

New Mexico 2018 Tax Expenditure Report

Presented to the
Revenue Stabilization and Tax Policy Committee

October 23, 2019

Stephanie Schardin Clarke, Cabinet Secretary

Clinton Turner, Tax Policy Director

The Tax Expenditure Report

- Tax Expenditure reports are important transparency tools that allow State policymakers, advocacy groups, and the public an opportunity to evaluate the State's tax code.
 - Just as the State's appropriations are evaluated and reprioritized annually, tax expenditures should be similarly evaluated.
 - A Tax Expenditure Report, helps to evaluate the implications of the revenue that the State foregoes through
 - tax credits,
 - deductions,
 - exemptions,
 - preferential tax rates,
 - and other tax expenditures.

The Tax Expenditure Report

- Annual Tax Expenditure Report (TER) has been produced by TRD since 2012;
 - The full report and past reports can be found at <http://www.tax.newmexico.gov/forms-publications.aspx> under “Publications” then “Tax Expenditure Reports”
 - <http://realfile.tax.newmexico.gov/2018%20NMTRD%20Tax%20Expenditure%20Report.pdf>
- This report compiling information for 2018 follows format that has evolved and been adopted from 2012-2017:
 - Separately identifies each “deviation” from the tax base;
 - Categorizes each deviation as expenditure, non-expenditure, or “arguable;”
 - Provides a description of each expenditure, the statutory reference, purpose, amendment history, cost, evaluation, and recommendations;
 - Categorizes each expenditure (citizen benefit, conservation, economic development, highly-specialized industries, health care).

A Primer - Exclusions, Exemptions, Deductions and Credits

- **Exclusions** – amounts of gross receipts, gross income, or other amount that is removed in order to define the tax base.
 - Example: Taxpayers exclude certain amounts of their “base income” to derive “net income” on which tax is imposed. § 7-2-2(N).

A Primer - Exclusions, Exemptions, Deductions and Credits

- **Exemptions** - eliminate a legal obligation to register, report, and/or pay.
 - Exemptions can hinge on the nature or character of the taxpayer.
 - Insurance companies exempt from CIT because they pay premium tax; § 7-2A-4;
 - Nonprofits § 7-9-29 and disabled street vendors exempt from GRT. § 7-9-41.3.
 - Exemptions can hinge on the nature of the transaction.
 - Gross receipts from sales of livestock or unprocessed agricultural products exempt from GRT. § 7-9-18.
 - Exemptions can be full or partial.
 - Generally, if the exemption is full and applies to the nature of the taxpayer, or if a taxpayer solely engages in exempt transactions, there is no registration or filing obligation.
 - For GRT, if a taxpayer is required to register and file returns, but some of its transactions are exempt, the exempt amounts are not included anywhere on the return.

A Primer - Exclusions, Exemptions, Deductions and Credits

- **Deductions** - reduce liability by eliminating certain transactions or income from amounts taxpayers are required to report on returns.
- Deductions deviate from the normal tax base and lower the tax base before calculating tax due.
 - For GRT, taxpayers report a gross amount on the face of the return, then also show the amount of the deduction.
 - Some deductions are “lumped” on a return; others are separately itemized by code.
 - Many GRT deductions statutorily require the seller to be in possession of a Nontaxable Transaction Certificate (NTTC) at the time the return is due for the receipts from the transactions or within sixty days of a TRD audit notice.

A Primer - Exclusions, Exemptions, Deductions and Credits

- **Credits** – are dollar for dollar credits against the tax determined due.
 - Most credits are business activity credits that require an application for approval to either TRD or another certifying agency before the credit is allowed.

What Constitutes a Tax Expenditure?

- Tax Expenditure is a particular type of exemption, deduction, or credit.
- A tax expenditure:
 - (1) is a deviation from the baseline system of taxation under the tax program;
 - or
 - (2) provides special or preferential treatment to a taxpayer or group of taxpayers.
 - Deviates for norms of horizontal or vertical equity

Baseline System of Taxation

- Any tax program or baseline system of taxation is the application of a “tax rate” against a “tax base.”
 - Common tax bases for New Mexico tax programs:
 - “Gross receipts” from sales of property or services or the “purchase value” of property (GRT/Comp);
 - “Net income” (CIT/PIT);
 - “Taxable value” (Severance-related taxes).
 - A percentage of “fair market value” for locally assessed property taxes.
 - “Tax rate” is simply a percentage applied to the tax base.

Tax Expenditures

Requirement 1 – Deviation from the Tax Base

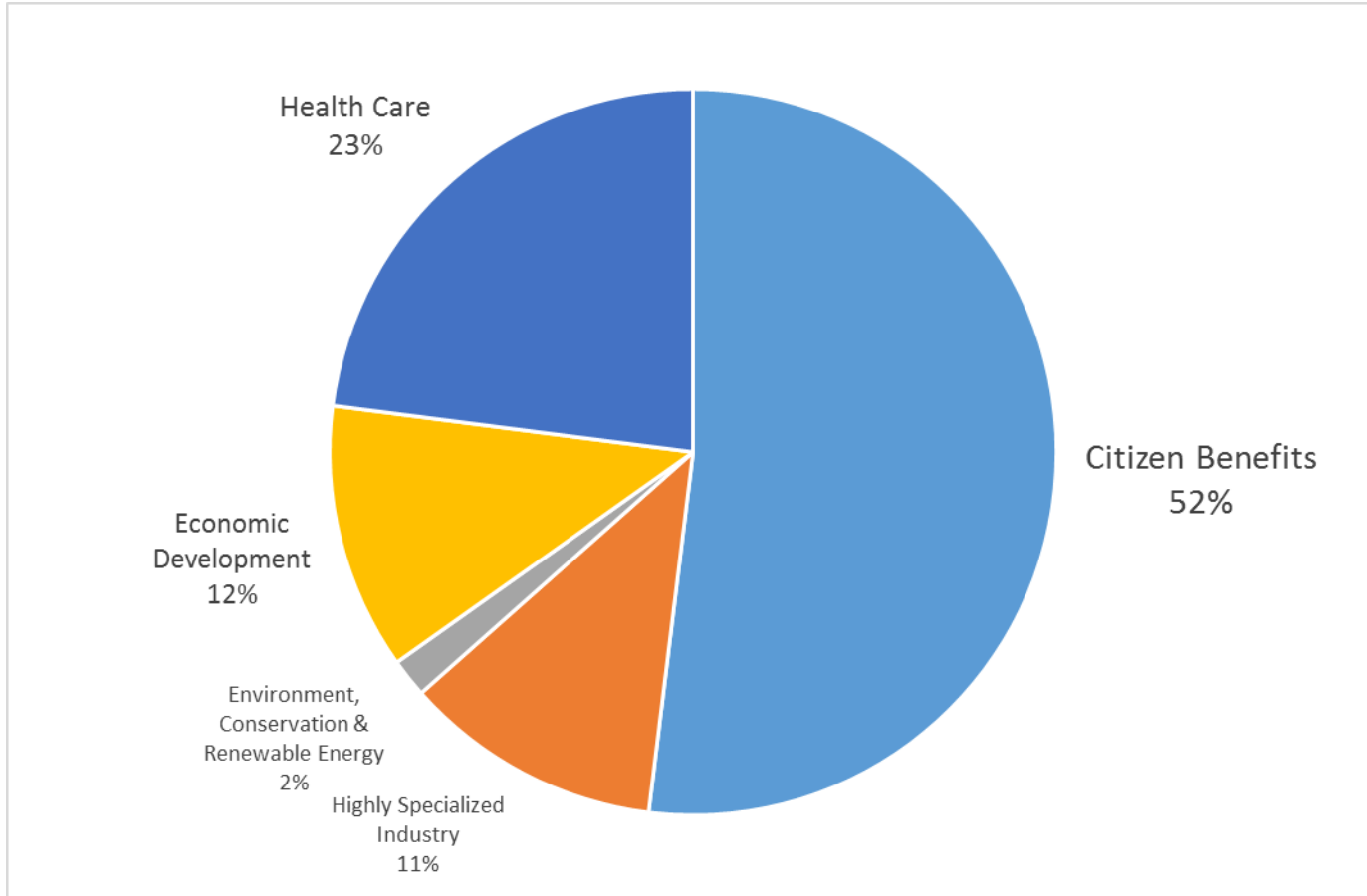
- Exclusions to derive the tax base are not deviations.
- TRD analysis: structure of statute governs.
- Deviations can occur for many reasons:
 - “in lieu of” taxation;
 - US constitutional prohibition or federal pre-emption;
 - Government-to-government comity;
 - To “true” a tax base – anti-pyramiding, bad debts;
 - To provide special or preferential treatment to achieve a policy objective – i.e. a “tax expenditure.”

Tax Expenditures

Requirement 2 – Special Treatment

- Special treatment typically evidenced by a policy choice regarding:
 - a subset of the tax base;
 - a subset of the population; or
 - both.
- Policy choices:
 - To benefit all, or a specific subset, of citizens;
 - Economic development;
 - Conservation;
 - Special industries.

Categorizing Expenditures



Expenditure Category Descriptions

Citizen Benefits

Benefit all taxpayers or specific population
Lessen the burdens of government

Economic Development

Stimulate investment or job creation
Attract industries

Environment, Conservation, and Renewable Energy

Support environmental health
Promote conservation and renewable energy

Expenditure Category Descriptions

Health Care

Increase accessibility to health care





Lower costs of health care

Highly Specialized Industries

Target specific or highly specified industries

Expenditure Estimates – Data Reliability

- Fiscal impact should be evaluated in conjunction with reliability factor.

Reliability Factor	Description	No. of Expenditures
1 	Most reliable. No estimation	67
2 	Estimated from GenTax data	15
3 	Estimated from national data	15
4 	Least reliable. Estimated from limited data	11
Unknown	No data available	15

Top Ten Expenditures by Cost

Name	Amount (\$000's)	reliability
Sale of Food at Retail Food Stores GRT Deduction and Hold Harmless Distribution	250,465	1
Prescription Drugs and Oxygen GRT AND GGRT Deduction	170,000	3
Nonprofit Organizations Exemption from GRT	95,000	4
Health Care Practitioner Services GRT Deduction and Hold Harmless Distribution	54,224	1
Film and Television Credit Against PIT and CIT	49,965	1
Working Families Credit against PIT	49,549	1
Apportionment Election of CIT for Manufacturers	35,787	2
Capital Gain Deduction From PIT	29,264	1
Locomotive Engine Fuel GRT and Compensating Tax Deduction	22,292	2
Low-Income Comprehensive Tax Rebate and Property Tax Rebate against PIT	17,389	1

Redacted Expenditures in Most Recent Fiscal Year (fewer than 3 taxpayers)

Advanced Energy Credit against GRT, Compensating Tax, Withholding Tax, PIT, or CIT

Agricultural Water Conservation Expenses Credit against PIT and CIT

Aircraft Sales or Services GRT Deduction

Alternative Energy Product Manufacturers Credit Against Modified Combined Tax

Coal Exemption from Severance Surtax

Electricity Exchange GRT Deduction

Job Mentorship Credit against PIT and CIT

Military Transformational Acquisition Programs GRT Deduction

Uranium Hexafluoride and Uranium Enrichment GRT Deduction

Veteran Employment Credit against PIT and CIT

Other Items

- Legislative Thoughts
 - Purpose not always defined – difficulty to then evaluate
 - Sunset clause – forces evaluation of the expenditure
 - Reporting requirements – electronic reporting: ease in working with other departments when cross-collaboration of expenditures; allows transparency; ability to evaluate expenditure cost
- Other Resources
 - National Conference of State Legislators has a State Tax Incentive Evaluations Database (worked with Pew Charitable Trusts)
 - <http://www.ncsl.org/research/fiscal-policy/state-tax-incentive-evaluations-database.aspx>
 - Can compare different incentives across states, years, analysis, incentive type



Thank you!

Stephanie Schardin Clarke

StephanieS.Clarke@state.nm.us

Clinton Turner

Clinton.Turner@state.nm.us

<http://www.tax.newmexico.gov/>