidence can be used to substantiate deductions requiring most NTTCS, and eliminates some registrations and penalty provisions rendered less useful as a result of the changes.	Signed
HB 245 L Trujillo/Gentry	<b>“Construction Material” in Gross Receipts: <a href="#">HB 245</a></b> Clarifies the definition of construction for purposes of the gross receipts tax to incorporate long standing regulations distinguishing tangible personal property from construction materials/services.	Signed
HB 276 Small	<b>Employer Statement of Withholding: <a href="#">HB 276</a></b> Requires employers to file annual statements of withheld income tax by employee.	Signed
SB 17 Cisneros	<b>Gross Receipt for Certain Nonprofits: <a href="#">SB 17</a></b> Adds operators of federally designated national laboratories to the list of exceptions to the general gross receipts tax exemption for nonprofits.	Passed
SB 24 O'Neill	<b>Auto Recycler Purchase Info to Tax &amp; Rev: <a href="#">SB 24</a></b> 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.	Passed
SB 79 Stewart	<b>Solar Market Development Tax Credit: <a href="#">SB 79</a></b> 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.	Passed
SB 99 Burt/Griggs	<b>Aircraft Training Construction Gross Receipts: <a href="#">SB 99</a></b> 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).	Signed

SB 109 Baca	<b>Tax Delinquent Property Sales: <a href="#">SB 109</a></b> Requires that <u>all</u> 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.	Passed
SB 192 Neville/Ortiz y Pino	<b>State Healthcare Quality Surcharge Act: <a href="#">SB 192</a></b> Creates a new daily surcharge, as determined by the department of health, for non-Medicare beds in nursing homes. TRD administers the surcharge which is made a part of the tax administration act.	Passed
SB 231 Munoz	<b>Foster Youth Employment Tax Credits: <a href="#">SB 231</a></b> Creates a new personal and corporate income tax credit for employing qualified foster youths. The credit is \$1/K per job time the fraction of the year worked (20+ hrs/week). The credit may be carried forward up to 3 yrs.	Signed

**HOLD THE DATE AND MARK YOUR CALENDARS NOW –  
15<sup>TH</sup> ANNUAL NMTRI TAX  
POLICY CONFERENCE IS COMING!**



**NEW MEXICO  
TAX RESEARCH  
INSTITUTE**

The Fifteenth (can you believe it?) Annual NMTRI Tax Policy Conference and annual members meeting will be held at the Hotel Albuquerque in Albuquerque May 10-11<sup>th</sup>. You will be inundated with details shortly, and the registration facility will be open soon! We look forward to seeing you there!

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## KNICK KNACKS

The Council on State Taxation's (COSTS's) nonprofit research group State Tax Research Institute ("STRI"), published this morning a study on the impacts of federal corporate tax law changes to the states. It's not a super deep dive but does get state specific. It reports on average that's states should see an average base expansion of 12% and suggests New Mexico should see an 11% expansion of its corporate tax base. A copy can be found on their website [here](#).

The Institute on Taxation and Economic Policy ("ITEP") released a similar analysis on the impacts to states on the individual side. It can be seen on their website [here](#).

If you're interested in the increasing activity at the Spaceport and hopeful it will be an economic game changer, you may not want to read the MSN.com article from yesterday here (read the title to guess direction): <https://www.msn.com/en-us/money/companies/new-mexicos-sad-bet-on-space-exploration/ar-BBJMHiY?ocid=spartandhp>

It's been reported on good source that Ron Scott, Audit and Compliance Division Director at the NTRD, resigned effective last Friday. We wish him the best. It's not clear who will replace him in that role.

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## 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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## TAX QUOTABLES

“The best argument against democracy is a five-minute conversation with the average voter.”

~*Winston Churchill*

“There may be liberty and justice for all, but there are tax breaks only for some.”

~*Martin A. Sullivan*

“A fanatic is one who can't change his mind and won't change the subject.”

~*Winston Churchill*

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**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!