



# Taxation & Revenue Department

## Agency Update and Status of 2019 Legislation Implementation

Stephanie Schardin Clarke, Cabinet Secretary

Emily Oster, Deputy Cabinet Secretary

July 25, 2019

# Executive Leadership Team

**Office of the Secretary**  
**Cabinet Secretary: Stephanie Schardin Clarke**  
Deputy Cabinet Secretary: Emily Oster  
Tax Policy Director: Clinton Turner  
Chief Legal Counsel: Tim Van Valen  
Director of Communications: Charlie Moore  
Chief Security Officer: Raja Sambandam  
Taxpayer Advocate: Tiffany Smyth  
Chief Economist: **Vacant**  
Local Government Liaison: David Montieth

**Property Tax Division**  
Director: Donna Maestas  
Deputy Director:  
Michael O'Melia

**Revenue Processing Division**  
Director: Charlene Trujillo  
Deputy Director:  
Rick Lopez

**Motor Vehicle Division**  
Director: Alicia Ortiz  
Deputy Director Field  
Operations: **Vacant**  
Deputy Director Central  
Admin: **Vacant**

**Tax Fraud Investigation**  
Director:  
Vince Mares  
Deputy Director:  
**Vacant**

**Information Technology**  
CIO: Mike Baca  
Deputy CIO:  
Darshana Kanabar

**Administrative Services**  
Director: Denise Irion  
Deputy Director:  
Miranda Ntoko

**Audit & Compliance**  
Director: Aysha Mora  
Deputy Director  
Audit: **Vacant**  
Deputy Director  
Compliance: Lisa Trujillo

# Agency Budget and Staffing

- Annual budget of \$89.6M in FY19, \$91.7M in FY20, an increase of 2.4%
- TRD is organized into 7 divisions with 1,072 FTE
  - As of July 22, 2019: 775 employees, 294 vacancies

<b>Administrative Services</b> (Office of the Secretary, ASD, Legal/Protest, Tax Policy/Research, Office of Internal Oversight, and 10 HR positions recently returned from SPO)	27 vacant / 103 FTE = 26% vacant
<b>Information Technology Division</b>	22 vacant / 71 FTE = 31% vacant
<b>Audit and Compliance Division</b>	84 vacant / 355 FTE = 24% vacant
<b>Revenue Processing Division</b>	60 vacant / 142 FTE = 42% vacant
<b>Property Tax Division</b>	12 vacant / 39 FTE = 31% vacant
<b>Motor Vehicle Division</b>	82 vacant / 340 FTE = 24% vacant
<b>Tax Fraud Investigations Division</b>	9 vacant / 21 FTE = 43% vacant
<b>TOTAL ALL TRD</b>	294 vacant / 1,072 FTE = 26% vacant

# Completed 2019 Legislative Implementations

## HB 6: Internet Sales GRT (implementation partially complete)

- Retail sales today are 3 times the 1992 level
- Remote sales are 20 times the 1992 level
- *Wayfair* decision and New Mexico's Gross Receipts Tax
  - In 2018, US Supreme Court approved South Dakota's statute taxing internet sales
  - Old rule: taxpayer physical presence in New Mexico (offices, employees, agents)
  - New rule: economic nexus, substantial taxpayer economic benefit without undue compliance burden on taxpayer

# HB6: Internet Sales GRT Two Step Implementation Process

- Step 1: July 1, 2019 (implementation complete)
  - Internet sellers began remitting the flat State rate of 5.125%
  - “Engaging in business” re-defined to include sellers without a New Mexico physical presence having, in the previous calendar year, total taxable gross receipts of at least one hundred thousand dollars (\$100,000)
  - Pro-rata distributions totaling \$24M per year from State General Fund to local governments during two-year implementation period to reflect that local governments are not yet receiving local internet sales revenue
  - GRT on receipts collected by marketplace providers for sales to New Mexico customers that the marketplace provider facilitates for marketplace seller
- Step 2: July 1, 2021 (implementation incomplete)
  - Internet sellers begin remitting both State and local GRT, depending on taxpayer reporting location
  - TRD will provide location/rate database for accurate destination-based sourcing by out-of-state sellers

# HB 6: Origin vs. Destination-Based Sourcing

- Until June 30, 2021: GRT will continue to be reported at seller's place of business (origin-based sourcing)
  - Exceptions for construction services and real estate commissions – these are already reported at the construction site/property location
- July 1, 2021 and After:
  - GRT location for goods will be determined by buyer's delivery location (currently seller's business location)
  - GRT location for services will be determined by seller's place of business (origin-based sourcing), except construction services and real estate commissions (still reported at the construction site/property location)

# HB 6: Other Major Provisions Implemented

- Hospital GRT – levels the playing field between like hospitals (60% deduction)
- Motor Vehicle Excise Tax: Increases from 3% to 4% with added revenue dedicated to Permian area road improvements
- Increases Cigarette Tax rate from \$1.66/pack to \$2.00/pack
- Limits Tobacco Products Tax on cigars at lower of 25% of wholesale/manufacturer value or 50 cents
- Taxation of E-Cigarette (“vaping”) liquid under Tobacco Products Tax at 12.5% of wholesale/manufacture value
- Tax “closed system cartridge” such as a Juul Pod at 50 cents each
  - Or any other single-use, pre-filled, disposable cartridge with less than 5 ml of vape juice



# SB 2: Film Tax Credit Changes

- Authorized up to \$195M to repay film credit backlog; first \$100M payments went out in late June 2019, remainder of backlog will be repaid in early September 2019
- Replaces previous \$50M cap system with new model
  - TRD authorized to pay \$110M in credits each fiscal year (\$110M cash cap)
  - EDD manages project budget certification/credit application process to ensure that backlog does not exceed \$100M (\$100M maximum backlog)
- “Film Partners” that have made 10-year commitment to New Mexico excluded from cap
- Extra 5% credit available for rural film production
- Improved reporting and transparency required of TRD and EDD

# SB 129: Tax Protests & Admin. Hearings Office

- Changes to timeline for protests and refund claims
  - Protests are filed with TRD, adjudicated informally through TRD Protest Office, and then Administrative Hearings Office (AHO) if necessary
  - 90-day time period for payment of undisputed amounts
  - Increases from 45 to 180 days the amount of time that taxpayers and TRD can work together to informally resolve protests, before escalation to AHO
- Two ways to dispute an assessed liability for taxes
  - File administrative protest, OR
  - Pay and then claim a refund
- Clarification of what must be included in a written protest
- Changes to Administrative Hearings Office Act
  - Tax protest procedures, who can represent taxpayers at AHO

# Additional 2019 Tax and Motor Vehicle Bills: Implementation Complete

- HB2: revised TRD's administrative fee structure
- SB413: Liquor permit, tax and definition changes
- HB165: Modified high wage jobs tax credit
- HB407: Driver Search with Last 4 SSN and DOB
- SB20: Sex designation on vital records
- SB189: Mobility limitation transport placards
- SB236: Disabled veteran license plate options
- SB517: DWI with minor in the vehicle

# 2019 Legislation Implementation In Progress

# HB6: Personal Income Tax Provisions

- Working families tax credit up from 10% to 17% federal EITC effective Tax Year 2019; a tax cut for 20% of filers, helps restore progressivity to PIT
- Capital gains deduction down from 50% to 40% effective Tax Year 2019 (beyond \$1,000 income exclusion), also helps restore progressivity
- Restores dependent deduction to offset recent federal tax changes effective Tax Year 2019
- Contingent Tax Year 2021 new top PIT bracket and 5.9% rate, may go into effect dependent on FY2020 general fund recurring revenue growth
  - Will only go into effect if FY20 recurring General Fund revenue does not grow by at least 5% over FY19
  - New marginal rate would apply to about 3 percent of taxpayers
  - Single Filers – Minimum Gross Income > \$222,000 on taxable income over \$210,000
  - Head of Household/Married filing Jointly – Min. Gross Income > \$333,000 on taxable over \$315,000

# HB6: Corporate Income Tax Provisions

- Groups of related corporations will be required to file “combined” returns, treating the group as a single combined business. (Beginning with the 2020 tax year). Current law makes such filing optional.
- The default filing option will be worldwide unitary combined filing (including all foreign entities); but taxpayers may elect to file a return for a unitary group of U.S. corporations or a federal-style consolidated return instead.
- Net operating losses of separate filing entities prior to the change will be grandfathered.
- The sales factor of the apportionment formula will source *all* sales on a market basis (currently only tangible personal property)
- Implementation will require changes in returns and instructions as well as regulations. The Multistate Tax Commission has model market sourcing regulations that New Mexico could adopt.

# HB 162: Insurance Premium Tax Provisions

- Authorizes TRD to administer Insurance Premium Tax under the Tax Administration Act (TAA)
  - Gives TRD tools to audit taxpayers, reconstruct records
  - Gives taxpayers protections under Taxpayer Bill of Rights
- TRD begins administering Insurance Premium Tax program January 1, 2020
  - Information sharing and collaboration with Office of Superintendent of Insurance- before, during and after transfer
  - Additional funding to be requested during 2020 session to develop premium tax module in GenTax

# HB 479: De-Earmark Local Option Gross Receipts

- Implementation delayed because bill does not affect flow of distributions, only allowable use of local revenues received from TRD.
- Allows wider use of many municipal and county local option gross receipts tax increments
- Changes related to local option gross receipts tax increments that may be imposed by municipalities and counties
- Greater flexibility for municipalities and counties to manage their finances
- Not required to reduce from current rates (grandfathered in)



# Other Ongoing Implementations

- HB6: Local compensating tax
- HB427: Motor vehicle code offense penalties
- SB278: Driver's license changes
- SB234: Pollinator protection license plates
- SB672: Early & auto voter registration
- SB246: Health care quality surcharge act
- HB163: Tax deduction for nonresident beneficiary

# Questions & Discussion?

# Thank you!

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