



Updates from the Governor's Tax Policy Advisory Committee and Tax Practitioner Advisory Committee

Presented to the
Revenue Stabilization and Tax Policy Committee

October 15, 2020

Stephanie Schardin Clarke, Cabinet Secretary

Suzanne Wood Bruckner, Esq., Sutin, Thayer & Browne, TPRAC Member

Richard Anklam, Executive Director, New Mexico Tax Research Institute, TPAC and TPRAC Member

Tax Policy Advisory Committee (TPAC) Overview

- Tax Policy Advisory Committee was created on October 11, 2019 pursuant to Section 9-1-9 NMSA 1978 to advise the Governor and the Secretary of Taxation and Revenue on matters of tax policy, including but not limited to structural strengths and weaknesses of New Mexico’s tax system, New Mexico’s competitive advantages and disadvantages, and proposed statutory and regulatory improvements
- Meetings held November 8, 2019; March 23, 2020; July 7, 2020; October 7, 2020

Ex Officio Members:

Secretary of Taxation and Revenue (Chairperson)
Stephanie Schardin Clarke

Tax Policy Director, Taxation and Revenue
Department
Vacant

Revenue Stabilization and Tax Policy Committee
Chairperson
Senator Clemente Sanchez

House Taxation and Revenue Committee
Chairperson
Representative Javier Martinez

Senate Corporations and Transportation Committee
Chairperson
Senator Clemente Sanchez

New Mexico Municipal League Executive Director
AJ Forte

New Mexico Counties Executive Director
Steve Kopelman

Additional Appointed Members:

Helen Hecht, Uniformity Counsel
Multistate Tax Commission

Richard Anklam, Director, New Mexico Tax Research
Institute

James O’Neill, Former Tax Policy Director and TRD
Secretary

James Jimenez, Executive Director, New Mexico
Voices for Children

Senator Steven Neville

Representative Jason Harper

TPAC Workplan

Workplan Item	Notes	Fiscal Implications	Priority	Associated Action	Tax Principles Invoked*							Status
					Adequacy	Competitiveness	Efficiency	Equity	Simplicity	Stability	Transparency	
Ensure annual tax administration clean up legislation	Annual legislation needed to ensure taxpayer predictability, reduce litigation and protests	Minimal	High	Statutory, Regulatory		X	X		X	X	X	21 TRD proposals under review for possible introduction
Prepare for July 1, 2021 full implementation of internet sales	Identify any additional statutory changes for 2021 regular session and promulgate rules for internet sales	Minimal, protect current revenue from challenge	High	Statutory, Regulatory	X	X	X	X	X	X	X	Contract in place with NMTRI, drafting underway
Review existing investment tax credit and proposed manufacturing equipment deduction	Existing investment tax credit was extended through 2030 in 2020 session. Consider true manufacturing equipment deduction to allow smaller businesses to benefit and simplify process with no need to apply for credit. Make New Mexico less of an outlier amongst states. Reduce double dipping potential with industrial revenue bonds	Mfg. equipment deduction est up to - \$9m per year general fund and -\$9.1 million per year local governments	Medium	Statutory	X	X		X	X			Tax Practitioner Advisory Committee feedback was generally positive on this item. Fiscal impact may be prohibitive at this time
Review State and local revenue adequacy, including food tax and hold harmless	For example, see SB584 in 2019 regular session	Unknown	Medium	Study, Statutory	X		X	X	X	X		Not started
Review severance tax structure	Extraction industry has fundamentally changed with technological advances. Our tax statutes and regulations related to that industry may need review. Would like NMOGA to survey members for suggestions how to better align statute and regulations with current industry practices. Involve Audit and Compliance Division's Oil and Gas Unit, which has substantial data	Unknown	Medium	Statutory, Regulatory, Bond Covenants	X	X	X	X	X		X	Not started
Review PIT rate structure, to include cliff effects, capital gains deduction, taxation of social security and military and retirement benefits, and progressivity of rates	Rate restructuring in last 15 years made PIT flatter and more regressive. 2019 legislation's new 5.9% top rate partially reversed this. New Mexico is in minority of states tax retirement benefits. However, New Mexico also exempts amongst the highest amount of income from PIT across the board (\$24,000). Consider holistically with LICTR and WFTR. TRD economists to study	NA	Medium	Study	X	X		X	X	X	X	Dialogue ongoing on these items but formal study not started

TPAC Workplan - Continued

Workplan Item	Notes	Fiscal Implications	Priority	Associated Action	Tax Principles Invoked*							Status
					Adequacy	Competitiveness	Efficiency	Equity	Simplicity	Transparency		
Address property tax lightning	3% property tax valuation limit creates situations where similarly situated properties are valued differently due to tenure of ownership	Moderate	Medium	Constitutional, Statutory				X				Not started
Broaden GRT base and lower GRT rate	While there may be some exemptions, deductions and credits from GRT that could be repealed, it is not believed that those would generate sufficient revenue to pay for a reduction in the GRT tax rate	High revenue impact to State and Local government	Low	Statutory	X		X	X	X			Updated Tax Expenditure Report scheduled for presentation to RSTP Dec. 2020. Fiscal impact may be prohibitive at this time
Reduce Pyramiding	Exclude certain business-to-business sales from gross receipts tax to avoid multiple levels of tax. Improve equity between like businesses that are/are not vertically integrated. Targeted businesses services include accounting, bookkeeping, legal, temp staffing, engineering, payroll and HR, and financial advising	Roughly \$100 million reduction in State GRT, plus local impact	Low	Statutory	X		X	X	X			Dialogue ongoing on disclosed agent, fiscal impact may be prohibitive at this time
Move 1.225% municipal distribution out of the State portion	For transparency, change the statewide 1.225% GRT collected by the State and transferred to municipalities to a 1.225% collected only in municipalities	High revenue impact to no longer collecting 1.225% in county unincorporated areas	Low	Statutory	X			X	X		X	Fiscal impact may be prohibitive at this time
Balancing reliance on property tax versus gross receipts tax	New Mexico is an outlier with a very low property tax and a very high gross receipts tax. May require review of property tax homestead exemption to shield low to moderate income homeowners. Increased homestead exemption may require relief to rural counties.	High revenue impacts to rural areas from increased homestead exemption	Low	Statutory, Constitutional	X	X		X		X		Not started
Review CIT rate structure	CIT rates were reduced in recent years to generate economic activity and investment in New Mexico, and it is not clear that this has come to fruition. Rate cuts may have been poorly targeted. Consider waiting to make any statutory changes because so much has recently changed in CIT. NM CIT rules have recently changed to mandatory combined reporting and any data will not be conclusive given changed rules	Unknown	Low	Study	X	X		X				Not started

TPAC Next Steps

- Next meeting in December 2021
- Will review TRD proposed agency bills
- Will advise on drafts of TRD rulemaking proposals

Tax Practitioner Advisory Committee (TPRAC) Overview

- Tax Practitioner Advisory Committee was created on October 15, 2019 pursuant to Section 9-1-9 NMSA 1978 to advise the Governor and the Secretary of Taxation and Revenue on systemic issues related to the Taxation and Revenue Department's administration and enforcement of the tax code, trends in tax auditing and litigation, and potential process improvements in tax administration
- Meetings held November 8, 2019; September 29, 2020 (no meetings held during filing season, which was extended in 2020)

Ex Officio Members:

Stephanie Schardin Clarke
Secretary of Taxation and Revenue
(Chairperson)

Emily Oster, CPA
Deputy Secretary, TRD

Tim Van Valen
TRD Chief Legal Counsel

Additional Appointed Members:

Helen Hecht, Uniformity Counsel,
Multistate Tax Commission

Richard Anklam, Director, New Mexico Tax
Research Institute

Brian VanDenzen, Chief Hearing Officer,
Administrative Hearings Office

Bobbi Kay Nelson, CPA

Suzanne Wood Bruckner,
Attorney, Sutin Thayer & Brown

Sam Baca, CPA

Peter Wanco, Enrolled Agent, H&R Block
President, New Mexico Society of Enrolled
Agents

TPRAC Workplan

Workplan Item	Notes	Associated Action	Tax Administration Goals					Status
			Fairness	Consistency	Efficiency	Simplicity	Transparency	
Survey practitioners for feedback on practioner needs	Send to NMCPA Society, NM Society of Enrolled Agents, State Bar Tax Section, AHO, etc. TRD staff prepare a first draft and share with committee members by email.	Write and send survey, analyze results	X				X	Complete as of 9/29/2020
Improve Correspondence	Meaningful communication of pertinent information through appropriate mechanisms and using "plain English" language.	Process review, updates to letters and publications			X	X	X	Strategic Plan Action 1.2.6 Revise letters to standardize language and increase readability, scheduled for Q4 FY20 through Q4 FY22
Expand Managed Audit Program	Allow taxpayer to enter into a managed audit within a specified number of days from start of a field audit. Allow taxpayers to retain limited protest rights under managed audit.	Process review, outreach and education	X		X	X		Underway- changes approved, system configuration in-process
TRD Staff Training Initiative	TRD partner with private sector employers to train TRD employees	Scheduling	X	X			X	Not yet started
Create State and Local Tax Certification Program	TRD partner with higher education to create a state and local tax certification program. Reach out to UNM Law School, TRI, CNM, LCS, LFC, NM Edge, NMSU, etc.	Build partnerships, figure out administration		X	X			Preliminary interest from NMSU/NM Edge, scheduling curriculum committee exploratory meeting
Review TRD position on limiting NTTC's to businesses engaged in more than one type of business at a time	Example: businesses selling construction materials and tangible personal property at same time		X	X		X		Directive to TRD staff issued 3/4/2020: no longer argue the defense that a prime contractor is not entitled to a deduction for receipts from a government entity for the sale of tangible personal property based upon the "type" of NTTC the prime contractor executed to a third party when it purchased such property (form over substance)
Review regulation treatment of software	Revisit 3.2.1.18 (DD)custom software as a service; 3.2.1.15 (J)"packaged software" as tangible personal property; 3.2.204.16 more on custom software; 3.2.205.19 "packaged software" v. "sale of a license" v. sale for resale. Look to other states for examples of possible approaches to modernization.	Rule review and changes	X	X	X	X	X	Included on list for NMTRI project, high priority
Establish regulations addressing Internet sales/Wayfair	New regulations needed as part of implementation of 2019 HB6	New rulemaking	X	X	X	X	X	Included on list for NMTRI project, high priority

TPRAC Workplan - Continued

Workplan Item	Notes	Associated Action	Tax Administration Goals					Status
			Fairness	Consistency	Efficiency	Simplicity	Transparency	
Review regulations related to CIT	New regulations needed as part of implementation of 2019 HB6	Rule review and changes	X	X	X	X	X	Included on list for NMTRI project, high priority
Repeal 3.11.88 NMAC	Overlaps with AHO rules created under new statutes	Rule repeal			X	X	X	Included on list for NMTRI project, high priority
Clarify Applicability of GRT to Reimbursed Expenditures	Issue with regulations surrounding reimbursed expenditures and whether they are subject to GRT.	Possible statutory change, and/or rule change	X	X		X	X	Considering legislative fix
Disclosed Agent	Revisit 3.2.1.19(C). Possible statutory change needed relating to the concept of "disclosed agent".	Rule review and change	X			X		Considering legislative fix, but negative fiscal impact presents difficulty at this time
Provide Education and Training on Form PIT-B	Related to out-of-state income and credit for taxes paid	Outreach and Training, rule changes	X	X		X	X	Underway, need for additional outreach identified per Practitioner Survey results
Review TRD handling of incomplete returns	Policies causing returns to be rejected for reasons such as not including driver's license information.	Process changes, outreach	X				X	Underway, drivers license number no longer mandatory
Consider establishing mediation process	Allow the use of a third-party mediator (on contract through AHO?) to mediate issues prior to escalation into formal AHO process. Programs already in place in Indiana and Massachusetts.	Statutory change			X	X		Not yet started
Expand TRD's New Informal Public Outreach Process	Encourage and promote informal communication	Communication	X	X	X	X	X	Underway, survey conducted for CRS Redesign project, more outreach planned (surveys, focus groups, etc.)
Review Duration of Audit Selection	TRD change in practice? Now looking at tax periods going back up to 6 years. Historical practice may have been to look at most recent 3 years. Consider state and local revenue implications to reducing the number of years reviewed	Process review	X	X	X	X		Not yet started
Split CRS into separate returns for GRT, Compensating Tax and Withholding Tax	Funding received in 2020 session to reprogram and decouple to streamline business filing requirements and automate department processing. Consider how credits would be applied (ex. Investment Credit currently applied to both GRT and Withholding)	Legislative appropriation, process review, IT initiatives and system configuration, outreach and education		X	X	X		Project underway for completion by 7/1/2021
Allow Smallest Businesses to File GRT and Compensating Tax Annually on PIT Return	Allow very small businesses to file and pay GRT and Compensating Tax annually on PIT return, consider tying this to the managed audit process to allow "late filing" penalty and interest to be waived. Need to consider fiscal impacts to State and local governments - would consolidate and possibly delay some GRT and Compensating Tax collection.	Statutory change, process review, IT initiatives and system configuration, outreach and education			X	X		Not yet started
Program notice to tax practitioners when client receives notice	Clients tend to contact practitioner when they receive notice of an adverse result, but practitioner does not hear of positive outcome	Gentax programming			X	X	X	TRD staff to researching Gentax programming needs

Summary of TPRAC Practitioner Survey Results

- 25 responses received in August 2020
- Practitioners need improved TRD accessibility and responsiveness, particularly telephone
- Practitioners would like to see continued improvement in customer service (courtesy, politeness, understanding, flexibility, reasonableness, training for staff)
- Practitioners see a need for adequate TRD staffing and technical training
- Practitioners highlighted needs for many initiatives recently completed or already underway
 - Expanded acceptance of electronic signatures (recently expanded and more underway)
 - Call center improvements (recently completed)
 - Simplified Taxpayer Information Authorization form (completed in 2019)
 - Self-service installment agreements in Taxpayer Access Point (TAP) (recently completed)

Thank you!

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