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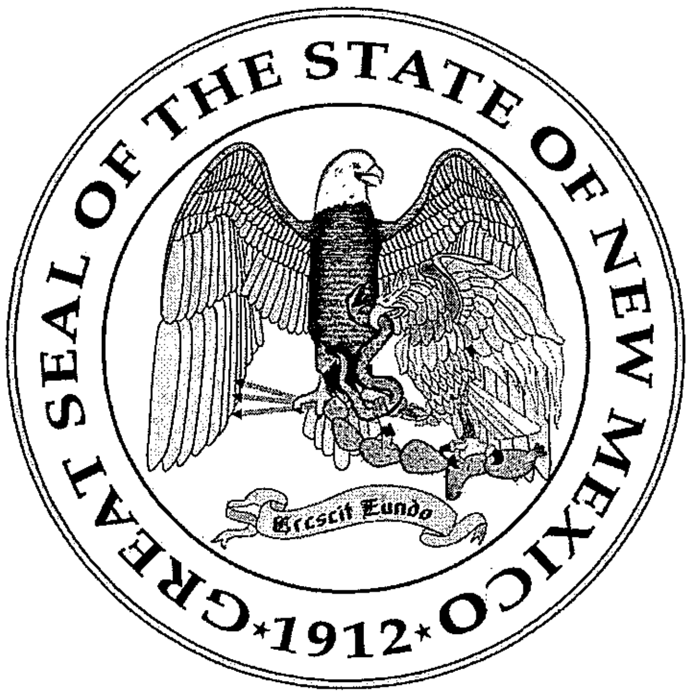
New Mexico Taxation
and Revenue
Department



New Mexico
Tax Expenditure Report

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SECRETARY'S MESSAGE

New Mexico's Governor Susana Martinez issued Executive Order 2011-071 directing the New Mexico Taxation and Revenue Department, in coordination with other executive agencies, to develop an annual tax expenditure report. This *2013 New Mexico Tax Expenditure Report* builds upon the foundations laid in the first annual Tax Expenditure Report published in 2012 and adds some new sections as well.

Properly implemented, tax expenditures can be a very efficient method of incentivizing desired economic behavior to further the public good. Tax expenditures can, however, sometimes miss the mark. It is important to periodically review the effectiveness of tax expenditures, as it is with any use of public funds, to ensure that they are meeting their intended goals.

We intend this report to further the general understanding of the costs and benefits associated with New Mexico's tax expenditures. This year, in addition to providing updated impacts for the tax expenditures in last year's report using updated data, two broad categories of tax expenditures that have not met desired goals will be examined: (1) those that are underutilized or not used at all, and (2) those that have grown beyond their originally-intended scope.

The 2013 legislative session produced significant changes to some of the included tax expenditures. This *Report* will include detailed discussion of the expected impact of those changes, some of which could be substantial, both in cost and in the benefit to New Mexico's economy.

We deeply appreciate and gratefully acknowledge the cooperation and participation we have received from all levels of the executive branch of the State of New Mexico in preparing this *2013 New Mexico Tax Expenditure Report.*

Secretary Demesia Padilla, CPA
New Mexico Taxation and Revenue Department
State of New Mexico
Santa Fe, New Mexico
October 18, 2013

Organization and Description of the *2013 New Mexico Tax Expenditure Report*

The *2013 New Mexico Tax Expenditure Report* is provided in a format that is intended to allow convenient annual updating and is intended to serve as an ongoing reference document useful in understanding the tax expenditures implemented under New Mexico's tax code and policies. The balance of the *Report* provides a summary of the significant findings and observations developed in the course of this investigation.

We begin in Section I: Defining Tax Expenditures with an introduction to a number of important concepts and a discussion about the challenges of determining which credits, deductions, and exemptions should be considered tax expenditures.

Section II: "Tax Base" Definition – The Foundation of a Tax Expenditure Analysis includes a more comprehensive discussion of the issues relating to the definition of the "tax base". This section provides a more detailed discussion of what specific considerations are taken into account when defining the baseline tax revenues from which a tax expenditure is measured, as well as those circumstances where statutory or regulatory provisions explicitly identify tax policy issues that define the tax base (rather than a "tax expenditure"). It should be acknowledged that this section builds on discussions that have been previously incorporated in tax expenditure analyses performed by various state entities.[1]

Commonly Used Acronyms

DFA – NM Department of Finance and Administration
DOH – NM Department of Health
DWS – NM Department of Workforce Solutions
EDD – NM Economic Development Department
EMNRD – NM Energy, Minerals, and Natural Resources Department
JTIP – Job Training Incentive Program
LFC – NM Legislative Finance Committee
NMDOT – NM Department of Transportation
NMED – NM Environment Department
NMFA – NM Finance Authority
NMMIP – NM Medical Insurance Pool
MFA – NM Mortgage Finance Authority
RETA – Renewable Energy Transmission Authority
RSTP – Revenue Stabilization and Tax Policy Committee
TRD – NM Taxation and Revenue Department

This section closes with a discussion of tax policy issues that can be treated as either a

[1] "New Mexico's Gross Receipts & Compensating Taxes: Exemptions & Deductions". NM Taxation and Revenue Department, 1991; "Gross Receipts Tax Exemption & Deductions—Descriptions, Rationale, Resources Allocation and Other Issues". NM Taxation and Revenue Department, 1997; "Fiscal Impact of Repealing Exemptions, Deductions, Exclusions and Credits the Gross Receipts and Compensating Tax Act". NM Taxation and Revenue Department, 2007; Thomas F. Pogue, "Tax Expenditure: Concept and Framework for Analysis," prepared for the NM Taxation and Revenue Department, 2008; Pogue, "Tax Expenditure Budget: Defining the Benchmark GRT Base," prepared for the NM Taxation and Revenue Department, 2008; "A Reconsideration of Tax Expenditure Analysis," New Mexico Joint Legislative Committee on Taxation, 2008; Ernst and Young, "Economic and Fiscal Impacts of the New Mexico Film Production Credit," prepared for the NM State Film Office and State Investment Council, 2009; "Description and Characteristics of New Mexico Credits, Exemptions, Deductions and Rate Differentials," NM Taxation and Revenue Department, 2010; "Estimated Revenue Impact of New Mexico Credits, Exemptions, Rate Differentials and Rebates for which Direct Data Exists: FY2004 to FY2010," NM Taxation and Revenue Department, 2010; "LFC Hearing: Inventory of New Mexico's Tax Expenditures," Report presented by Elisa Walker-Moran, Chief Economist, 2011.

"tax base definition" or a "tax expenditure" issue – illustrating the occasional difficulty in providing a "black and white" or "bright line" definition of tax policy issues that may alternatively be viewed as defining the tax base or a tax expenditure.

Section III: Detailed Tax Expenditure Analysis Results gets to the substance of the tax expenditure analysis and is organized around eight major topic areas. The topic areas include:

1. industry specific tax expenditures for economic development;
2. general tax expenditures to improve business climate and stimulate economic activities;
3. tax expenditures for specific public purposes;
4. tax expenditures for health care facilities and programs;
5. tax expenditures (expressly) for public welfare, elderly, and low-income protections;
6. tax expenditures for specific non-profit enterprises;
7. tax expenditures related to natural resource tax policy; and
8. tax expenditures related to Indian nations, tribes, or pueblos.

Section IV: Most Used and Unused Tax Expenditures includes tables showing the top 5 most used tax expenditures by dollar amount and those tax expenditures that are going unused.

Section V: Conclusions of the *2013 New Mexico Tax Expenditure Report* provides some concluding thoughts about New Mexico's tax expenditures.

Section I: Defining Tax Expenditures

An analysis of tax expenditures generally begins with explanations of tax policy principles and the definition of a baseline for taxation. From these foundations and baseline definitions, tax expenditures are identified as tax policies that deviate from the baseline tax principles to achieve specific purposes or objectives.

Difficult trade-offs are involved in establishing principles used to evaluate tax policy. Policymakers bring many different priorities and values to the debate over specific social purposes served by tax code modifications, exclusions, credits, deductions, rate differentials and preferential treatments. As one example, the desire to redistribute income through tax code provisions must be balanced against the need to have a competitive tax system that does not discourage investment and workforce participation. Another important tradeoff pits the desire to target tax relief to specific activities or taxpayers against the increased administrative and compliance costs of requiring large amounts of information from each potential beneficiary. Tax expenditure analysis cannot resolve all issues raised by these tradeoffs. Rather, the goal of tax expenditure analysis is to provide objective information and data to facilitate evaluation of these policy decisions.

Tax expenditures are defined as deviations from a baseline tax system created by specific tax law provisions. Baseline taxes serve to identify not only revenue raising powers of government,[2] but also the principles of efficiency and fairness embodied by the tax system. One goal of these principles is to establish thresholds for income or consumption levels that, as a matter of social and economic policy, are deemed not to be subject to taxation. Provisions establishing these thresholds that define the normal tax base are not tax expenditures.

An example would be the personal exemption amount allowed under the income tax. This exemption defines a minimum amount of income that is not subject to taxation. This is a policy adopted almost universally by all entities imposing income tax, and is therefore considered part of the baseline tax system and not a tax expenditure.

Tax Rate Differentials

Tax policy analysis does not provide a simple answer to the question of what is the appropriate tax rate to be applied to a given tax program. Under the income tax, for example, there is little agreement on what degree of progressivity should be built into the tax rate brackets. Although a comparison is often made to other states to see what the "typical" tax rate might be, this analysis is complicated by the differences between states in their tax base definitions.

The most important example of this challenge in New Mexico is the Gross Receipts Tax ("GRT"). With an average statewide rate of seven percent, the GRT compares well with the average retail sales tax

[2] Restrictions imposed on a state government's taxing authority include limitations such as federal preemption. Provisions of the US Constitution and federal statute preempt New Mexico from imposing tax on certain individuals and transactions. Examples include the taxation of tribal members when engaging in transactions on their tribal lands, and transactions in interstate commerce. Such provisions are not treated as tax expenditures in this *Report*.

imposed in other states. However, the tax base of the GRT is much broader than those of almost all other states. Businesses in effect pay this tax more than once because the GRT includes tax on many business-to-business transactions; therefore, the statutory rate of seven percent significantly understates the true economic burden of the tax.

The issue of tax rate differentials comes up most often in the area of excise taxes. In addition to the GRT, the state imposes various excise taxes prior to the retail sale of commodities. Examples include cigarette taxes, liquor excise taxes, motor fuels taxes, and taxes on mineral extraction. Each of these tax programs has a different policy rationale with its own goals and standards. The analysis of what the "correct" tax rate should be for each of these tax programs has not been undertaken as part of this *Report*. Thus, tax rate differentials between and within tax programs are generally not treated as tax expenditures in this *Report*.

The insurance company exemption (Section 7-9-24 NMSA 1978) is an example of an "in lieu" provision; that is, it presumes that another state tax program is applicable (i.e., the "Premium Tax"). The difference between the tax rate for insurance companies under the Premium Tax and the otherwise applicable Gross Receipts Tax might, by some definitions, be considered a tax expenditure. Due to this complexity, however, this tax rate differential will not be examined in this *Report*.

Identifying Tax Expenditures

Defining baseline taxes is not always a straightforward task. Establishing thresholds for income or consumption taxation, whether as bellwether standards or as sliding-scale, ability-to-pay mechanisms, narrows the tax base and forms social tax policies. But these mechanisms are not tax expenditures because they are standard features of the income tax. In contrast, examples such as tax credits for working families and contributions to medical savings accounts may be tax expenditures.

Generally, tax expenditures reflect decisions to use the tax system to pursue specific social objectives and should be judged by their effectiveness in doing so. A tax is generally implemented with a specific purpose or intent (e.g., imposed for the privilege of doing business within a state) and, in like fashion, tax expenditures must be judged by specific tax policy criterion. These policy criteria will often be a direct product of the very social objectives that the government is trying to achieve. For example, a tax credit to stimulate renewable energy investment may be judged by the actual, incremental investment that qualifies for the credit.

The *2013 New Mexico Tax Expenditure Report* was developed as a tool to understand (a portion of) New Mexico tax policy and covers a broad landscape of issues and objectives. Because there can be legitimate differences of opinion about what is and what is not a tax expenditure, this *Report* identifies alternative policy perspectives in many of the tax policy issues discussed herein. This *Report* is not intended to judge whether a particular tax expenditure is good or bad policy. Instead, the goals are to estimate the revenue costs of the tax expenditures identified, offer useful characterizations of tax base issues, and provide an insight into the benefits and costs of the tax policies evaluated.

Evaluating Tax Expenditures

Principles of Good Tax Policy

As a starting point for evaluating tax expenditures, it is useful to review a set of good tax policy principles.

Adequacy

Taxes should be adequate to support needed government services. This principle underlines the fact that taxes are a necessity. Although other policy goals may suggest that lower tax burdens are often desirable, the hard facts are that taxes are a necessary burden, and the state faces difficult choices in how it distributes that burden.

Equity

Tax equity or fairness is concerned with how tax burdens are distributed among taxpayers. Two different goals are grouped under this heading. One goal is that tax burdens should be distributed according to taxpayers' ability to pay, so that taxpayers with greater ability to pay should bear a larger burden than those with a lesser ability to pay. This is known as the principle of "vertical" equity. This principle could be cited in defense of a progressive income tax rate schedule, for example. The second goal states that similarly-situated taxpayers should face similar tax burdens. This principle is referred to as "horizontal" equity. An example of this principle would be the goal of reducing the tax on business-to-business transactions, so that small businesses, which must purchase more of their inputs than large businesses, are not put at a competitive disadvantage.[3]

Efficiency

In this context, efficiency is the term economists apply to policies that benefit economic growth. Tax policies affect the efficiency of the economy in complicated ways. As a general rule, tax efficiency requires that taxes be levied in such a way as to minimize market distortions that occur as taxpayers substitute untaxed goods for taxed goods so as to reduce tax burdens. As an example, income taxes on labor income may induce taxpayers to work less and instead use their time for non-taxed leisure. The result is a lower labor supply and less economic growth.

Evaluation of efficiency in the application of economic theory is complicated when an activity generates external costs, such as environmental degradation. These costs are "external" in the sense that they may not be fully considered by individual actors in their marketplace decisions. In this case, taxes may be imposed as proxies for costs that would otherwise not be taken into account and can arguably improve the functioning of the economy. For example, this reasoning supports tax expenditures for renewable energy because they may have the effect of reducing pollution, an important example of an external cost.

[3] An alternative to the ability-to-pay principle is termed the "benefits" principle which argues that tax burdens should be allocated according to taxpayers' benefits from government services. Taxpayers who receive greater benefits from government should pay appropriately higher taxes, and those who receive the same benefits should pay the same taxes. This principle is deemed to be applied for example in the case of motor fuels taxes, under which a taxpayer's burden reflects how much they drive and therefore the benefits they receive from the use of the taxes on the highways.

Simplicity
Taxpayers incur compliance costs as they submit tax returns and keep records required to prepare those returns. New Mexico's state and local governments incur administrative costs as they collect taxes, check on the accuracy of tax returns and tax payments, and deal with taxpayers who underpay or fail to pay. These costs are inescapable, but their magnitude is affected by how taxes are defined and collected. While they may increase accountability, tax expenditures that require additional reporting move away from the tax principle of simplicity. Although generally hidden from view, the costs of collection and compliance impose significant burdens on society and should be kept to a minimum level, consistent with other goals.

Accountability
Good tax policy suggests that tax preferences should be easy to monitor and evaluate. Moreover taxes should be transparent so that taxpayers can better evaluate government policy. Improved accountability is an important goal of this *Report*.

Measurement Challenges
A major challenge in evaluating tax expenditures is distinguishing the effects of tax policy from the effects of other social and economic conditions. For example, when a company closes down a factory that had benefitted from tax incentives, the judgment is sometimes made that the incentives were unsuccessful. However, the tax expenditure is only one of many influences on economic behavior. Most tax policy initiatives will have only incremental impacts on business decisions. For instance, creating a five percent "preference" by exempting a transaction from taxation may produce an even smaller change in consumption activities.

Importantly, the direct revenue impacts of many tax expenditures are largely unknown. Many of the tax expenditures listed in this report are structured as deductions or exemptions with no reporting requirements. Consequently, it is necessary to use alternative sources of information to estimate these tax expenditures' costs.

Tax Expenditure vs. Direct Expenditure Policy
An important application of tax expenditures analysis is a consideration of whether alternative policies may produce a more efficient outcome. For example, are tax expenditures that reward third-party investors with tax credits more efficient than providing direct government payments to stimulate business start-ups? Are tax breaks for certain households a better means of delivering relief than a direct spending program?

When debating between alternative policy proposals, the following questions should be considered: Which economic agents will be most effective in pursuing the objectives sought? How will the policy's outcomes be measured? What are the opportunity costs – that is, the most effective alternative use of public funds – inherent in a given tax expenditure? What are the administrative costs of each public policy option?

However, to maintain consistency in evaluation of tax expenditures, the specific economic gains to the taxpayers should be measured in terms of increases in real income (wages, salaries, and benefits adjusted for inflation), not merely by an estimate of the number of jobs associated with a particular tax expenditure program.[4] In considering the economic benefits of a tax policy, it is important to consider all economic benefits, not merely the impacts of the policy on government revenue and expenditures.

Economic Development Tax Expenditures

Over the last 20 or so years, like many other states, New Mexico has adopted a series of policies to stimulate the state's economic development. Although not traditionally thought to be a function of state government, and although taxes are only one of many factors that influence business location decisions, the increase of global competition for new investment and jobs has forced all states to think carefully about how their tax systems impact economic growth. In designing these policies, the state must weigh the advantages of targeted incentives versus broad-based tax relief. The latter approach is generally recommended by economists and tax policy experts but can be very expensive and difficult to achieve. The former can be more cost-effective but requires detailed information and understanding of the marketplace that is often difficult to obtain.

Measuring the effectiveness of these policies requires that a balance be reached between the state's desire for information and businesses' legitimate concerns over the protection of proprietary information. Ideally, an evaluation would take into account all of the impacts of business location and expansion on the state's economy. In practice, this is not usually feasible.

Evaluating tax expenditures related to research and development ("R&D") activities illustrates two additional challenges. One is that the time frame over which the benefits are obtained may be much longer than the usual policy evaluation framework. In addition, the benefits may have wide ranging geographic impacts and be broadly distributed among economic sectors making the ultimate benefits to the state's economy difficult to calculate.

Tax Expenditures: Poverty and Disability Related

A number of tax expenditures targeted at low-income households or disabled persons are presented in this report. These policies are difficult to evaluate because there is not a common, agreed upon standard for the preferred distribution of income. In addition, since government spending also provides many benefits that redistribute income to low-income households (e.g. Medicaid), these provisions raise difficult questions about whether tax policy or expenditure policy is the better way to provide the benefits. One advantage of using the tax code is that it encourages the private sector to deliver services that would otherwise require a government program. Examples include health care preferences and low-income housing preferences. In addition, administrative costs may be lower. These advantages must be weighed against the potential that benefits may not be as well targeted as they would be under a direct spending program.

[4] It is economic output and income that must be measured against the tax revenue implications – if the tax revenue costs exceed the economic benefits measure, government has suffered a net loss in its ability to provide for the needs of its citizens. In this sense the evaluation of tax expenditures is a direct test of the economic benefits (i.e., output/income) against the economic opportunity cost of the tax policy

Tax Expenditures: Non-Profit Organizations and Activities

New Mexico's tax code contains many provisions excluding non-profit organizations' receipts, spending, and net income from taxes. Exceptions to this rule are usually made (meaning the tax does apply) to the unrelated business income of otherwise tax-exempt entities. In this respect, New Mexico follows federal law closely. Under a theoretical definition of a comprehensive consumption tax, an argument can be made for the taxation of non-profit entities. In addition, an equity argument can be made for taxing non-profits when they provide the same services as taxable enterprises. However, since non-profit entities are generally excluded from tax by other states, it can be argued that their exclusion is part of the baseline tax system. Although there are strong arguments on both sides of this debate, these provisions are included in this report as tax expenditures.

Preferential tax treatment for non-profit organizations is evaluated based on the same principles and criteria as tax expenditures affecting for-profit entities. The benefits obtained by non-profit entities may be more difficult to evaluate without the metrics of economic output or income. Furthermore, because a variety of government support is provided to some non-profit entities, it can be difficult in practice to separately identify the effects of a particular policy.

Appropriate Use of Tax Expenditure Estimates

In addition to the measurement limitations already described in this section, there are several other reasons why estimated fiscal impacts of tax expenditures must be interpreted with caution. One is the limited amount of information with which to evaluate many provisions. Second, estimates are "static" in the sense that they reflect amounts currently reported on tax returns and do not attempt to incorporate changes in taxpayer behavior that could result if a provision were changed. Third, fiscal impacts of a statutory change in any provision would depend critically on how the legislation is drafted. Finally, the estimates do not take into account interactions with other provisions. For example, a non-profit hospital may benefit from the deduction for health care purchased by managed care organizations as well as from the non-profit exclusion. The fiscal impacts of changing one of these provisions depend critically on what is assumed about the other provisions. As a consequence, estimates of individual provisions should not be added to estimates of other provisions.

Tax Expenditure Reporting: Balancing Transparency and Simplicity

Because they authorize the expenditure of public monies, accounting for and evaluating tax expenditures is an important purpose of public policy. To improve such accountability, the state could require taxpayers to submit detailed information regarding business practices to qualify for the credit, exemption, or deduction. However, there are a number of reasons why in practice the state should limit the amount of information it collects on some tax expenditures. First, preparing and processing added information requires the investment of added resources by taxpayers and by the Taxation and Revenue Department (and other state agencies). This added cost escalates with the number of taxpayers eligible for a tax expenditure and with the complexity of evaluating compliance with qualification criteria. Second, if reporting requirements are made too onerous, they run the risk of discouraging the use of tax expenditures and thus thwarting the intended purpose. Finally, even when detailed information is reported, it can still be very difficult to know whether a tax expenditure is achieving its goals. All of these arguments become much stronger when applied to a monthly revenue collection system like the

Gross Receipts Tax. The urgent need to process these payments in a timely manner necessitates that the return be kept as simple as possible. In comparison, more detailed reporting is less burdensome for income tax credits and deductions, which are reported annually.

An excellent example of these issues is the film production tax credit. Detailed data on film company expenditures are reported to the Taxation and Revenue Department by every company applying for the credit. The Department reviews this information to determine how much of the expenditures are eligible for the credit. Preparing, collecting, and processing this information is a costly process. However, even when equipped with this detailed information, it is still difficult to determine the cost-effectiveness of the credit. Two competent studies have analyzed the credit, and they came to very different conclusions as to whether the credit was cost-effective.[5]

Given these considerations, the state has often adopted a compromise position on tax expenditure reporting. Many of the tax expenditures that are claimed by a relatively small number of taxpayers have been structured as tax credits, and the Taxation and Revenue Department requires separate reporting for these credits. These reports can be used to determine at least some of the information needed to evaluate the credits. However, this process is not without costs. The Department currently commits a significant amount of staff time to process credit claims manually. Developing information systems to process credits automatically is an option but is certainly not without its own administrative costs.

In addition to the costs, a primary concern is that information collection should not be allowed to delay the processing of GRT returns on a monthly basis. The GRT is the financial lifeblood of state and local governments in New Mexico. With almost one million taxpayers filing returns on a monthly basis and a tax return that contains a significant and growing amount of complexity, there is a substantial risk of financial dislocation, including the inability to make payroll, if the tax return and the system with which it is processed are made significantly more complex.

Data Availability for Tax Expenditure Analysis

This *Report* presents fiscal impact estimates for all tax expenditures on which the Taxation and Revenue Department collects sufficiently detailed information. Typically, this includes tax credits, but in some cases it includes exemptions or deductions that are separately stated or that are provided by third-party data sources (e.g., US Energy Information Administration, financial reports, industry reports, etc.).

[5] Anthony V. Popp and James Peach, "The Film Industry in New Mexico and The Provision of Tax Incentives," a Report Submitted to the Legislative Finance Committee of the State of New Mexico, Arrowhead Center, Office of Policy Analysis, New Mexico State University, August 26, 2008; and Ernst & Young, "Economic and Fiscal Impacts of the New Mexico Film Production Tax Credit," prepared for the New Mexico State Film Office and State Investment Council, January 2009 (http://nmfilm.com/locals/downloads/nmfilmCreditImpactAnalysis.pdf).

Section II: "Tax Base" Definition – The Foundation of a Tax Expenditure Analysis

In establishing governmental tax policy, the foundations are laid by the expressed purposes of a particular tax. These purposes also establish the baseline for the tax revenues to be collected – referred to in this report as the "tax base." From this tax base, the provisions of the tax code, or administrative policies of government agencies exercising powers under its constitutional or statutory authority, may grant economic relief from the tax burdens of individual taxpayers to accomplish specific goals and objectives that generally define specific tax policies. By deliberately implementing tax policies that reduce public revenues, tax expenditures become a form of government spending administered through the tax code.

Personal Income Tax

Because it is based on a federal tax program, New Mexico's personal income tax shares many base definition issues with the federal tax. For example, New Mexico follows federal practice in allowing the exclusion of a certain amount of taxpayer income from taxation through the personal exemption amount and through the standard deduction. Because these policies are common practice among the states, they are not treated as tax expenditures in this report. Similarly, there are numerous tax expenditures under federal tax law on which the state "piggybacks" because New Mexico taxable income is based on federal adjusted gross income. Because such piggybacking is a common practice among most states, the state tax effects of these federal tax expenditures are not reported on as tax expenditures in this report.

Corporate Income Tax

New Mexico's corporate income tax is also based on the federal tax; therefore, many federal tax expenditures are included in the base. The base for imposition of the corporate income tax is contained in the following statutory language:

> A tax to be known as the "corporate income tax" *is imposed* at the rate specified in the Corporate Income and Franchise Tax Act [citation omitted] *upon the net income* of every domestic corporation and *upon the net income* of every foreign corporation *employed or engaged in the transaction of business in, into or from this state or deriving any income from any property or employment within this state.* (Section 7-2A-3(A) NMSA 1978; emphasis added)

This statute defines "base income" as that part of the taxpayer's taxable income upon which the federal income tax is calculated, excluding the amount of the net operating loss carryover deduction and including interest received on state or local bonds (Section 7-2A-2(C) NMSA 1978). The statute then defines "net income" as base income adjusted by exclusions of income from the obligations of the federal government, other income where tax is prohibited by explicit statutory or constitutional authority, and statutory provisions for net operating loss carryover deductions (Section 7-2A-2(H) NMSA 1978).

Thus, "net income" is defined as the tax base for corporate income tax purposes in New Mexico, and, by application of the income-graduated percentage tax rate, a "baseline tax revenue" is defined.

For tax years 2013 and prior, the Corporate Income Tax rates are 7.6 percent, 6.4 percent, and 4.8 percent, as determined by total taxable value. Beginning in tax year 2014, the top two rates will be phased down until the top rate is 5.9 percent in tax year 2018.

The 2013 Legislative Session produced two other Corporate Income Tax changes, including mandatory combined reporting for certain retailers and single-sales factor apportionment for manufacturers. Single sales factor apportionment will be discussed below.

Under Section 7-2A-4 NMSA 1978, the following are exempted from corporate income tax:

A. insurance companies, reciprocal, or inter-insurance exchanges which pay a premium tax to the state;
B. a trust organized or created in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries, which trust is exempt from taxation under the provisions of the Internal Revenue Code; or
C. religious, educational, benevolent, or other organizations not organized for profit which are exempt from income taxation under the Internal Revenue Code unless the organization receives income which is subject to federal income taxation as "unrelated business income" under the Internal Revenue Code, in which case the organization is subject to the corporate franchise tax, and the corporate income tax applies to the unrelated business income.

Although the corporate income tax base definitions described above may not strictly meet the qualification of tax expenditures, there are a number of other provisions within the Corporate Income Tax code that do clearly meet the definition. These are discussed in later sections of the *Report*.

Gross Receipts Tax

For the privilege of engaging in business, this tax is imposed on gross receipts received from certain transactions. "Gross receipts" is revenue generated by either selling property in New Mexico, leasing (or licensing) property employed in New Mexico, from granting a right to use a franchise, performing services outside of New Mexico the product of which is initially used in New Mexico, or performing services in New Mexico. This is a far more comprehensive tax base than the typical retail sales tax imposed by most states. It is also more comprehensive than a value added tax base, a commonly suggested alternative for consumption taxation. Because of this broad base definition, many of the exemptions and deductions in the GRT are necessary to prevent multiple taxation of transactions and the associated economic distortion that would cause. Examples include the exemption for wages, dividends, and interest, all of which are taxed under the income tax. Also exempt are various sales which are taxed under separate excise taxes, including motor fuels, motor vehicles, etc.

Another set of deductions and exemptions in the GRT is designed to reduce the incidence of "pyramiding." Pyramiding refers to the imposition of tax on business purchases. Because the final sales of these businesses are typically subject to tax, imposing tax on their purchases creates an additional layer of taxation. This practice creates economic distortion because, for example, small businesses have to purchase more of the goods and services they need from outside companies than do large businesses; the GRT on those inputs creates a discriminatory burden on them. Deductions, like the deduction for the sale of goods for re-sale, that reduce this burden are not treated as tax expenditures in this *Report* because they contribute to the proper definition of the tax base.

Compensating Tax

For the privilege of engaging in certain activities within New Mexico, a Compensating Tax is imposed on the use of tangible property in New Mexico. This tax is New Mexico's version of a "use" tax, imposed on New Mexico residents when they purchase from out-of-state vendors who are not subject to the GRT. Because of the unusual nature of the GRT, many of the deductions from the Compensating Tax base can be thought of as simply defining the tax base.

Other Excise Taxes

Each of New Mexico's excise taxes contain several provisions that can be thought of as defining the tax base and not as tax expenditures. Examples include the exemption for sales of cigarettes on tribal lands to tribal members. Other provisions are treated as tax expenditures in this report, including the sale of cigarettes by tribal vendors to non-tribal members.

Natural Resource Extraction Taxes

New Mexico imposes a variety of taxes on natural resource production activities. Although similar taxes are imposed in some other states, there is not a high degree of uniformity among states in what deductions are allowed in determining the taxable value of the resource. These taxes are generally imposed on the privilege of severing natural resources, and the differences in each state's definition of taxable value is largely dependent on the unique property right laws that have developed in conjunction with resource developments within each state. There is no uniformity in the tax rates or application of tax expenditure principles imposed by states. Since natural resource production taxation is based on retention of a portion of the severed (non-renewable) resources' economic value by the state (frequently accruing to "permanent trust funds"), it would be inappropriate to assume that their tax base should be similar to that of a retail sales tax. The largest of these deductions reduce taxable value for royalties paid to federal, Indian, and state owners of the minerals and are treated in this *Report* as defining the tax base. Most of the remaining deductions allowed under New Mexico's minerals production taxes, such as processing and transportation deductions, recognize the costs of getting the product to market. Other provisions, aimed at stimulating particular types of production, for example, are treated as tax expenditures.

Property Tax

New Mexico's property tax law features a number of limitations and exclusions that reduce the revenue-generating potential of the tax. Some of these are broad-based, however, and are not treated as tax expenditures in this *Report*. Examples include the exclusion from tax of personal property and the three percent limit on annual value growth for residential property. Other provisions that are targeted at specific populations are included.

Section III: Detailed Tax Expenditure Analysis Results

The discussion of results that follows first identifies major categories of tax expenditures defined by the nature of the tax policy's objective, goal, or purpose. The major tax expenditure categories used to structure the presentation of the results include:

- Industry-specific tax expenditures for economic development;
- General tax expenditures to improve business climate and stimulate economic activity;
- Tax expenditures for specific public purposes;
- Tax expenditures for health care facilities and programs;
- Tax expenditures (expressly) for public welfare, elderly, and low-income protections;
- Tax expenditures for specific non-profit enterprises;
- Tax expenditures related to natural resource tax policy; and
- Tax expenditures related to Indian nations, tribes, or pueblos.

The analysis of the individual tax expenditures begins with a discussion of the tax base, which is impacted by the tax expenditure. The discussion will explain how the tax base relates to the determination of whether a tax policy provision (i.e., credit, deduction, exemption, differential tax rate, etc.) should be characterized as a tax expenditure. Available information on each provision is then presented, including estimates of the fiscal impacts.[6]

Having provided definition of the characteristics of the tax expenditures evaluated within that category of policy activities, we summarize the specific results obtained including the estimated fiscal impacts. ***In cases where discussion of the results would reveal confidential taxpayer information, the discussion summarizes multiple individual tax expenditures (e.g., across multiple tax programs) or reflects redacted data.***

Industry-Specific Tax Expenditures for Economic Development

To evaluate a tax expenditure applicable to a specific industry with the goal of promoting economic development, the revenue costs of the incentive should be measured against growth in the targeted industry's output, its employment, and general impact on the state's economy. For example, the latter could include improvements in the skill set of the New Mexico workforce. In addition to general economic development, some industry subsidies are targeted at other goals, such as energy conservation and reducing pollution.

However, rarely will the specific benefits be easily quantified. Only in the case where an industry or economic entity would not otherwise have engaged in the specific activities stimulated can the specific tax expenditure's effect be clearly measured.

[6] While state and local taxes are closely connected in New Mexico, this *Report* only considers the fiscal impact to the state.

Renewable Energy Tax Credits

A clear example of the difficulties in quantifying the benefits from tax expenditures is demonstrated in the range of tax expenditures that are provided to the renewable energy industry in New Mexico. Statute provides for 12 different tax expenditures for renewable energy activities.

However, only three of the specific tax expenditures – Advanced Energy Tax Credit, Renewable Energy Production Credit, and the Solar Market Development Credit – allow revenue cost evaluation as specific, reported tax credits. We were able to estimate a fourth tax expenditure, the Solar Energy Systems Deduction (against Gross Receipts Tax), by using indirect data associated with the Solar Market Development Credit. We cannot know the specific *additional* revenue impacts of the other tax expenditure programs, as these are unreported deductions or are credits that have not been taken to date. Thus, the revenue costs of New Mexico's renewable energy tax expenditures are only partially reflected in Table 1. Moreover, short of surveying all entities that could be eligible for the un-quantified tax deductions and credits, there is no method available to fully evaluate the foregone revenue expended in support of the installation of renewable energy facilities in New Mexico.

Table 1: NM Renewable Energy Tax Credits – Paid Claims ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	**Amount**	**Claims**	**Amount**	**Claims**	**Amount**	**Claims**	**Amount**	**Claims**	**Amount**
Advanced Energy Tax Credit	0	$0	0	$0	<3	-[7]	0	$0	0	$0
Renewable Energy Production Tax Credit	3	$2,030.0	4	$8,667.0	6	$2,822.5	<3	-[7]	not avail.	not avail.
Solar Market Development Tax Credit	180	$545.1	307	$833.8	569	$1,239.8	1,013	$2,248.2	1,222	$2,634.4
Solar Energy System Tax Deduction	not avail.	$380	not avail.	$580	not avail.	$860	not avail.	$1,100	not avail.	$1,800

Recent estimates of a portion of the increased renewable energy production capacity in New Mexico are reflected in Table 2, with the data identifying qualified and approved projects eligible for the Renewable Energy Production Tax Credit. The "net benefit" question then arises with respect to the tax expenditures. That is, of the total value of increased renewable energy production, what role should be attributed to the identified tax expenditures? The answer to this question is not an easy one as there are many other economic factors at play. Aside from a stimulus provided by the mandatory Renewable Portfolio Standard under the Renewable Energy Act (Sections 62-16-1 NMSA 1978 et seq.) that *requires* utilities to install significant renewable energy facilities, the "above market" costs of energy produced from these facilities may also be passed through in utility rates under the New Mexico Public Regulation Commission's jurisdictional authority. Additionally, federal tax expenditures may also stimulate investment.

[7] Redacted due to confidentiality concerns

Table 2: NM Renewable Energy Production Tax Credit Projects – 2012 ($thousands, MWh thousands)

	Approved Capacity (MW)	Estimated MWh Annual Output	Maximum MWh Output	Estimated Production Credit Potential Accrual (2012)
All Renewables Allotment (Wind, Solar, Biomass)	594	1,999	2,000	$19,994
Solar Only Allotment	201	500	500	$13,500
TOTAL	795	2,499	2,500	$33,494

SOURCE: New Mexico Energy, Minerals, and Natural Resources Department, May 11, 2012.

Comparing Table 1 and Table 2 suggests that only a portion of the potential tax expenditures have actually been taken as Renewable Energy Production tax credits to date. Renewable Energy Production Tax Credit claims for production from facilities certified before October 1, 2007 may be carried forward for a period of up to five years against corporate and personal income tax. Thus, there is a period where tax credits may accrue and, if not used, may be lost.[8] The statute was amended in 2007 to make the tax credit refundable for those "qualifying projects commencing operations after October 1, 2007." This program is first-come, first-served, and those who came first did so while the credit was non-refundable. Therefore, most of the currently-approved companies still have non-refundable credits pending. Because companies have 10 years from the date of first production to claim the credit, only after this period expires for currently-approved companies will those companies who qualify under the 2007 amendment be approved and receive the refundable credit.

Based on the most recent information available, it appears the carry-forward of accrued but unused Renewable Energy Production Tax Credit has created a *potential additional claim* of more than $60 million in approved tax credits, with that amount increasing by at least $33 million per year.

The following provides additional descriptive details of the renewable energy tax expenditures.

Advanced Energy Deduction and Advanced Energy Tax Credit

Receipts from selling or leasing tangible personal property or services that are eligible generation plant costs to a person that holds an interest in a qualified generating facility are deductible from gross receipts and compensating tax. In addition, a taxpayer who holds an interest in a qualified generating facility in New Mexico that files a corporate income tax return may claim a credit for six percent of the eligible generation plant costs of a qualified facility.

New energy generation facilities are required as New Mexico's energy demands grow and existing generation facilities are retired. This tax expenditure incentivizes generation plant investments with lower carbon emissions. Avoidance of air quality degradation is generally likely to have environmental benefits and potentially direct economic benefits (e.g., avoidance of carbon emission fees, if such are established).

Under New Mexico's Renewable Energy Act (Section 62-16-1 NMSA 1978), public utilities and cooperatives are allowed to recover from ratepayers the cost of generation facilities required to meet the Renewable Portfolio Standards. Thus, offering a deduction for investment in the eligible facilities

[8] Note the limitation that CIT and PIT tax returns can only be amended for up to three years after they are due.

could mitigate the effect of rate increases on energy consumers. Moreover, the utility earns a return on its investment, including the value of the investment offset by the tax expenditure.

The tax credit and deduction have been infrequently claimed since their inception. For four of the past five years for which data are available, neither the deduction nor the credit was claimed by taxpayers. To the extent that these tax expenditures are applicable to public utilities, it is through the treatment of these deductions and credits in the setting of regulated rates that energy consumers will realize the benefits of these tax expenditures. Preliminary data indicate that use of this credit is increasing in FY2013.

Alternative Energy Product Manufacturers Tax Credit

Manufacturers of certain alternative energy products may receive a tax credit not to exceed five percent of qualified expenditures for purchase of manufacturing equipment used in the manufacturing operation. This credit is designed to stimulate the development of new alternative energy manufacturing facilities. In the past four years for which data are available, this credit has not been claimed by any taxpayers.

Electric Transmission Facilities and Services for Electric Transmission Facilities Deductions

The value of equipment installed as part of an electric transmission facility or an interconnected storage facility acquired by the New Mexico Renewable Energy Transmission Authority (RETA) may be deducted in computing compensating tax and Gross Receipts Tax due by the use of the equipment. In addition, receipts from providing services to the New Mexico Renewable Energy Transmission Authority or an agent or lessee of the authority are deductible from gross receipts.

RETA was formed to facilitate planning and investment in renewable energy facilities that were not otherwise deemed sufficient economically viable or likely to be constructed by public utilities or other third-party developers. Justification for the reduction in tax revenue from use of the facilities acquired by the RETA are assumed to be based on the long term benefits earned by New Mexico from the development and use of these renewable energy facilities. There are no data available to estimate the usage and direct revenue impact of this tax expenditure.

Solar Energy Systems Deduction and Solar Market Development Credit

Receipts from the sale or installation of solar energy systems are deductible from gross receipts. This deduction benefits taxpayers engaged in the sale or installation of solar energy systems. If the cost savings of the seller or installer is passed on to the purchaser of these goods and services, solar energy systems would become more affordable for the end-user.

In addition, taxpayers who install a solar thermal system or a photovoltaic system in a residence, business, or agricultural enterprise in New Mexico owned by that taxpayer may apply for a solar market development tax credit of up to 10 percent of the purchase and installation cost of the system. The credit benefits taxpayers who purchase and install certain solar energy systems.

It is unclear whether the stimulus to the solar energy industry provided by each tax expenditure would be sufficient in the absence of the other, but it is possible that only one or the other is necessary. As the solar energy industry matures in New Mexico, the need for these tax expenditures will diminish and a sunset of the provision may be appropriate.

Wind and Solar Generation Equipment Deduction

Receipts from selling wind generation equipment or solar generation equipment to a government for the purpose of installing a wind or solar electric generation facility are deductible from gross receipts. If the deduction results in lower prices for the equipment, this tax expenditure reduces the cost to governments for purchasing wind and solar generation equipment. Consequently, this tax expenditure provides an incentive to sell wind and solar generation equipment to governments. Wind facilities that are authorized pursuant to an Industrial Revenue Bond are considered to be owned by the government. Hence, this deduction would apply to equipment purchased through IRB financing.

Agricultural Biomass Tax Credit

This tax expenditure subsidizes the sale of agricultural biomass from dairies and feedlots to facilities that use agricultural biomass to generate electricity or make biofuels for commercial use. The subsidy provides direct support to taxpayers engaged in the dairy or feedlot business. If the subsidy is passed on to purchasers of those goods through lower prices, the tax expenditure indirectly promotes the biomass electricity generation and biofuels production sectors. The development of agricultural biomass fuel supplies and related generation facilities provides both environmental benefits and creates a valuable energy resource from what would otherwise need to be addressed as an agricultural waste product.

Geothermal Ground Coupled Heat Pump Tax Credit

This tax expenditure, effective January 1, 2010, provides a non-refundable credit of up to 30 percent of the purchase and installation costs of a geothermal ground-coupled heat pump in a residence, business, or agricultural enterprise in New Mexico. The energy efficiency and fuel savings provided through this technology creates a direct benefit to the taxpayer while minimizing energy and infrastructure costs borne by New Mexico utility ratepayers.

Table 3: Geothermal Ground Couple Heat Pump Tax Credit ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Geothermal Credit	N/A	N/A	N/A	N/A	N/A	N/A	15	$66.9	32	$113.5

Film Production Tax Credit

A credit against personal or corporate income tax is available for 25 percent of direct production and direct postproduction expenditures made in New Mexico that are subject to taxation by the state of New Mexico and directly attributable to the production of a film or commercial audiovisual product. This tax expenditure provides a tiered schedule of payments based on the total credits allowed under a specific claim, and the credit is refundable (Section 7-2F-1(O) NMSA 1978).

For productions with total credit claims under $2 million, the total credit claim is paid immediately upon authorization. For total credit claims between $2 million and $5 million, one half of the credit is paid immediately upon authorization and the other half is paid 12 months following that date. For total credit claims over $5 million, the credits will be paid in three equal payments; one paid immediately upon authorization, one paid the year following, and the last paid two years following.

An aggregate annual cap limiting payouts of the film production tax credit to $50 million across both personal and corporate income tax programs in any fiscal year became effective in FY2012. Table 4 summarizes the Film Production Tax Credits provided in the last five fiscal years. Amounts in the table reflect the dates on which credits were actually paid out to taxpayers and differ from the annual amounts sorted by when the credits were approved.

House Bill 641 in the 2013 legislative session amends Section 7-2F-1 NMSA 1978 to allow an additional five percent to be added to the calculation of the film production tax credit for television shows subject to certain requirements. It also allows for any amount of annual film credit that is unused in Fiscal Years 2013-2015 under the $50 million cap – up to a maximum of $10 million – to be carried forward and added into the subsequent fiscal year's cap. In any year where the $50 million cap is not reached, if there are amounts that would be paid in a subsequent year under the multi-year provisions of the film credit, those subsequent year amounts may be paid in the current year up to the $50 million cap. The bill also requires long-form films to display a state logo in the end screen credits and provides some more specific requirements for withholding taxes related to services provided by artists under the "direct production expenditures" provisions of the credit. Additionally, it provides for a definition of "qualified production facility" and clarifies tax obligations of non-resident vendor services.

Table 4: NM Film Production Tax Credit ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Film Production Tax Credit	51	$46,027.4	78	$76,706.4	80	$65,388.5	55	$77,013.1	41	$9,494.5

The Film Production Tax Credit statute states that the goal of the credit is to establish the film industry as a permanent component of the economic base of New Mexico. To the extent that the film credit has attracted film production to the state, most agree the tax expenditure has been successful. Since the tax credit first took effect in 2002, the number of productions filmed annually has increased dramatically.

Two economic impact studies have been conducted to evaluate the impacts of the film credit program on the New Mexico economy. One, by the Ernst & Young economics group, was based on (calendar year) 2007 data collected from the New Mexico Film Office.[9] The study concluded that the state received $0.94 in additional revenue for each dollar of the credit, and local governments received $0.56 in additional revenue for each dollar of the credit. Furthermore, the study estimated that the credit had been responsible for creating a total of 3,829 new jobs. Notably, the study used data from the year in

[9] Ernst & Young, "Economic and Fiscal Impacts of the New Mexico Film Production Tax Credit," prepared for the New Mexico State Film Office and State Investment Council, January 2009.

which Albuquerque Studios was being constructed, a one-time expenditure. In addition, the study drew a strong link between film production and increased tourism in estimating economic impact.

The other study was conducted by the Arrowhead Research Center at NMSU based on fiscal year 2008 data.[10] It estimated the state received only $0.14 in additional revenue for each dollar of the credit. The Arrowhead study did not examine induced effects such as tourism or capital expenditures.

The widely different results illustrate the fact that different assumptions, altered methodologies, and shifted time frames can yield contradictory conclusions.

Over the last five fiscal years for which data is available, approved film tax credits have averaged $54.9 million per year. Assuming that the credit is 25 percent of qualified direct expenditures, the observed credits translate into qualified expenditures of $219.7 million.

Section 7-2F-4 NMSA 1978 requires EDD to conduct "an objective assessment of the effectiveness of the film production tax credit." In fulfillment of this requirement, the Economic Development Department ("EDD") and Department of Finance and Administration ("DFA") are finalizing contract negotiations on a third study to be completed in phases beginning in FY2014.

Small Breweries and Wineries Tax Credits

A tax expenditure is provided against the liquor excise tax based on an incentive rate differential for small breweries and wineries. Prior to the changes in the 2013 legislative session, beer manufactured or produced by a microbrewer and sold in this state is taxed at a rate of $0.08 per gallon, as opposed to beer produced by larger brewers, which is taxed at $0.41 per gallon. On wine manufactured or produced by a small winegrower and sold in this state, a tax of $0.10 per liter on the first 80,000 liters sold and $0.20 per liter on all liters sold over 80,000 liters but less than 950,000 liters is imposed. In contrast, larger winegrowers are subject to an excise tax of $0.45 per liter tax.

Beginning in 2014, beer manufactured or produced by a microbrewer and sold in this state will be taxed at a rate of $0.08 per gallon on the first 10,000 gallons sold and $0.28 per gallon on all gallons sold more than 10,000 gallons but fewer than 15,000 gallons. For all gallons sold 15,000 or more, the tax rate will be $0.41 per gallon. Also beginning in 2014, a tax of $0.10 per liter on the first 80,000 liters sold, $0.20 per liter on all liters sold over 80,000 liters but not over 950,000 liters, and $0.30 per liter on each liter sold over 950,000 liters but not 1.5 million liters will be imposed on wine manufactured or produced by a small winegrower and sold in this state. In contrast, larger winegrowers are subject to an excise tax of $0.45 per liter tax.

Table 5 reflects that this differential tax rate provides a more significant tax expenditure with respect to small wineries than with respect to microbreweries and that the benefit to microbreweries is increasing.

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[10] Anthony V. Popp and James Peach, "The Film Industry in New Mexico and The Provision of Tax Incentives," A Report Submitted to the Legislative Finance Committee of the State of New Mexico, Arrowhead Center, Office of Policy Analysis, New Mexico State University, August 26, 2008. [http://www.nmlegis.gov/lcs/lfc/lfcdocs/film%20credit%20study%20TP&JP_08.pdf]

Table 5: Small Breweries and Wineries Liquor Excise Tax Differentials ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Microbrewer Beer Rate Differential against Liquor Excise Tax	$169.3	$207.5	$233.2	$307.9	$313.6
Small Wineries Rate Differential against Liquor Excise Tax	$352.8	$402.5	$443.1	$443.3	$485.5
TOTAL	**$522.1**	**$610.0**	**$676.3**	**$751.2**	**$799.1**

This tax differential protects infant industries from larger competitors and provides an incentive to grow small businesses. As such, it could be viewed as an economic development tool. According to the New Mexico Association of Small Brewers, the industry has grown from three breweries in 1988 to 22 in 1998. The New Mexico Wine Growers Association reports that New Mexico now has about 42 wineries and tasting rooms producing about seven hundred thousand gallons of wine each year. In addition, many of the microbreweries currently doing business in New Mexico are in rural areas of the state, creating employment opportunities. Moreover, the breweries and wineries actively promote tourism by exporting New Mexico products.

It is also notable that all liquor products are subject to double taxation where the product sold by the wholesaler of small brewery/winery is subject to the liquor excise tax, and the retail sale of the product is taxed again under the Gross Receipts Tax. Especially in the case of excise taxes which are sometimes applied to activities or products considered detrimental to society, double taxation might even be intended. Such taxes are sometimes referred to as "sin taxes" and are justified as a means of limiting the activity being taxed.

High Technology Incentives

A group of tax expenditures are aimed at stimulating New Mexico high technology businesses including the Research and Development Small Business Tax Credit, the Software Development Services Deduction, the Technology Jobs Tax Credit, and the Space-Related Test Articles Deduction. We can only measure the tax expenditure with respect to the two tax credits that are applied against gross receipts and compensating taxes, as the details of the other two deductions are not reported by the taxpayers claiming the tax benefit. Table 6 provides the details of the two reported tax credits.

Table 6: NM High Technology Tax Credits – Filed Claims ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Research & Development Small Business Tax Credit	56	$133.1	82	$107.1	5	$0.7	0	$0.0	0	$0.0
Technology Jobs Tax Credit	174	$1,909.8	346	$6,042.6	398	$6,267.7	334	$4,601.9	286	$6,695.2
TOTAL	**230**	**$2,042.9**	**428**	**$6,149.7**	**402**	**$6,268.4**	**334**	**$4,601.9**	**286**	**$6,695.2**

Research and Development Small Business Tax Credit

Businesses with 25 or fewer employees, revenues under $5 million annually, and whose qualified prior year's research and development expenditures were equal to at least 20 percent of the firm's total expenditures are eligible for this credit which is equal to their total GRT liability or to 50 percent of their withholding tax liability on behalf of employees.

The limited use of this credit could be due to the fact that small businesses do not have a significant amount of tax liability against which to apply the credit. Under these circumstances, a refundable tax credit may be a more appropriate way to provide economic stimulus to the targeted businesses.

Technology Jobs Tax Credit

A taxpayer who conducts qualified research and development at a facility in New Mexico, excluding facilities operated for the US government, is allowed a basic tax credit equal to four percent of qualified expenditures and an additional four percent credit toward income tax liability by raising its in-state payroll $75,000 for every $1 million in qualified expenditures claimed. The tax credit doubles when the qualified facility is in a rural area. Qualified expenditures include all expenditures associated with research activities in New Mexico.

Growth in the amount of this credit over time suggests it is successfully reaching the targeted population. One issue that has been raised is whether the credit would be simpler for taxpayers and the Department if it were tied explicitly to the definitions under the Federal Research and Experimentation Credit, an approach that has been adopted by 39 other states. Several states have adopted a two-tier approach under which growth of qualified expenditures results in an increased rate of credit. In addition, the credit may be more beneficial to small businesses if a portion were refundable.

Software Development Services Deduction

Receipts from the sale of software development services that are performed in a qualified area by an eligible software company are deductible. In some cases, this deduction may prevent tax pyramiding. However, as a targeted incentive, it qualifies as a tax expenditure for the purposes of this report.

Fuel Used in Space Vehicles Exemption

Receipts from selling fuel, oxidizer, or a substance that combines fuel and oxidizer to propel space vehicles or to operate vehicle launchers and the use of fuel, oxidizer, or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers are exempt from Gross Receipts Tax and compensating tax.

This exemption is provided as an incentive to promote the New Mexico commercial space-flight industry. Tax expenditures, such as this fuel exemption, can serve as an incubator for fledgling industries, but the benefit of these tax incentives becomes less important as an industry becomes stronger. Once New Mexico establishes a robust space vehicle operations industry, the need for the exemption could be diminished.

Space Related Transactions Deduction

Receipts from operating a spaceport; launching, operating, or recovering space vehicles or payloads; preparing a payload; or research, development, testing, and evaluation services for the US Air Force Operationally Responsive Space Program are deductible. This deduction is provided as an incentive to promote the New Mexico space-flight industry and to limit the taxation of certain defense-related research programs.

Sustainable Building Tax Credits

A tax credit can be claimed against either personal or corporate income tax for investments in constructing or renovating sustainable residential or commercial buildings that meet certain Leadership in Energy and Environmental Design ("LEED") green building rating system standards. Table 7 provides data on the sustainable building tax credit since its enactment.

The US Green Building Council has argued that incentives are an effective way to promote the construction and renovation of LEED-certified buildings. In other states and localities, tax credits are often coupled with other incentives designed to stimulate sustainable construction. Likewise, New Mexico offers several tax incentives that can be used together to achieve additional savings.

Table 7: NM Sustainable Building Tax Credit – Credit Applied to Tax Liability ($thousands)

	TY2008		TY2009		TY2010		TY2011		TY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Sustainable Building Tax Credit (CIT & PIT)	6	$39.6	70	$398.3	202	$1,723.6	308	$2,642.4	411	$3,330.3

The number of claims has grown since the inception of these tax credits in 2007, averaging slightly more than $6,500 per claim. The tax credit is based on the LEED rating and size of the building. If the total amount of a sustainable building tax credit approved by the department is less than $25,000, the entire amount of the credit may be applied against the taxpayer's corporate or personal income tax liability for the taxable year for which the credit is approved. If the amount of the credit exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for up to seven years.

Table 8: NM Sustainable Building Tax Credit – Approved Credits ($thousands)

	TY2008		TY2009		TY2010		TY2011		TY2012	
	Projects	Credit Amount	Projects	Credit Amount	Projects	Credit Amount	Projects	Credit Amount	Projects	Credit Amount
Approved Sustainable Building Tax Credits	101	$954.1	140	$1,224.3	340	$3,231.4	639	$6,111.5	1,045	$9,452.7

Table 8 provides the *approved* Sustainable Building Tax Credits through the end of tax year 2012,[11] and reflects an accrual of more than $20.0 million in tax credits from 2009 to 2012. The total approved credit is about $21.1 million since the inception of the tax expenditure program in 2007. It is apparent that the program is growing substantially since it began, and preliminary data for 2012 suggests the program continues to be popular. With only $8.1 million of the total accrued credits having been

[11] Source data from the Energy Conservation and Management Division, New Mexico Energy, Minerals, and Natural Resources Department, January 22, 2013

claimed through 2012, there is approximately $13.0 million in accumulated tax credits that can be claimed during the carry-forward eligibility period under this program.

Affordable Housing Tax Credit

A tax credit can be applied against gross receipts (less local option Gross Receipts Taxes), compensating, withholding, personal income, corporate income, E911, and other CRS tax liabilities for investments in affordable housing projects equal to 50 percent of the amount of cash invested or the fair market value of the land, buildings, materials, or services relating to such projects. This tax expenditure is available to taxpayers receiving a tax credit voucher issued by the New Mexico Mortgage Finance Authority ("MFA").

Under the MFA's program, the tax credit voucher is administered based on donations made to affordable housing projects and the Affordable Housing Charitable Trust. In 2006 and 2007, the tax credit voucher was capped at $200,000 and $500,000 respectively. As of 2008, it was set at a base rate of $1.85 times the reported state population and it is adjusted annually for inflation. In FY2013, this cap amount will be approximately $4 million. Donations may include land, buildings, materials, cash or services. Cash equivalents, such as store credit or waived invoices, are considered a cash donation. Donations received by the project sponsor in exchange for tax credits may be used to fund the acquisition, substantial rehabilitation, and/or new construction of affordable housing projects throughout the state, including down payment and closing cost assistance for acquisition of affordable single family housing. No minimum or maximum dollar limits are placed on donations made directly to the Affordable Housing Charitable Trust.[12] Table 9 reflects the use of the tax expenditure since tax year 2007.

Table 9: Affordable Housing Tax Credit – Filed Claims ($thousands)

	TY2008		TY2009		TY2010		TY2011		TY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Affordable Housing Tax Credit	42	$82.8	67	$461.0	100	$70.9	51	$38.1	9	$56.1

An average of almost 55 housing projects per year have filed tax credit voucher claims with an average benefit per claim of less than $2,500. However, it is difficult to imagine a *net benefit* is obtained from this tax expenditure when the administrative costs of the Affordable Housing Tax Credit program, or the specific support it is providing to developers of these projects, are taken into account. Among the tax expenditures costs, MFA may charge fees for its services in operating the program. In addition to verifications of actual project expenditures and completion, MFA's role includes documenting project eligibility with the use of reservation letters, binding agreements, investment vouchers, and Land Use Restriction Agreements (or acceptable alternative) in all cases, as well as any other documentation required by MFA counsel.

[12] Donations made directly to affordable housing projects in an amount less than $200 are not eligible for investment vouchers; the maximum donation made directly to affordable housing projects which will be eligible for investment vouchers is $1,000,000.

County Gaming Tax Credit

In counties that have imposed the county business retention Gross Receipts Tax, racetrack casinos – or racinos – with a net take of less than $15 million in the prior calendar year may claim a credit equal to 50 percent of their gaming tax liability, provided that the amount of the total credit claimed by a racino cannot exceed $750,000 in any fiscal year. This credit provides qualifying racinos an economic advantage until the racinos are able to generate greater revenues, while holding the state harmless for the loss of tax receipts. If the amount of the credit is more than the revenue generated through the local option Gross Receipts Tax, the state could experience a negative revenue impact.

Table 10: County Gaming Tax Credit ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
County Gaming Tax Credit Against Gaming Tax	not avail.	not avail.	not avail.	not avail.	not avail.	not avail.	1	$398.2	1	$750.0

There are five racinos in New Mexico now: Ruidoso Downs, Albuquerque Downs, SunRay Park & Casino, Sunland Park Racetrack & Casino, and Zia Park LLC. Currently, only Ruidoso Downs is qualified to claim the gaming tax credit. The total credit claimed was $398,200 for six months in FY2011 as this credit was not in effect prior to January 1, 2011. The FY2012 tax expenditure was $750 thousand. However, the list of qualifying racinos may change if a county imposes or repeals the business retention Gross Receipts Tax or if net take amount changes.

Credit Unions' Sales Deduction

This tax expenditure creates a deduction of sales by state-chartered credit unions from gross receipt taxes. This tax expenditure may allow state-chartered credit unions to be placed in competitive parity with federal-chartered credit unions. The direct revenue impact of this tax expenditure cannot be readily estimated from available data.

Newspapers and Publication Sales Deduction

Receipts from selling newspapers, except from selling advertising space, are deductible from Gross Receipts Tax. This deduction was adopted out of concern for the difficulty of collecting small tax amounts on each newspaper purchase.

Excluded from the definition of a newspaper in regulation is the online dissemination of news by a newspaper publisher because that online content is not printed. It is unclear whether publishers have been extending the deduction to their online activities, but the Taxation and Revenue Department has not pursued taxation of online subscriptions to newspaper content. These subscriptions constitute a license, and the receipts from their sale are taxable. If the deduction is being inappropriately applied to them, the cost of this tax expenditure is larger as a result. There are no data readily available to estimate the usage and direct revenue impact of this tax expenditure.

Production or Staging of Professional Contests Deduction

Gross receipts for broadcasting, producing, or staging professional boxing, wrestling, or martial arts contests are deductible. The purpose of this tax expenditure is to promote these events. There are no data readily available to estimate the usage and direct revenue impact of this tax expenditure.

General Tax Expenditures to Improve Business Climate

Where a tax expenditure is created with a general application and intent to achieve broad goals of improving the potential for economic development and stimulus, the revenue costs must be measured broadly against the state's economic output. Although the appropriate measurement remains the economic output effects of the specific tax expenditure program, quantification of the specific benefits becomes significantly more difficult as they are more broadly distributed.

Rural Job Tax Credit

A good example of a tax expenditure that falls into this broad economic stimulus category is the Rural Job Tax Credit, which was originally enacted in 1999 and reenacted in 2007. To be eligible for the Rural Job Tax Credit, employers must be approved for the Job Training Incentive Program ("JTIP") administered by EDD. Changes adopted in the 2013 legislative session ensure that only newly-created jobs qualify for this tax credit. The definition of "wage" was also modified in this legislation to exclude benefits. Recipients of the Rural Job Tax Credit may apply it against a taxpayer's corporate and personal income tax, or modified combined tax liability, including Gross Receipts Tax (less local option Gross Receipts Taxes), compensating tax, and withholding tax.

The statute defines two tier areas based on population size that establish the specific tax credits applicable under the program.[13] A "Tier One area" is any municipality within a rural area if the municipality's population is 15,000 or less, or any part of the rural area that is not within the exterior boundaries of a municipality. For a Tier One area, the credit is for 25 percent of the first $16,000 of wages paid. For a Tier Two area – defined as any municipality within a rural area if the municipality's population is more than 15,000 – the credit is for 12.5 percent of the first $16,000 of wages paid. For each of the (up to) four 12-month qualifying periods, the annual credit is 6.25 percent of the first $16,000 of wages paid if the job is in a Tier One area. In a Tier Two area, for each of the (up to) two qualifying periods, the annual credit is 6.25 percent of the first $16,000 of wages paid.

Table 11: Rural Jobs Tax Credit – Filed Claims ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Rural Jobs Tax Credit	49	$179.5	119	$422.7	78	$664.6	32	$307.6	11	$225.9

Table 11 shows that the Rural Jobs Tax Credit has been averaging approximately $405,000 over the last four years. Recognizing that the Rural Jobs Tax Credit provides a $1,000 annual benefit for each job it

[13] A "rural area" means any part of the state other than: (a) an H class county (i.e., Los Alamos County); (b) the state fairgrounds; (c) an incorporated municipality within a metropolitan statistical area if the municipality's population is thirty thousand or more according to the most recent federal decennial census; and (d) any area within ten miles of the exterior boundaries of a municipality described in Subparagraph (c) of this paragraph.

supports,[14] it can be asserted that the tax credit has provided direct benefit to approximately 200 to 700 jobs in rural New Mexico during the last four years. Because a qualifying employer is one who qualifies for in-plant training assistance under the EDD's JTIP, the jobs benefiting from the Rural Jobs Tax Credit generally range in annual pay from $40,000 to $60,000 per year. Thus, *to the extent* that the Rural Job Tax Credit is significantly responsible for the creation of these jobs, the return on the tax expenditure from this program are relatively substantial. As with all job incentives, however, it is difficult to determine whether a job would have been created in the absence of the incentive.

High Wage Jobs Tax Credit

A similar, but much more complex, analysis was required for the High Wage Jobs Tax Credit (Section 7-9G-1 NMSA 1978), which offers a ten percent tax credit of up to $12,000 for qualified wages. Prior to FY2016, high wage jobs eligible for the tax credit are defined as jobs with wages greater than $28,000 per year in rural areas and greater than $40,000 per year in urban areas. The maximum tax credit allowed is $12,000, and the credit is calculated on total compensation (i.e., wages and benefits). Eligible employers are those businesses eligible for JTIP or, prior to FY2014, whose sales revenues are more than 50 percent to out-of-state entities in the year prior to when the employer files for the tax credit. Prior to FY2014, qualified claims could have been made for jobs created since 2004, requiring documentation that the claimant created a "new high wage job" and that the job was occupied for 48 weeks from the "start date" of the qualifying period. The tax credit may be claimed for a period of up to four years from the start date of the qualifying period. The employer may claim the tax credit against several different tax liabilities, but the credit is refundable – that is, paid by the state even if the taxpayer does not have a tax liability against which to apply the credit. Table 12 provides a summary of the High Wage Jobs Tax Credit claims since FY2008.

Table 12: High Wage Jobs Tax Credit – Paid Tax Claims ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
High Wage Jobs Tax Credit	66	$3,805.7	100	$14,333.1	70	$4,651.5	77	$9,258.4	242	$24,202.4

Although there has been significant historic growth in the tax credit claims, FY2012 claims were escalating at an even more substantial rate, which prompted a need for reform of the tax credit during the 2013 legislative session.

The High Wage Jobs Tax Credit was amended in the 2013 legislative session to clarify its application, to impose additional limitations on eligibility, and to extend the credit for an additional five years. Beginning in FY2014, the threshold for definition of a municipality is raised to a population of at least 60,000 residents, and eligibility for treatment as a municipality is extended to include an area within ten miles of the external boundaries of municipality. The threshold for new high wage jobs created after July 1, 2015 is raised to $40,000 outside a municipality and $60,000 within a municipal area. The

[14] That is, 6.25 percent of $16,000 is equal to $1,000, and if it is presumed that the great majority of qualifying jobs are paying at least $16,000 per year in wages, then each $1,000 of tax credit claimed is approximately equal to a new rural job created under the Rural Jobs Tax Credit program.

cumulative effect of the 2013 changes should reduce the number and amount of claims while improving targeting of the incentive to those jobs most likely to benefit the state's economy.

The High Wage Job Tax Credit program illustrates a tax expenditure program that has provided significant benefit to taxpayers. Additionally, substantial administrative resources are required of the Taxation and Revenue Department to verify the compliance of applications with qualification criteria, and significant costs are imposed on the applicants in preparing claims for presentation and approval. The administrative and compliance costs are a trade-off for providing an incentive that is carefully targeted.

Laboratory Partnership with Small Business Tax Credit

The purpose of the Laboratory Partnership with Small Business Tax Credit is to bring the technology and expertise of the national laboratories to small businesses. When a national laboratory offers certain types of eligible assistance to individual small businesses, it may take a credit against the state portion of Gross Receipts Tax of up to $10,000 per business, or $20,000 for a business in a rural area, in an amount equal to the qualified expenditure. To qualify for tax credits, a national laboratory must establish a small business assistance program, including a revolving fund with initial funding from a source other than tax credits. Money from the revolving fund shall be used to pay for qualified expenditures, and the fund shall be replenished with an amount equal to the tax credits taken pursuant to the Laboratory Partnership with Small Business Tax Credit Act (Section 7-9E NMSA 1978).

A national laboratory may claim the amount of each tax credit by crediting that amount against Gross Receipts Taxes otherwise due and shall not impact any local government tax distribution. A tax credit shall be in an amount equal to the qualified expenditure incurred by the national laboratory to provide small business assistance to a specific small business, not to exceed $10,000 for each small business located outside of a rural area, or $20,000 if the small business assistance was provided to a small business located in a rural area. In no event shall the tax credits taken by an individual national laboratory exceed $2.4 million in a given calendar year. Tax credits claimed by all national laboratories in the aggregate for qualified expenditures for a specific small business not located in a rural area shall not exceed $10,000. The recent history of this tax expenditure is provided in Table 13.

Table 13: Laboratory Partnership with Small Business Tax Credit – Filed Claims ($thousands)

	TY2008		TY2009		TY2010		TY2011		TY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Laboratory Partnership w/ Small Business Tax Credit	4	$3,316.9	4	$4,236.7	5	$4,577.3	4	$2,823.5	7	$4,383.9

Although the use of the tax credit to replenish the Small Business Development Revolving Fund was enacted in FY2000, only in the last four fiscal years have significant claims been filed. "Small business assistance" includes the transfer of technology, including software, manufacturing, mining, oil and gas, environmental, agricultural, information, and solar and other alternative energy source technologies. Eligible assistance includes nontechnical assistance related to expanding the New Mexico base of suppliers, including training and mentoring individual small businesses; assistance in developing business systems to meet audit, reporting, and quality assurance requirements; and other supplier development initiatives for individual small businesses.

The economic benefit is to encourage New Mexico-based national laboratories to engage in developing research activities, particularly in rural New Mexico. The tax expenditure may create enough economic incentive to induce engagement between the laboratories and the communities that might not otherwise happen.

Investment Tax Credit

This tax credit is equal to five percent of the value of the capital investments in qualifying manufacturing equipment where such investment increases employment in the manufacturing business. This investment tax credit may be applied against a maximum of 85 percent of a taxpayer's gross receipts, compensating, and withholding tax liability, but may not be taken against any local option Gross Receipts Tax imposed by a county or municipality. No limit is currently imposed on the amount of investment eligible for the credit. However, after June 30, 2020, qualified investment will be limited to no greater than $2,000,000 for any taxable year. To claim the credit, a taxpayer must add at least one additional employee for every $500,000 of eligible investment if the total investment claimed is up to $30 million. The taxpayer must add at least one employee for every $1 million of investment if the total investment claimed is over $30 million. Table 14 reflects the tax expenditures for the Investment Tax Credit since FY2008.

Table 14: NM Investment Tax Credit (Qualified Manufacturing) – Filed Tax Claims ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Investment Tax Credit	92	$1,053.2	197	$11,602.8	117	$7,037.9	90	$1,862.0	102	$1,468.4

In the last four years, the investment tax credit has averaged nearly $5.4 million per year. At the five percent credit rate, this translates into approximately $127 million per year in qualified investment. Assuming an average of $1 million in investment per employee added, this translates into 127 additional employees per year. Since manufacturer's equipment purchases are not subject to sales tax in most states, a strong argument can be made that the investment credit is not a tax expenditure, but rather a correction to make the GRT more comparable to other states' sales taxes.

Venture Capital and Angel Investment Tax Credits

The Venture Capital Investment Tax Credit (Sections 7-2D NMSA 1978 et seq.), enacted in 1993, is applied against personal income tax liability. The Angel Investment Tax Credit, enacted in 2007 and extended in 2012, is applied against personal income tax liability. The two investment tax credit programs are presented here as much for the contrasts and effectiveness, as for any similarities that they bear in relationship to capital investment in New Mexico. Table 15 reflects the recent history of utilization of these two tax expenditure programs for capital investment in New Mexico.

Table 15: Venture Capital Investment Tax Credits – Filed Tax Claims ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Venture Capital Investment Tax Credit	0	$0.0	0	$0.0	0	$0.0	0	$0.0	not avail.	not avail.
Angel Investment Tax Credit	16	$145.0	28	$157.8	32	$200.8	45	$251.8	63	$392.5
TOTAL	**16**	**$145.0**	**28**	**$157.8**	**32**	**$200.8**	**45**	**$251.8**	**63**	**$392.5**

The Venture Capital Investment Tax Credit provides for a 50 percent credit against corporate income tax liability from net capital gains realized from investments in manufacturing businesses in New Mexico. The gain is realized from the sale or exchange of "qualifying diversifying business stock" where the contributed capital does not exceed $25 million (stated generally, with statutory restrictions), and was originally issued after June 30, 1994 but before July 1, 2001. In short, there is little reason to believe that this tax expenditure will likely see significant activities in support of venture capital in New Mexico with such restrictions.

The Angel Investment Tax Credit is provided against personal income tax liability of an accredited investor making a qualified investment in an amount not to exceed 25 percent of not more than $100,000 of the qualified investment. A qualified investment is in a business that maintains its principal place of business in New Mexico and engages in high-technology research or manufacturing activities in New Mexico. A taxpayer may claim the angel investment credit for not more than two qualified investments in a taxable year, provided that each investment is in a different qualified business. A taxpayer may claim the Angel Investment Tax Credit for qualified investments made in the same qualified business or a successor of that business for no more than three taxable years.

Claims for the Angel Investment Tax Credit have averaged approximately $229,600 per year over the last five years and have leveraged at least $4.6 million in qualifying investment during the last five years.

Tax Increment for Development District Tax Dedications

The incremental Gross Receipts Tax revenue and property tax payments attributable to new development pursuant to a tax increment development plan may be dedicated to the infrastructure development within the Tax Increment Development District ("TIDD"). Since these gross receipts and property tax payments would otherwise flow to more general beneficiaries, the dedication of these revenues may be considered a tax expenditure. The portion of Gross Receipts Taxes in excess of the amount of base Gross Receipts Taxes, and the portion of property taxes in excess of the amount of base property taxes, may be irrevocably pledged by the district for the payment of the principal of, the interest on, and any premiums due in connection with the bonds, loans, advances, and indebtedness. With the approval of the State Board of Finance, up to 75 percent of the GRT attributable to the imposition of the State GRT within a district may be dedicated to the district.

Table 16: Tax Increment for Development District Tax Dedications ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
TIDD Gross Receipts Tax Dedications	not avail.	not avail.	2	$2,946.1	4	$1,370.9	5	$3,810.8	5	$3,840.3

Table 16 reflects that the role of TIDDs in funding economic development investments has been significant. There are cases where TIDDs have been authorized, and the participants have subsequently moved to abolish the special development districts. Thus, it is now apparent that the TIDD structure may have both benefits and additional costs. Certainly, there is a significant additional administrative cost for the Taxation and Revenue Department and for the county treasurers to identify and monitor specific gross receipts and property tax payments, allocate those receipts, and report these additional subdivision revenues. TIDD's are widely seen as a beneficial structure for providing development assistance because the earmark of revenue for infrastructure is based only on the incremental revenue base which presumably can be attributed to the developers receiving the assistance. Two significant concerns are raised by this approach. One is that it is administratively very complex to distinguish incremental from base revenue levels. The second is the concern that development within the district may be "cannibalizing" development in other districts with the result that the combined tax base of all districts is not really increasing.

Manufacturing Income Apportionment

A taxpayer whose principal business activity is manufacturing may elect to have business income apportioned to New Mexico by multiplying the income by a "double-weighted sales" fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. The tax expenditure provides an optional, alternative method of income apportionment for manufacturers when calculating New Mexico corporate income tax liability. All other taxpayers are required to use a three-factor apportionment formula in which payroll, property, and sales are equally weighted. By increasing the weight of the sales factor, this policy also has the effect of promoting an export-based manufacturing industry because exported sales reduce the share of income apportioned to this state.

House Bill 641 in the 2013 legislative session amended this expenditure to phase in over five years sales factor-only apportionment for manufacturers. By Tax Year 2018, manufacturers will be able to elect to apportion income by using only the sales factor. While the cost of this expenditure is expected to increase significantly, this provision could encourage the relocation to New Mexico of manufacturers with large New Mexico payroll or property holdings and will allow New Mexico to better compete with other states, many of which allow single sales factor apportionment for all industries.

Table 17: Double-Weighted Sales Apportionment against Corporate Income Tax ($thousands)

	TY2008		TY2009		TY2010		TY2011		TY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Double-Weighted Sales Apportionment Against CIT	11	$10,160	10	$1,702	16	$18,745	15	$2,255	not avail.	not avail.

Excluding taxpayers from sectors other than manufacturing from this apportionment method could violate the principle of equity in tax policy. Under the statute, "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation at a facility regulated pursuant to the Public Utility Act (Section 62-13-1 NMSA 1978); or (4) processing natural resources, including hydrocarbons (Section 7-4-10(C) NMSA 1978).

Back to School Sales Tax Holiday Deduction

This tax expenditure allows receipts from retail sales of specified tangible personal property to be deducted from Gross Receipts Tax if the sale of the property occurs during the period between 12:01 a.m. on the first Friday in August and ending at midnight the following Sunday. The property specified by this statute includes certain clothing valued under $100, computers valued under $1,000, computer accessories valued under $500, and school supplies. The tax expenditure is targeted at "back to school" expenditures, but its broadly-stated basis allows any eligible retail sales to qualify for the economic benefits. No direct data is available to either estimate the economic benefits or lost revenues associated with this tax expenditure. Because daily reporting of GRT is not required, the estimate presented in Table 18 is based on 10 percent (three days out of 30) of August retail sales attributed to qualifying expenditures and application of statewide average GRT rates. This estimate is only an approximation as the tax holiday would likely lead to some increase in otherwise taxable activity during the period.

Table 18: Estimated Tax Holiday Deductions for Gross Receipts Tax Liabilities ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Estimated Tax Holiday Deductions from GRT	$3,600	$4,054	$3,595	$3,109	$3,350

A concern with this tax expenditure is that the benefits may not be limited to the intended targets.

Jet Fuel Deduction

This tax expenditure provides a deduction that reduces the effective gross receipts and compensating tax rates on jet fuel. From July 1, 2003 through June 30, 2017, 55 percent of the value of jet fuel prepared and sold for use in turboprop or jet engines may be deducted from the total value before computing tax due. After June 30, 2017, 40 percent of the value of that same qualified jet fuel may be deducted from the total value before computing tax due. Although no direct data source exists to estimate this tax expenditure, Table 19 provides an estimate based on jet fuel expenditures data obtained from the US Energy Information Administration through calendar year 2011. Expenditures were adjusted to a fiscal year basis. The analysis further assumes that 80 percent of purchases would be subject to the Gross Receipts Tax and that the other 20 percent would be subject to compensating tax.

Table 19: Estimated Jet Fuel Deduction Tax Expenditures ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Jet Fuel Deduction	$7,000	$5,700	$3,800	$4,400	$5,900

Comparison with other states indicates that most states allow a reduced or zero rate of sales tax on jet fuel. This appears to be due to the desire to attract airlines to operate within the state.

Other General Tax Expenditures to Improve Business Climate and Stimulate Economic Activities

The following additional tax expenditures may be identified as providing benefit to the general business climate and as a stimulus to economic activities. However, there have been no readily available data and, correspondingly, no ability to estimate the cost and benefits of those tax programs. It must be noted that the tax expenditure associated with County and Municipal Revenue Bonds[15] is undoubtedly the largest of these tax expenditures and that the complexity in assigning economic value, revenue impacts, and the potential costs of the programs is very substantial.

Business Facility Rehabilitation Credit

This credit can be applied against personal or corporate income tax liabilities for one-half of the cost, not to exceed $50,000, incurred to restore, rehabilitate, or renovate a qualified business facility. Claimants cannot also claim the cultural property preservation credit or the investment credit. The credit is intended to stimulate the creation of new jobs and revitalize economically depressed areas within New Mexico enterprise zones as designated by local governments, subject to certain restrictions and qualifications. Any portion of the credit not deducted from the taxpayer's income tax liability that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive taxable years.

Table 20: Business Facility Rehabilitation Credit against CIT and PIT ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Business Facility Rehabilitation Credit against CIT & PIT	0	$0.0	0	$0.0	0	$0.0	0	$0.0	0	$0.0

County and Municipal Revenue Bonds

New Mexico statute authorizes municipalities to acquire, own, lease, or sell projects for the purpose of promoting industry and trade other than retail trade, by inducing manufacturing, industrial, and

[15] See the Industrial Revenue Bond Act (Section 3-32-2 NMSA 1978), the County Industrial Revenue Bond Act (Section 4-59-1 NMSA 1978), the Pollution Control Revenue Bond Act (Section 3-59-1 NMSA 1978), or the Statewide Economic Development Finance Act (Section 6-25-1 NMSA 1978), and the Hospital Equipment Loan Act (Section 58-23-1 NMSA 1978).

commercial enterprises to locate or expand in New Mexico, promoting the use of the agricultural products and natural resources of this state, funding pollution control equipment, and promoting other businesses, subject to certain qualifications. This tax expenditure provides an exemption from Gross Receipts Taxation for all project development costs and revenues from a County Revenue Bond project. This is an economic development incentive that sets aside lease revenue generated from the project for the purpose of payment on the bonds, the proceeds of which are used to purchase or construct the project. In some instances, the revenue bonds are sold to the corporation or organization leasing the facility.

In addition to the impact on gross receipts revenues, the property associated with the project is considered property of the state and is therefore exempt from property taxation. This exemption reduces the available property tax revenue which limits the total general obligation bonding capacity for the county and any smaller political subdivisions (such as municipalities and school districts) in which the project is located. It should be noted that such political subdivisions have no recourse to disallow projects that might diminish their revenues.

Trade-Support Companies in Border Zone Deduction

This deduction allows the receipts of a trade-support company to be deducted from gross receipts if the trade-support company first locates in New Mexico within twenty miles of a port of entry on New Mexico's border with Mexico on or after July 1, 2003 but before July 1, 2013, and subject to other qualifications. Trade-support companies provide an intermediate service in the importing and exporting of goods. Depending on the definition of the Gross Receipts Tax base, it might be inappropriate to subject those services to taxation because it could promote pyramiding of taxation into the final cost of imported goods. The statute, however, is clear through its structure that this deduction is intended to serve an economic development role by incubating the trade-support sector. As such, it is considered a tax expenditure.

New Mexico's geographic proximity to Mexico creates the opportunity to establish a viable import-export economy. This tax expenditure provides support to new businesses and better allows New Mexico trade-support companies to compete with neighboring border states.

Hosting World Wide Web Sites Deduction

Receipts from hosting web sites are deductible against Gross Receipts Tax. To the extent that web sites serve business purposes, this deduction limits pyramiding of the GRT.

Military Acquisition Programs Deduction

Receipts from military transformational acquisition programs performing research and development and test and evaluation services at New Mexico major range and test facility bases are deductible against Gross Receipts Tax. This deduction was enacted to support major defense research projects at White Sands Missile Range.

Military Construction Services Deduction

Receipts from military construction services provided at New Mexico military installations to implement special operations mission transition projects pursuant to contracts entered into with the US

Department of Defense are deductible against Gross Receipts Tax. This deduction only applies to reporting periods between July 1, 2007 and December 31, 2010.

Purchases Made by Instrumentality of Armed Forces Exemption

The sale of alcoholic beverages to or by an instrumentality of the armed forces of the United States engaged in resale activities is exempt from Local Liquor Excise Tax. On first appearance, this tax exemption may appear necessary to avoid tax-pyramiding that might occur through resale. However, all liquor sales are subject to double taxation in that the liquor excise tax is paid by the distributor, while the retailer is subject to a Gross Receipts Tax on the final sale. In actuality, this exemption is a preferential treatment of sales to the US government and should therefore be considered a tax expenditure.

Tax Expenditures for Specific Public Purposes

There are some tax expenditures that are clearly provided to directly serve public purposes. These projects often involve large individual costs with very little individual benefit. Because of the potentially large social benefit, however, policymakers may use tax expenditures to incentivize such activities. Although many public projects, such as public transportation, are initiated through direct government spending, the tax programs outlined below are sometimes better managed through private activity.

Cultural Property Preservation Tax Credit

The tax credits are provided "...to encourage the restoration, rehabilitation and preservation of cultural properties" (Sections 7-2-18.2 and 7-2A-8.6(A) NMSA 1978). Taxpayers may take this credit against corporate and personal income tax return for restoring, rehabilitating, or preserving properties listed on the New Mexico Register of Cultural Properties. The credit is equal to 50 percent of the cost of construction. It may not exceed $25,000 if listed on the New Mexico Register of Cultural Properties or $50,000 if the property is within an arts and cultural district designed by the state or a municipality as designated in the Arts and Cultural District Act.

Table 21: Cultural Property Preservation Credits against Corporate and Personal Income Tax ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Cultural Property Preservation Credits Against CIT & PIT	91	$235.4	85	$266.6	80	$229.4	67	$164.7	69	$151.1

At a 50 percent credit rate, the nearly $1 million in total tax credits reflected in Table 21 contributed to leveraging an additional $1 million in direct expenditures on cultural and historic property preservation. The public benefits of these expenditures are based on the potential for providing future generations the opportunity to enjoy and benefit from these culturally and historically important New Mexico resources. The restoring, rehabilitating, or preserving of properties listed on the New Mexico Register of Cultural Properties offers many benefits in the form of heritage preservation, culture, and tourism.

Agricultural Water Conservation Credit

Corporate and personal income tax credits are available for agricultural water conservation expenses incurred by the taxpayer for specific improvements in irrigation systems or water management methods. The expenses must comply with a water conservation plan approved by the local soil and water conservation district in which the improvement is located. The improvements must be primarily designed to substantially conserve water on the land in New Mexico that is owned or leased by the taxpayer and used to produce agricultural products, harvest or grow trees, or sustain livestock. The credit amount is 35 percent of eligible expenses incurred in calendar year 2008 and 50 percent of expenses in subsequent years through December 31, 2012 when the credit sunset. This credit was designed to incentivize responsible water management and to offset the cost of irrigation improvements incurred by the individual farmer or rancher.

In New Mexico, the availability of viable water resources is a critical issue. Without additional information regarding the water resource benefits achieved (e.g., acre-feet of additional beneficial use provided) through these conservation investments, it is not possible to assess the direct benefits from the tax expenditure. All the claims made have been taken against personal income tax liabilities.

Table 22: Agricultural Water Conservation Credits against Corporate and Personal Income Tax ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Agricultural Water Conservation Credits Against CIT & PIT	0	$0.0	19	$56.5	11	$42.0	5	$10.7	3	$13.5

Land Conservation Tax Credits

Land that is conveyed for conservation or preservation purposes may be eligible for a credit against the personal and corporate income and franchise taxes in an amount equal to 50 percent of the fair market value of land contributed. The amount of the credit that may be claimed by a taxpayer shall not exceed $100,000 for a conveyance made prior to January 1, 2008, or not exceed $250,000 for a conveyance made on or after that date. In addition, for any taxable year, the credit used may not exceed the amount of personal or corporate income tax otherwise due. The provision includes a 20-year carry-forward of any portion of the credit unclaimed in a taxable year.

Table 23: Land Conservation Tax Credits ($thousands)

	TY2008		TY2009		TY2010		TY2011		TY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Land Conservation Tax Credit	25	$284.5	41	$1,438.2	55	$3,537.4	58	$1,489.9	45	$937.7

The value of the lands and appurtenant resources contributed through the land conservation tax credit program is presumed to be much more significant than the dollar value of the contributed resources themselves (as reflected in Table 23). Generally the motivation for such contribution is that there is recognition that the resources have a very high intergenerational preservation value that may not be captured in the market value of the resources themselves. Through such contributions, the use and protection of the lands as a conservation or preservation area shall be assured in perpetuity.

Jobs Mentorship Tax Credit

The job mentorship tax credit gives a personal or corporate income tax credit to businesses hiring qualified students in a school-sanctioned, career-preparation education program. Qualifying businesses must employ students attending an accredited New Mexico secondary school full-time. Credits are for 50 percent of the gross wages paid, subject to limitations.

The maximum aggregate credit allowable shall not apply to more than 10 qualified students employed by the taxpayer for up to 320 hours of employment of each qualified student in each taxable year for a maximum of three taxable years for each qualified student. In no event shall a taxpayer claim a credit in excess of $12,000 in any taxable year. The employer must certify that hiring the qualified student does not displace or replace a current employee.

This provides benefits to the students in the form of training and employment experience which could translate into increased employment opportunities, better education, and higher wages. Employers could also benefit from this incentive which may reduce training costs and could ensure better-qualified future job applicants.

Table 24: Job Mentorship Tax Credits against Corporate and Personal Income Tax ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Job Mentorship Tax Credits Against CIT & PIT	7	$25.1	5	$13.9	4	$12.7	4	$13.7	not avail.	not avail.

The low utilization of this credit may be due to the qualification restrictions (e.g., certifications by sponsoring school personnel) or may reflect a broad lack of awareness of the program.

Non-Athletic Special Events Deduction

Receipts from admissions to nonathletic special events held at a venue that holds at least 10,000 people and is located on the campus of a post-secondary school within 50 miles of the New Mexico border are deductible from gross receipts. This tax expenditure serves to allow certain venues within 50 miles of the New Mexico border to compete with out-of-state facilities for special events.

Data on gross ticket sales were provided by administrators at the only qualified institution, New Mexico State University. Foregone revenue was then calculated by applying the five percent governmental Gross Receipts Tax rate. The governmental Gross Receipts Tax rate is used in lieu of the Gross Receipts Tax rate for the following reason: prior to 2007, when the original deduction was enacted, the Pan American Center at New Mexico State University applied the governmental Gross Receipts Tax to income from special events. After the Gross Receipts Tax deduction was enacted, the performer contracts were revised to take advantage of the Gross Receipts Tax deduction. In the absence of this tax expenditure, the Pan American Center would presumably revise contracts to move the receipts, once again, under the governmental Gross Receipts Tax provisions.

Table 25: Non-Athletic Special Events Deduction against Governmental Gross Receipts Tax ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Nonathletic Events Deduction Against GGRT	$36.1	$22.8	$99.3	$71.2	$80.0

The direct benefits of this tax expenditure accrue to event promoters and performers receiving proceeds from ticket sales. An argument can be made that but for the gross receipts deduction, promoters would host these events in El Paso, Texas, where ticket sales are not subject to taxation. If this were true, the benefit of the tax expenditure encompasses all economic activity associated with these special events including certain vendor sales, hotel stays, and other goods and services purchased by attendees. Total receipts from admissions have averaged $1.60 million annually from FY2010 through FY2012, but it is unknown how much of those sales can be attributed to the tax expenditure.

Officiating at NMAA-Sanctioned School Events Exemption

Receipts from refereeing, umpiring, scoring, or other officiating at school events sanctioned by the New Mexico Activities Association ("NMAA") are exempt from Gross Receipts Taxation.

This tax expenditure provides incentive for New Mexicans to provide officiating services at NMAA-sanctioned events. These taxpayers likely engage in officiating activities as a secondary or supplemental income source. The desire to engage in supplemental employment is generally more responsive to taxation than the demand for primary employment, meaning taxpayers are less likely to pursue such jobs if the income earned is highly taxed. This tax expenditure also provides schools a greater pool of potential officiators and reduces the costs of hiring these individuals.

Table 26: Officiating At NMAA-Sanctioned Events against Gross Receipts Tax ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Officiating NMAA-Sanctioned Events Exemption against GRT	$150	$160	$160	$170	$170

No direct data for this tax expenditure is reported. The estimates presented in Table 26 rely on data from the NMAA officials' fee rate for the 2011-2012 year, which were used to estimate the amount of receipts that would qualify for the deduction. Foregone revenue was obtained by multiplying the estimated receipts in each fiscal year by the statewide average Gross Receipts Tax rate for each respective year. The wide-ranging public benefits of this tax expenditure is undisputed, and the exemption of an official from having to report gross receipts on these fees helps to minimize the challenges of obtaining these community services.

Gasoline and Special Fuels Tax Issues

Gasoline and other special fuels[16] are (predominantly) taxed under separate excise taxes rather than under the Gross Receipts Tax. There are many issues related to the taxation of gasoline and special fuels, with these issues primarily related to the specific purposes to which the tax revenues are applied. In particular, the primary beneficiary of the these fuel taxes is the State Road Fund, although distributions are also provided to the State Aviation Fund; Motorboat Fuel Tax Fund; County Government Road Fund; Municipal Roads Fund; Local Governments Road Fund; County, Municipal, and Tribal Governments; and the General Fund.[17]

One issue is whether the different tax rates applied by these fuel taxes are tax expenditures. In this *Report*, tax rate differentials, including the fuel tax rates, are not treated as tax expenditures, but because some of these fuel volumes are subject to GRT or Compensating Tax, and because the revenues are widely-distributed (beyond simply the Road Fund), it is informative to present the data related to these tax rate differentials. A $0.17 per gallon excise tax is imposed on gasoline, and a $0.21 per gallon excise tax is imposed on special fuels, for the privilege of receiving special fuels in New Mexico. This is in lieu of the GRT currently at 5.125 percent. As shown in Table 27, both gasoline and special fuels provide for greater tax revenues to the state under their respective excise tax rates than would be provided under the GRT, although it should be noted that when the average price of gasoline rises above $3.32 per gallon and the average price of special fuels exceed $4.10 per gallon, the GRT produces higher revenues than do the respective excise taxes. This was the case in FY2012 with respect to the Gasoline Tax.

Table 27: Gasoline And Special Fuels Tax Issues – Comparison to Gross Receipts Tax Revenues ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Gasoline Tax versus GRT	($11,228.8)	($37,653.7)	($32,284.3)	($10,705.7)	$6,892.5
Special Fuels Tax versus GRT	($10,070.4)	($38,408.5)	($25,783.6)	($6,081.8)	($3,131.7)

The deductions component of the gasoline and special fuels taxes provide a mixture of tax expenditure and tax base issues. Data identifying the deducted gallons of gasoline and special fuels pursuant to the provisions of the statute are collected on Combined Fuel Tax Report for Distributors, Suppliers and Wholesalers Form (RPD-41306), which clearly states the number of gallons deducted pursuant to each of the allowed deductions.

Fuels Tax Issues – Federal & Indian Deductions/Exemptions

Under Sections 7-13-4(B), 7-16A-10(B), and 7-13A-4(B) NMSA 1978, gasoline and special fuels received in New Mexico sold to and for the exclusive use of the United States or an agency or instrumentality

[16] "Special fuel" means any diesel-engine fuel or kerosene used for the generation of power to propel a motor vehicle, except for gasoline, liquefied petroleum gas, compressed, or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet engines (Section 7-16A-3 NMSA 1978).

[17] NOTE: Appendix A-2: Distribution of Tax Revenues to Beneficiaries by Tax Program to this *Report* provides the distribution of all tax revenues discussed herein, as provided (in most cases) by the Tax Administration Act (Section 7-1 NMSA 1978).

thereof may be deducted from gasoline and special fuels taxes and the petroleum products loading fee. This is not a tax expenditure due to the federal constitutional preemption from taxation.

Under Section 7-13-4(E) NMSA 1978, gasoline received in New Mexico and sold at retail by a registered Indian tribal distributor, if the sale occurs on the tribal lands, is placed into the fuel supply tank of a motor vehicle on that land, and the Indian nation, tribe, or pueblo has certified to the department that it has in effect an excise, privilege, or similar tax on the gasoline, then a deduction in proportion to the percentage of tribal tax to the gasoline tax may be deducted (up to 100 percent of the gallons sold). Although there is no prohibition on multiple taxation of transactions on tribal lands, as a competitive matter the double taxation would disadvantage the tribal commerce and as a state tax policy may be deemed undesirable as a result of its anti-competitive effects. If this interpretation of tax policy is applied, then this exemption would be a tax base issue. Otherwise, interpretation of the exemption would be as a tax expenditure.

A special deduction is provided under Section 7-13-4(F) NMSA 1978 for gasoline received in New Mexico and sold by a registered Indian tribal distributor from a non-mobile storage container located within that distributor's Indian tribal lands for resale outside that distributor's Indian tribal land. In this case, the department must certify that the distributor claiming the deduction sold no less than one million gallons of gasoline from such facility during the period of May through August 1998, and that the amount of gasoline deducted under this subsection shall not exceed two million five hundred thousand gallons per month. This tax policy must be considered a specific tax expenditure as it is a specific deference to the commerce of an Indian tribal distributor operating on Indian tribal lands but selling gasoline and special fuels in resale activities outside the boundaries of the distributor's Indian tribal lands.

An additional deduction in proportion to the percentage of tribal tax to the gasoline tax (up to 100 percent of the gallons sold) is provided under Section 7-13-4.4 NMSA 1978 for gasoline received in New Mexico and sold at retail by *other than* a registered Indian tribal distributor, if the sale occurs on the tribal lands, the gasoline is placed into the fuel supply tank of a motor vehicle on that land, the Indian nation, tribe, or pueblo has certified to the department that it has in effect an excise, privilege, or similar tax on gasoline, and the distributor is subject to and in compliance with the tax on gasoline imposed by the Indian nation, tribe, or pueblo where the sale occurs. This deduction would be considered a tax expenditure. Table 28 summarizes these deductions and exemptions.

Table 28: Fuels Tax Issues – Federal & Indian Deductions/Exemptions ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Gasoline Tax Deductions against Gasoline Tax – Section 7-13-4(E) NMSA 1978 (Retail Sales from Indian Lands)	$6,613.4	$7,358.8	$7,929.6	$8,337.6	$7,882.4
Gasoline Tax Deductions against Gasoline Tax – Section 7-13-4.4 NMSA 1978 (Additional Deduction: Certain Retail Sales on Indian Lands)	$1,427.2	$1,527.5	$1,883.2	$1,480.4	$1,466.7
Gasoline Tax Deductions against Gasoline Tax – Section 7-13-4(F) NMSA 1978 (Special Indian Distributor Sales)	not avail.	not avail.	not avail.	not avail.	not avail.
Petroleum Products Loading Fee – Section 7-13A-4(B) NMSA 1978 (US Govt)	$233.6	$193.7	$253.0	$347.8	$259.0
Alternative Fuels Tax Exemption – Section 7-16B-5 NMSA 1978 (Federal, State or Indian Use)	$88.3	$199.7	$135.3	$118.2	$106.7

To summarize, generally these deductions and exemptions are not tax expenditures to the extent that a federal constitutional preemption from taxation is applicable. It appears that the preemption applies only if the fuel is received by an Indian tribe "on its own territory" and for its exclusive use. If the fuel is received in New Mexico (but not on the Indian sovereigns' lands) or is not exclusively used by Indians, this can be interpreted to be a tax expenditure. There is no prohibition of taxation of the Indian sovereigns in the State of New Mexico, or non-Indian entities obtaining taxable goods within the boundaries of the Indian sovereign lands; however, the Legislature has explicitly provided for this deference to the Indian sovereigns.

Fuels Tax Issues – Special Use Deductions/Exemptions

Under Section 7-16B-5 NMSA 1978 and 3.16.300.8 NMAC, receipts from the sale of alternative fuel for non-highway use is subject to Gross Receipts Tax and not the alternative fuel excise tax. These deductions intend to avoid double taxation. This is a case where the interpretation of tax base or tax expenditure turns on the intended purpose of the tax. That is, if it is presumed that the intent of the tax policy is primarily to fund roads and related purposes, then the deductions to exclude the gasoline, special fuels, and alternative fuels taxes is a tax base issue where the tax policy interprets those uses not to be subject to taxation. Where, in the alternative, stating a more general tax policy, the deduction and exemption from gasoline, special, and alternative fuels taxation is properly interpreted as a tax expenditure in that the tax policy creates a tax rate differential relative to the gross receipts. The foregone revenue from the identified special use and alternative fuels exemptions and deductions are summarized in Table 29.

Table 29: Gasoline And Fuels Tax Issues – Special Use Exemptions and Deductions ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Special Fuels Suppliers' Deduction – Section 7-16A-10(F) NMSA 1978 (PubEd School Buses)	$102.9	$144.0	$95.9	$218.1	$103.4
Alternative Fuels Tax Exemption – Section 7-16B-5 NMSA 1978; NMAC 3.16.300.8	$14.7	$0.2	$0.0	$1.1	$0.0

School Bus Use of Special Fuels Exemption

Receipts from the sale of special fuel dyed in accordance with federal regulations for use in school buses is subject to Gross Receipts Tax and not the special fuel excise tax. Assuming a rate per gallon of $4.00 for diesel fuel, applying the Gross Receipts Tax rate of 5.125 percent to the purchase of special fuel would result in a per gallon tax of $0.18. This compares to the special fuel excise tax rate of $0.21 per gallon. This exemption reduces the operating costs of school buses, which are funded through state general fund appropriations, which could allow the use of more buses, more routes, or better wages and benefits for bus drivers. It should also be noted that fuel for school bus use is also exempt from federal fuel taxes. However, if the net price less the federal exemption is above $4.10 per gallon, the amount paid per gallon in Gross Receipts Taxes will surpass the special fuel excise tax rate, thereby creating a tax disadvantage.

Biodiesel Deduction

Under Section 7-16A-10(H) NMSA 1978, special fuel received in New Mexico that consists of at least 99 percent vegetable oil or animal fat is deductible from the Special Fuels Excise Tax; provided that the use is restricted to an auxiliary fuel system that is subject to a certificate of conformity pursuant to the federal Clean Air Act. This is a tax expenditure enacted to encourage the development and use of bio-fuels in auxiliary fuel system pursuant to the federal Clean Air Act. This provides a public benefit by limiting the amount of nonrenewable energy that is consumed and reducing air pollution associated with the burning of fossil fuels.

Other Tax Expenditures for Specific Public Purposes

There are several additional tax expenditures providing for economic benefits realizing specific public purposes. These statutory provisions are listed below. In most cases the data and information necessary to estimate these tax expenditures is not available to the state and cannot be estimated based on secondary data resources.

Electronic ID Card Readers Credit

New Mexico provides a one-time credit against Personal and Corporate Income Tax up to $300 for the purchase of electronic card-reading equipment for age verification. The credit provides incentive for establishments serving alcohol to invest in technology that could allow better enforcement of under-age alcohol consumption.

Event Center Surcharge Exemption

Receipts from selling tickets, concessions, and all other products or services sold at or related to a municipal event center on which an event center surcharge is imposed pursuant to the Municipal Event Center Funding Act are exempt from the Gross Receipts Tax. Revenue from the event center surcharge is earmarked for payment on bonds issued to secure funding for the construction of the event center. By statute, a surcharge of at least five percent is imposed on each vendor contract. In this light, it would appear that the surcharge is meant to prevent double taxation. However, to the extent that the county or municipality could have obtained funding through general obligation bonds, without imposing either a surcharge or receiving an exemption from that surcharge, this is a tax expenditure. Moreover, unlike general obligation bonds which are secured with local government revenues, this exemption effectively reduces state revenues to provide payment for local government bonds. On the other hand, the surcharge allows a more efficient form of taxation whereby the tax is imposed only on those utilizing the final project. In this case, the tax exemption may be necessary for the purpose of tax efficiency. In either case, to the extent that the surcharge is less than the relevant GRT rate, the preference provided to municipal event centers under this tax expenditure is substantial and improves the competitiveness of these event offerings.

Stadium Surcharge Exemption

Receipts from selling tickets, concessions, and all other products, services or activities sold at, related to, or occurring at a minor league baseball stadium on which a stadium surcharge is imposed under the Minor League Baseball Stadium Funding Act are exempt from gross receipts. This tax expenditure is identical to the Event Center Surcharge Exemption. To the extent that the surcharge is less than the relevant GRT rate, this tax expenditure reduces the cost of admission, products, and services, and dedicates the proceeds of the surcharge to funding for the construction, operation, and maintenance of those facilities.

Tax Expenditures for Health Care Facilities and Programs

A significant group of tax expenditures are created with the intent to reduce the consumer cost of health care services, to subsidize the operation of hospitals, to provide indirect funding for programs and hospitals targeting underserved or at-risk populations, to stimulate the construction of public hospitals, and to incentivize individual health savings.

Twelve such tax expenditure programs have been identified. Of those 12, data from tax returns could be used to obtain the direct revenue cost for only six programs:

1. the Health Care Practitioners Deduction;
2. the Unpaid Doctor Services Credit;
3. the Hospitals Credit;
4. the Rural Health Care Practitioners Credit;
5. the NM Medical Insurance Pool (NMMIP) Assessment Credit; and
6. the Medical Care Savings Accounts Exemption.

The revenue cost of three additional programs could be estimated with indirect data:

1. the Medical Services Deduction;
2. the Prescription Drugs Deduction; and
3. the Hospitals Deduction.

For the remaining three programs, no estimate of direct revenue cost could be made.

The benefits of these tax expenditures must be measured against the health policy goals with which they were enacted. The studies needed to evaluate the specific impact of each program would be time consuming and require a joint effort between the New Mexico Department of Health, the Taxation and Revenue Department, and other agencies.

Health Care Practitioners Deduction

The receipts of licensed health care practitioners from payments by managed health care providers or health care insurers for commercial contract services or Medicare Part C services provided by a health care practitioner are deductible from Gross Receipts Tax.

Table 30: Health Care Practitioners' Deduction against Gross Receipts Tax ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Health Care Practitioners Deduction	$32,100.9	$33,307.5	$35,773.2	$38,333.8	$41,569.2
Hold Harmless Payments made to Local Governments	$26,769.6	$27,511.6	$29,748.3	$31,914.0	$34,590.3

As reflected in Table 30, the Health Care Practitioners' Deduction has averaged nearly $61.3 million over the last five years and is escalating at more than 5.2 percent per year. Separate sections of statute provide that the revenues of municipal and county governments are to be held harmless from the deduction. Although these Hold Harmless transfer payments are not strictly tax expenditures in and of themselves, any analysis of the cost of the underlying deduction must include their effects; in the absence of the deduction, no Hold Harmless payment would occur. The Hold Harmless payments distribute to County and Municipal governments approximately forty percent of the tax expenditures reflected in Table 30 (i.e., are included in the tax expenditure shown in the table), and are paid directly from the state's General Fund. Annually, the direct revenue cost of the tax expenditure is equal to roughly 1.3 percent of total General Fund revenues when both the foregone revenue and the Hold Harmless payments are considered.

During the 2013 legislative session, changes were made to the Hold Harmless distribution process that will phase-out Hold Harmless payments to large cities and counties over a period of 15 years. With this phase-out, the total revenue impact of the Health Care Practitioners Deduction will be reduced.

Medical Services Deduction

A tax expenditure is created by the deduction of receipts from payments by the United States government or any agency thereof for Medicare services from payments by a third-party administrator of the federal TRICARE program, and from payments by or on behalf of the Indian Health Service of the US Department of Health and Human Services received by certain medical practitioners for the provision of medical and other health services to covered beneficiaries.

No direct data for this tax expenditure currently exist. Data from the Centers for Medicare and Medicaid Services ("CMS") on Medicare expenditures by state of residence[18] were used to estimate the cost of this tax expenditure with respect to only the Medicare deduction. The state GRT rate (3.9 percent) was then applied to the CMS state data to estimate the amount of the deduction each year. State level data were not available for TRICARE or Indian Health Service expenditures.

[18] Centers for Medicare and Medicaid Services, "Health Expenditures by State of Provider, 1980-2009" http://www.cms.gov/NationalHealthExpendData/Downloads/provider-state-estimates.zip, accessed May 24, 2012.

Table 31: Medical Services Deduction against Gross Receipts Tax ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Medical Services Deduction Against GRT	$39,800	$42,900	$45,200	$47,100	$49,000

Prescription Drugs Deduction

A deduction is provided against gross receipts for sales related to certain drugs and medical equipment. The benefit of the tax expenditure could filter down to the purchaser of those goods, whether that is an individual or an insurance company, through decreased costs.

No direct data for this tax expenditure currently exist. Data on total retail sales of prescription drugs in New Mexico in calendar year 2010[19] were obtained, and growth factors from the Centers for Medicare and Medicaid Services' projections of health care spending[20] were used to attain estimates of foregone revenue for the remaining calendar years. Data are not available for expenditures on oxygen and oxygen services.

Table 32: Prescription Drugs against Gross Receipts and Governmental Gross Receipts Taxes ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Prescription Drugs Deduction Against GRT & GGRT	$54,000	$56,000	$58,000	$61,000	$61,000

The legislation enacting this statute repealed a personal income tax credit that reimbursed a portion of income spent on prescription drugs. Restructuring the tax expenditure as a deduction rather than a credit has several implications. One is that the deduction may primarily benefit the sellers of these goods, extending only a possible indirect benefit to the purchaser. Another is that the deduction provides very limited information about the distribution of the benefits of the tax expenditure relative to a personal income tax credit. Moreover, an income tax credit could be targeted towards households with income below certain thresholds (i.e., based on ability-to-pay).

Credit for Unpaid Doctor Services Provided in a Hospital

Licensed medical doctors and licensed osteopathic physicians may claim a credit against Gross Receipts Taxes due for 100 percent of the value of unpaid bills for medical care services performed while on call to a hospital. This tax expenditure provides an incentive for certain licensed medical professionals to provide health care services to individuals who are either unable or unwilling to pay for those services.

The direct tax expenditure subsidizes medical care for individuals who are unable or unwilling to pay for it, but for whom the cost of that care cannot be reimbursed through either Medicaid or an indigent

[19] The Kaiser Family Foundation, statehealthfacts.org. Data Source: "Total Sales for Retail Prescription Drugs", SDI Health, L.L.C.: Special Data Request, 2011, accessed May 24, 2012.
[20] Centers for Medicare and Medicaid Services, "National Health Expenditure Projections, 2012-2022" http://www.cms.gov/NationalHealthExpendData/Downloads/proj2012.pdf, accessed September 14, 2013.

health care program. Data concerning the number of patients benefitting from these services and the average unpaid bill are not available.

One indirect benefit of this tax expenditure is that it could serve to reduce the cost of medical services for any person seeking care, not just those unable or unwilling to pay. Unpaid medical costs are transferred on to those who do pay through the form of higher prices and insurance premiums. Whether through Medicaid, indigent care programs, this tax expenditure, or even by way of mandated insurance coverage, reducing the amount that goes unpaid could have a significant effect on the cost of health care. The quantification of this benefit is beyond the scope and capabilities of this report.

Table 33: Unpaid Doctor Services Provided in a Hospital Credit against Gross Receipts Tax ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Unpaid Doctor Services Credit Against GRT	45	$269.7	211	$488.9	329	$1,252.2	312	$1,379.9	240	$1,722.5

Note the rapid escalation of this tax expenditure in the last several years. The federal Emergency Medical Treatment and Active Labor Act ("EMTALA") require hospitals and their physicians to provide medical screening examinations and stabilization of all individuals seeking emergency care, regardless of ability to pay. Although the cost of some of this care can be reimbursed through Medicaid or through a program established pursuant to the Indigent Hospital and County Health Care Act (Section 27-5-1 NMSA 1978), some of the care will not be reimbursed. A concern with this provision is whether the value of unpaid expenses can be measured with accuracy to prevent the over-subsidization of these costs.

Hospitals Deduction

A tax expenditure is created by the deduction against gross receipts of 50 percent of the receipts remaining after all other appropriate deductions are taken by hospitals licensed by the Department of Health. The tax expenditure reduces the operating cost of hospitals by eliminating some portion of their tax liability. It can be inferred that the tax expenditure intends to lower the cost of health care received at a hospital, but no data exist to assess the efficacy of this incentive.

Gross receipts tax data from the hospitals sector, NAICS code 622000, were obtained from the Taxation and Revenue Department's RP-80 Report and used to estimate the direct revenue cost of the deduction.

Table 34: Hospitals Deduction against Gross Receipts Tax ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Hospitals Deduction Against GRT	not avail.	$44,689	not avail.	$40,615	not avail.	$41,198	not avail.	$41,275	not avail.	$37,000

Additional information about the effects of this tax expenditure could be gained through a study by the Department of Health examining how the price of medical services provided by hospitals has been affected by the deduction. This would provide grounds to evaluate how the deduction has benefitted purchasers of services provided by those hospitals.

A concern with this and other health-care related deductions is that they eliminate a significant and growing portion of the consumption base from taxation. As a result, the State could be forced into taxing other activities, including investment and income. Taxes on investment and income have been proven to have more negative impacts on the economy than taxes on consumption. Another concern is that a significant portion of state revenue is dedicated to providing health care benefits, especially to low-income families.

Hospitals Credit

A tax expenditure is created as a credit against Gross Receipts Tax for hospital facilities, licensed by the Department of Health, providing emergency or urgent care, inpatient medical care and nursing care for acute illness, injury, surgery, or obstetrics and includes a facility licensed by the department of health as a critical access hospital, general hospital, long-term acute care hospital, psychiatric hospital, rehabilitation hospital, limited services hospital, and special hospital. Hospitals located in a municipality are eligible for a credit in an amount equal to 0.375 percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken, and five percent for a hospital located in an unincorporated area of a county. The tax expenditure is intended to provide economic subsidy to health care.

Table 35: Hospitals Credit against Gross Receipts Tax ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Hospitals Credit Against GRT	57	$592.0	200	$4,711.1	198	$7,462.4	211	$9,957.2	168	$9,755.8

Although the effect of the tax expenditure is with respect to the total cost of hospital care, alternative economic mechanisms to transfer cost savings to targeted recipients of hospital care could be more efficient from a tax policy perspective. For example, a direct tax personal income credit for the cost of hospital care up to a certain income level could more effectively target economically vulnerable segments of the population while minimizing the distorting economic effects of an industry-wide subsidy.

New Mexico Medical Insurance Pool Assessment Credit

A tax expenditure is provided as a credit allowed against the Insurance Premium Tax for a portion of an insurer's required assessments paid to the New Mexico Medical Insurance Pool ("NMMIP"). The NMMIP Credit allows the State's General Fund to indirectly finance the NMMIP without an appropriation.

A health insurer is allowed a credit on its Insurance Premium Tax return equal to 50 percent of the value of an assessment paid by that entity and a credit equal to 75 percent of the value of an assessment paid by that entity for assessments attributable to pool policy holders that receive premiums, in whole or in part, through the federal Ryan White CARE Act, the Ted R. Montoya hemophilia program at the University of New Mexico Health Sciences Center, the children's medical services bureau of the public health division of the Department of Health, or other programs receiving state funding or assistance. These identified federally- and state-funded programs support specific health care and medical services, but the NMMIP Assessment Credit is applied more broadly than with respect to the funding offset by the federal and state programs identified.

Table 36: NMMIP Assessment Credit against Insurance Premium Tax ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
NMMIP Assessment Credit Against Insurance Premium Tax	$27,946.4	$36,243.2	$49,628.9	$55,003.6	$55,576.1

As is shown in Table 36, the rapid escalation of the credits against NMMIP Assessments, increasing at more than 31 percent per year in the past five years, imposes a substantial impact on the General Fund. Moreover, the federal Patient Protection and Affordable Care Act ("PPACA") (Pub. L. 111-148, 124 Stat. 119 through 124 Stat. 1025) could have implications for this tax expenditure as its provisions are phased in through 2014. By way of a health insurance exchange or some other mechanism that ensures coverage for individuals currently covered under the NMMIP, the PPACA could render the state's insurance pool obsolete. If the NMMIP were no longer in existence, assessment payments from insurers wouldn't occur and subsequently, there would be no credits claimed on their insurance premium tax returns. This is unlikely to impact General Fund revenues until FY2015, and even then, other revenue losses due to the fundamental restructuring of health care could offset any gains.

Rural Health Care Practitioners Credit

A taxpayer who files a personal income tax return, who is an eligible health care practitioner, and who has provided health care services in New Mexico in a rural, underserved area in a taxable year, may claim a credit of $3,000 or $5,000 against the tax liability imposed by the Income Tax Act, subject to certain qualifying criteria. This credit intends to establish a financial incentive for the recruitment and retention of health care practitioners in underserved rural areas.

Table 37: Rural Health Care Practitioner Credit against Personal Income Tax ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Rural Health Care Practitioner Credit Against PIT	1,276	$5,172.2	1,385	$5,464.1	1,447	$5,655.5	1,596	$6,308.5	1,640	$6,298.4

The purpose of the credit is to increase the number of primary care physicians working in the rural areas of New Mexico. The credit, averaging more than $5.8 million for the last five years, as reflected in Table 37, provides financial support to community-based primary care health clinics throughout the state, ensuring the provision of basic health care for the underserved. It helps bring physicians to rural areas of the state.

Medical Care Savings Accounts Exemption

This exemption provides that the interest earned on medical care savings accounts and money reimbursed to an employee for eligible medical expenses from those accounts or money advanced to the employee by the employer for eligible medical expenses are exempt from taxation. The tax expenditure is a form of health care subsidy and piggy-backs on federal tax treatment of these contributions to medical care savings accounts.

Table 38: Medical Care Savings Account Exemptions against Personal Income Tax ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Medical Care Savings Accounts Exemption Against PIT	357	$57.8	816	$63.4	804	$59.6	822	$4,498.5 [21]	806	$60.1

Construction of Public Health Care Facilities and Sole Community Provider Hospital Construction Deductions

Receipts from the sale of construction services, equipment, and material to a foundation or non-profit organization for use in the construction of new facilities for a sole community provider hospital located in a federally designated health professional shortage area ("HSPA") are deductible from gross receipts. This deduction intends to provide an incentive for the construction of new medical facilities located in HPSAs.

HPSAs are designated using five criteria:

1. population-to-primary care physician ratio;
2. percent of the population with incomes below the poverty level;
3. infant mortality rate;
4. low birth weight rate; and
5. travel time or distance to nearest available source of care.

There are approximately 369 HPSAs in New Mexico as defined by county, geographical area, census tract, or other type.[22]

Hearing and Vision Aides Deduction against Gross Receipts Tax

Sales of vision aids, hearing aids, or related services are deductible from gross receipts. There is no means to estimate this tax expenditure's impact.

[21] While the FY2011 Claim Amount is well above the average Claim Amount for the last five years, we have verified that the amount included in this table matches the data in GenTax.
[22] For a full listing of New Mexico HPSAs visit http://hpsafind.hrsa.gov/HPSASearch.aspx.

Tax Expenditures (Expressly) for Public Welfare, the Elderly, and Low-Income Protections

The primary social purpose served by these tax policies is providing benefit to public welfare, the elderly, and low-income residents. The single largest of the general public welfare tax expenditures relates to the deduction of retail food sales against the Gross Receipts Tax.

Retail Food Sales Deduction

A tax expenditure is provided by a deduction from Gross Receipts Tax liability for qualifying food sales at retail food stores. One possible purpose of the deduction would be as an anti-poverty measure since low-income households spend a greater share of their income on food than do high-income households. However, the fact that the deduction applies to all qualifying retail food sales, and the fact that food purchased with food stamps is deductible under a separate section of statute, suggests that its tax policy purpose is not just to provide low-income benefits. Another argument for the existence of this expenditure is that because food is a necessity it should be taxed at a lower rate. In addition to the foregone revenue from the deduction, the Hold Harmless transfer to local governments means that the full revenue burden of the food deduction falls on the State. The "Hold Harmless" provision of Sections 7-1-6.46 and 7-1-6.47 NMSA 1978 require distribution to local governments of monies from the General Fund to compensate those government entities from the revenue costs of the retail food and medical Gross Receipts Tax deductions. Table 39 reports the claims for retail food sales deduction against Gross Receipts Taxes.

During the 2013 legislative session, changes were made to the Hold Harmless distribution process that would allow the phase-out of Hold Harmless payments to large cities and counties over a period of 15 years. With this phase-out, the total revenue impact of the Retail Food Sales Deduction will be reduced.

Table 39: Retail Food Sales Deductions against Gross Receipts Tax ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Food Sales Deductions Against GRT	$111,620	$115,701	$116,275	$119,084	$124,190
Hold Harmless Payments made to Local Governments	$108,057	$93,442	$97,170	$98,808	$103,154

The foregone revenue from the retail food sales deduction against gross receipts has averaged in excess of $202.2 million per year during the last five years, and is roughly equal to 10 percent of annual General Fund Gross Receipt Tax revenue and roughly four percent of total General Fund revenues. In addition to the revenue costs shown in the table, the food deduction imposes a relatively high administrative cost because the deduction must be separately stated on the GRT return and also because the definitions and limitations on the deduction create significant taxpayer uncertainty.

As with other GRT deductions, it is difficult to know to what extent the benefits are shared between buyers and sellers. Economic research is not sufficiently precise to provide a detailed answer to this question. Sellers can benefit indirectly if, for example, the tax deduction means that consumers buy more food, and in the process provide higher profits and wages for food sellers. As noted above, the food tax deduction is not a well-targeted method of providing benefits to low-income households. Certain other mechanisms, such as the Low-Income Comprehensive Tax Rebate, might be a more effective vehicle to fulfill this purpose.

Textbook Exemptions

This tax expenditure reduces the tax liability of certain taxpayers engaged in selling textbooks and other materials required for courses at a public post-secondary educational institution. Qualifying receipts are from textbooks sold by a bookstore located on the campus of the institution and operated pursuant to a contractual agreement with that institution to a student enrolled at the institution who displays a valid student identification card. The purpose of the tax expenditure is to reduce the cost of textbooks and other materials for students of qualified institutions. It should be noted, however, that bookstores not located on higher education campuses do not receive this exemption, so this tax expenditure may violate the tax policy principle of horizontal equity. As shown in Table 40, this exemption produces a significant economic benefit that is estimated to have averaged $6.3 million per year for the last five years.[23]

Table 40: Textbook Sales Exemption against Gross Receipts Tax ($thousands)

	FY2007	FY2008	FY2009	FY2010	FY2011
	Amount	Amount	Amount	Amount	Amount
Textbook Exemption from GRT	$6,664.0	$6,290.8	$5,938.5	$5,605.9	$7,059.3

Income-Based Tax Expenditures

Three significant tax expenditure programs are designed to benefits low- and middle-income households through their personal income tax liability:

1. the Low-Income Comprehensive Tax Rebate;
2. the Low-Income Property Tax Rebate; and
3. the Low- and Middle-Income Persons Exemption.

Collectively these three tax expenditures provide for approximately $49.9 million per year economic benefit to low-income taxpayers during each of the last five years. This data is summarized in Table 41.

[23] Data from ten major New Mexican institutions of higher education is used to create these estimates, relying on these institutions estimated cost of books and supplies for a given year, and enrolled in their respective programs. An estimate of the total dollar value of textbooks sold in a given institution is, therefore, equal to the number of students attending that institutions multiplied by the estimated cost of books and supplies. This method is used to estimate the amount of forgone revenue for the FY2011, and extrapolated to FY2007 to FY2010 by deflating backwards by using the 5.6 percent, annual average increase in post-graduate education costs (2000-2010). [Source: www.CollegeBoard.org]

Table 41: Income-Based Tax Expenditures against Personal Income ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Low-Income Comprehensive Tax Rebate against PIT	290,516	$25,553.9	288,841	$24,948.6	272,759	$24,823.7	266,212	$22,562.1	260,463	$22,137.6
Low-Income Property Tax Rebate against PIT	82	$22.7	66	$20.0	1,219	$352.1	1,595	$469.3	1,704	$507.3
Low- and Middle-Income Persons Exemption against PIT	621,393	$25,673.1	626,866	$25,824.7	617,032	$26,042.8	624,179	$25,716.9	608,707	$25,060.2
TOTAL	not avail.	$51,249.7	not avail.	$50,793.3	not avail.	$51,218.6	not avail.	$48,748.4	not avail.	$47,705.1

The wide-spread use of these tax expenditures against personal income tax demonstrates the role that low-income social support programs play in New Mexico. However, the prevalence of these tax expenditures also suggests that better targeting may be needed.

Welfare-to-Work Credit

A tax expenditure was created as a credit against personal and corporate income tax available for companies participating in the federal welfare-to-work program. This credit is available to certain companies, located mostly in rural counties, who employ welfare recipients. Its purpose is to encourage the employment of welfare recipients in the hopes that they will no longer need welfare. The credit equals 50 percent of the federal welfare-to-work credit for which the employer is eligible. For each qualified person hired, the employer receives from the state 50 percent of the credit earned for federal purposes. However, beginning January 1, 2008, the federal credit was repealed and a new federal work opportunity credit was established. Employers who qualify for the new federal work opportunity credit will no longer qualify for the New Mexico credit.

Age-Based Tax Expenditures

A number of tax expenditures are provided as economic assistance to individuals aged 65 years or older. These tax expenditures averaged nearly $40 million per year during the last five years, as shown in Table 42.

Table 42: Age-Based Tax Expenditures against Personal Income Tax ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Persons 100 Years of Age or Older Exemption against PIT	95	$69.1	96	$98.0	95	$86.4	99	$108.9	74	$100.8
Persons 65 Year of Age or Older Property Tax Rebate against PIT	19,170	$3,594.2	18,408	$3,507.3	17,290	$3,313.1	17,090	$3,335.2	17,070	$3,358.4
Persons 65 Years of Age or Older or Blind Exemption against PIT	82,014	$29,529.4	83,978	$30,049.1	86,149	$30,849.2	86,922	$30,903.4	87,681	$31,040.5
Unreimbursed or Uncompensated Medical Expenses for Persons 65 Years of Age or Older Exemption against PIT	1,519	$165.1	1,644	$167.8	1,556	$158.4	1,638	$164.6	2,210	$228.9
Unreimbursed or Uncompensated Medical Expenses for Persons 65 Years of Age or Older Credit against PIT	1,276	$3,560.2	1,341	$3,750.6	1,326	$3,703.0	1,425	$3,981.6	1,745	$4,879.0
TOTAL	104,074	$36,918	105,467	$37,573	106,416	$38,110	107,174	$38,494	108,780	$39,608

Children, Working Families, and Educational Trust Tax Expenditures

A group of tax expenditures are generally directed to economically support New Mexico's children, education, and families. In general, it can be asserted that these programs provide direct economic support to children and families that supplant other forms of social support programs. In addition to the specific tax credits that are reflected in Table 43, the Head-of-Household Property Tax exemption described below would be included in the general category of tax expenditures.

Table 43: Children, Working Families, and Educational Trust Tax Expenditures ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Child Care Credit against PIT	3,156	$1,186.1	4,078	$1,446.6	4,356	$1,604.7	3,218	$1,271.5	1,151	$390.0
Corporate Supported Child Care Credit against CIT	<3	-	<3	-	<3	-	<3	-	not avail.	not avail.
Educational Trust Fund Payments Deduction against PIT	4,148	$1,981.5	3,989	$1,156.5	3,634	$937.4	3,721	$917.5	3,906	$1,013.9
Special Needs Adopted Child Tax Credit against PIT	532	$867.5	654	$1,082.0	684	$1,163.0	865	$1,526.5	861	$1,549.0
Working Families Tax Credit against PIT	183,639	$30,146.9	192,469	$40,358.6	198,061	$45,335.2	212,678	$47,776.5	211,756	$48,868.1

Child Care Tax Credits

Opportunity is provided under both personal and corporate income tax programs to take a credit for the expenses of child care services. A resident who files an individual New Mexico personal income tax return and has a modified gross income of not more than the equivalent of double the federal minimum wage may take a credit for forty percent of actual compensation paid to a caregiver and may not exceed $480 for each qualifying dependent or $1,200 for all qualifying dependents in any taxable year. Corporations providing or paying for licensed child care services for employees' children under 12 years of age may deduct thirty percent of eligible expenses from their corporate income tax liability (up to $30,000).

Educational Trust Fund Payment Deductions

The tax expenditure against personal income tax is allowed as a deduction from net income in an amount equal to the payments made by the taxpayer into the education trust fund pursuant to a college investment agreement or prepaid tuition contract under the Education Trust Act (Section 21-21K-1 NMSA 1978). Nearly $1.2 million per year has been deducted from personal income tax liabilities for the deposits into this educational trust fund by New Mexico taxpayers, building asset balances that will be used to offset the future educational costs of these taxpayers' dependents.

Special Needs Adopted Child Tax Credit

This tax expenditure provides financial incentive for the adoption of special needs children. Enacted in 2007, a taxpayer who has adopted a special needs child (an individual certified as a "difficult to place child") may claim a credit in the amount of $1,000. If the amount of credit due to a taxpayer exceeds the taxpayer's individual income tax liability, the excess is refunded. This tax expenditure has provided credits of nearly $1.2 million per year in support of these special needs adoption activities since its enactment.

Working Families Tax Credit
Individuals may claim a credit equal to 10 percent of their federal Earned Income Tax Credit ("EITC"). This tax expenditure benefits more than 199,700 taxpayers per year, and provides more than $42.5 million per year in direct tax credits. The EITC was designed to increase the incentive to work by tying benefits to the amount earned.

Head-of-Household Exemption
Up to $2,000 of the taxable value of residential property is exempt if the property is owned by the head of a family who is a New Mexico resident or if the property is held in a grantor trust. The direct revenue cost of the tax expenditure totaled $16.47 million with respect to property tax in FY2012. The revenue impact is spread among all property tax beneficiaries, including school districts, municipalities, counties, community colleges, hospitals, and others.

It is important to note that the assessment authorities may do a poor job in educating taxpayers on the exemption. Based on the property tax abstracts, there are about 281,000 taxpayers taking advantage of this exemption. Assuming 2.5 persons per household, New Mexico's 2.0 million population would result in 800,000 households. Assuming that there is roughly 80 percent home ownership in the state would imply that there are 640,000 homeowners eligible for the Head-of-Household Exemption.

Non-Profit Elderly Care Facilities Exemption
This tax expenditure exempts from Gross Receipts Taxes the receipts of non-profit entities operating facilities for retired elderly persons, and promotes the private provision of housing for retired elderly persons through such non-profit entities. As the exemption applies to only non-profit entities, it is possible that the benefits of the exemption are passed on to retired elderly persons through decreased cost of accommodations. The exemption is estimated to have provided nearly a $1 million per year of support in recent years (Table 44); however, no data are readily available to assess the efficacy of this tax policy incentive.

Table 44: Non-Profit Elderly Care Facilities Exemption from Gross Receipts Tax ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Non-Profit Elderly Care Facilities Against GRT	$880	$910	$910	$930	$950

Veterans-Related Tax Expenditures
There are several tax expenditures that provide economic support to New Mexico armed services veterans and servicemen. The first of these is the life insurance premium exemption against personal income tax liability for members of the National Guard. As shown in Table 45, this has reduced personal income tax liability by more than $38,800 per year for an average of 1,047 taxpayers who are eligible members of the National Guard (i.e., an average veteran tax benefit of approximately $370 per year).

Table 45: National Guard Life Insurance Premiums Exemption from Personal Income Tax – Filed Claims ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
National Guard Member Premiums Paid for Life Insurance Exemption against PIT	952	$49.6	1,079	$25.4	1,113	$45.8	1,071	$19.8	1,022	$53.5

Disabled Veterans Exemption

The property of a disabled veteran, including joint or community property of the veteran and the veteran's spouse, is exempt from property taxation if it is the disabled veteran's principal place of residence. The direct revenue cost of the tax expenditure totaled $10.79 million with respect to property tax in FY2012. The tax expenditure is generally considered to be a social obligation to the disabled veterans and economic support for their service-related disability.

Veterans Exemption

Up to $4,000 of the taxable value of property, including the community or joint property of husband and wife, is exempt from the tax if the property is owned by a veteran or the veteran's unmarried surviving spouse, if the veteran or surviving spouse is a New Mexico resident, or if the property is held in a grantor trust. The direct revenue cost of the tax expenditure totaled $9.82 million with respect to property tax in the FY2012. This revenue impacts is spread among all property tax beneficiaries, including school districts, municipalities, counties, community colleges, hospitals, and others.

Other Tax Expenditures for Public Welfare, Elderly, and Low-Income Populations

The following additional tax expenditures may be identified in New Mexico's tax code as providing benefit to the public welfare, elderly, or low-income residents.

- Certain Individuals Exemptions against Motor Vehicle Excise Tax
- Disabled Street Vendors Exemption against Gross Receipts Tax
- Expenses Related to Organ Donation Deduction against Personal Income Tax
- Non-Profit Facilities Exemption against Gross Receipts Tax
- Valuation Freeze against Property Tax
- Veteran Employment Tax Credit against Corporate Income or Personal Income Taxes
- Veterans' Organizations Exemption against Property Tax (Contingent Effective Date)

Tax Expenditures for Specific Non-Profit Enterprises

Certain New Mexico enterprises gain their status as non-profit enterprises under federal and state authority in recognition that they serve economic and social purposes that are significant in their public character and are valuable in improving many diverse elements of social well-being.

However, as is shown in Table 46, these entities produce very significant revenues,[24] and details of the largest category of non-profit entities – that is, public charities – is reflected in the description of the organization types shown in Table 47. But for the explicit non-taxable provisions of New Mexico statute, the revenues would otherwise be subject to taxation. Therefore, it is informative to present these exemptions, credits, and deductions to understand the scope of economic resources that can be associated with the activities of these non-profit organizations within the State of New Mexico.

Table 46: NM Not-For-Profit Entities, 2010

	Number Registered	Number Filing w/IRS	Total Annual Revenues ($thousands)	Total Assets ($thousands)
Public Charities	7,142	3,531	$4,223,524.2	$7,223,624.2
Private Foundations	504	327	$30,643.8	$1,108,598.1
Other	3,036	1,719	$1,009,689.3	$3,092,325.7
TOTAL	**10,682**	**5,577**	**$5,263,957.3**	**$11,424,548.0**

There is significant business activities undertaken by many of these non-profit public charities, and, as is reflected in Table 47, the Health and Medical Research registered public charities stand out as typically representing very large business organizations on an annual revenue basis.

Table 47 also lists the number and total revenue of New Mexico public charities by advocacy type. Religious organizations constitute the largest group of public charities representing 23 percent of the registered entities, followed by educational organizations, which constitute 14 percent of all registered public charities. In terms of total revenue, New Mexico health organizations produce the lion's share, comprising nearly 60 percent of total public charity revenues. Human services charities generate an additional 10 percent of New Mexico public charity revenues.

Estimating tax expenditures relating to non-profit revenues requires a primary assumption that – were the non-profit entities' revenues subject to Gross Receipts Tax liability – some specific percentage of the revenues of those entities would be subject to the tax obligation. This speculation would also require an assumption that some large share of revenue would be deductible under existing Gross Receipts Tax provisions (e.g., medical expenses, food, etc.), and is therefore not provided herein. Moreover, it should also be acknowledged that whatever portion of these activity that are directed to support social goals and public wellbeing should be understood to be facilitated by these tax expenditure.

[24] Data extracted from National Center for Charitable Statistics, Center on Non-profits and Philanthropy, Urban Institute, Washington, DC [http://nccsdataweb.urban.org/PubApps/profile1.php?state=NM, accessed May 31, 2012].

Table 47: NM Not-For-Profit Public Charities, By Type, 2010

	Number Registered	Number Filing w/IRS	Total Annual Revenues ($thousands)	Annual Revenues per Registered Charity Entity
Arts, Culture, and Humanities	919	566	$ 120,153,543	$212,285
Education	1,003	582	$ 341,209,489	$586,271
Environmental Quality, Protection, and Beautification	241	158	$ 38,037,469	$240,743
Animal-Related	197	124	$ 19,581,267	$157,913
Health	236	168	$ 2,508,925,386	$14,934,080
Mental Health, Crisis Intervention	137	94	$ 72,509,988	$771,383
Diseases, Disorders, Medical Disciplines	139	89	$ 29,011,328	$325,970
Medical Research	22	18	$ 115,588,502	$6,421,583
Crime, Legal Related	127	81	$ 23,118,017	$285,408
Employment, Job Related	47	34	$ 87,620,435	$2,577,072
Food, Agriculture, and Nutrition	60	43	$ 44,371,963	$1,031,906
Housing, Shelter	156	122	$ 83,337,476	$683,094
Public Safety	90	43	$ 1,455,861	$33,857
Recreation, Sports, Leisure, Athletics	453	223	$ 42,739,881	$191,659
Youth Development	150	90	$ 27,093,581	$301,040
Human Services - Multipurpose and Other	629	403	$ 432,331,614	$1,072,783
International, Foreign Affairs, and National Security	94	59	$ 4,058,690	$68,791
Civil Rights, Social Action, Advocacy	52	35	$ 7,001,007	$200,029
Community Improvement, Capacity Building	312	171	$ 39,275,466	$229,681
Philanthropy, Voluntarism, and Grant-making Foundations	134	89	$ 66,487,626	$747,052
Science and Technology Research Institutes, Services	78	50	$ 25,927,180	$518,544
Social Science Research Institutes, Services	35	18	$ -1,436,958	($79,831)
Public, Society Benefit - Multipurpose and Other	150	80	$ 54,058,117	$675,726
Religion Related, Spiritual Development	1,632	177	$ 40,541,528	$229,048
Unknown	49	14	$ 625,729	$44,695
TOTAL	**7,142**	**3,531**	**$ 4,223,624,185**	**$1,196,155**

Non-Profit Organizations Deduction

Receipts from selling tangible personal property to 501(c)(3) organizations for use in their exempt functions and receipts from the sale of construction materials to a 501(c)(3) organization organized for the purpose of providing homeownership opportunities to low-income families are deductible.

Any reduction in the construction cost of low-income housing could translate directly into lease or mortgage savings for the recipient of the housing.

Non-Profit Organizations Deduction

The use of property by organizations that have been granted a tax exemption under Section 501(c)(3) of the US Internal Revenue Code is exempt from compensating tax as long as the property is used in the conduct of their exempt functions. This exemption reduces operating costs.

Non-Profit Organizations Exemption

Receipts of 501(c)(6) organizations from conducting chamber of commerce, visitor bureau, and convention bureau activities and receipts of 501(c)(3) organizations are exempt from Gross Receipts Tax.

This exemption encourages non-profits to manage the functions of these services which provide social benefit in the form of information and guidance. Such service would be difficult to provide through the private sector as it would be nearly impossible to charge for such information.

Bus Use by Businesses Operated by Religious or Non-Profit Organizations Exemption

Exempted from the Weight Distance Tax is the use of highways by buses operated by religious and charitable institutions. This exemption reduces operating costs.

Fees from Social Organizations Exemption

Receipts from dues and registration fees of non-profit organizations are exempt from Gross Receipts Tax. Such membership fees are used by non-profits to cover operating costs. This exemption allows more funding to flow to the beneficiary of the non-profit and allows non-profits to reduce fees and thereby attract a greater membership. Non-profits often secure additional funding through donations as a result of meeting certain membership levels.

Fundraising Events Deduction

Organizations exempt from federal income tax under Section 501(c) of the Internal Revenue Code may deduct the receipts from two fund-raising events each calendar year. Such events may be necessary for the charitable organization to secure funding. As such, this deduction may reduce operating costs which could increase the available resources for the beneficiaries of the non-profit programs.

Religious Activities Exemption

Receipts of a minister of a 501(c)(3) religious organization performing religious services are exempt.

Tax Expenditures and Natural Resource Tax Policy

The taxation of natural resource extraction in New Mexico relates primarily to the capture of the State's economic interests in non-renewable resources. New Mexico is endowed with a finite resource stock and obtains substantial economic benefits from the one-time development and utilization of those resources. However, to the extent that the resource is non-renewable, there is also an inter-generational economic value in that resource stock that is appropriately captured as the resource is permanently severed from the lands of the state.

The severance and use of these non-renewable resources is generally subject to taxes on the economic values obtained, proceeds of which are distributed to several different funds, including two permanent endowed trusts for future generations as well as other operating and capital outlay functions of state and local government.

Because the value of State's non-renewable natural resources are largely exported from the state, and because these resources are traded and must compete in markets with the resource extracted from other states (and countries), tax policy must be set in recognition that detrimental competitive market impacts may result from inappropriate tax rates.

It is certainly true that *some* tax policies related to natural resource taxation can properly be characterized as tax expenditures, but it is equally correct to understand that many of the policies simply define the tax base and baseline of tax revenues that are properly recovered from the severance of the state's non-renewable natural resource endowments.

Although similar taxes are imposed in some other states, there is not a high degree of uniformity among states in what deductions are allowed in determining the taxable value of the resource. These taxes are generally premised on the privilege of severing natural resources, and the differences in each state's definition of taxable value is largely dependent on the unique property right laws that have developed in conjunction with resource developments within each state. There is no uniformity in the tax rates or application of tax expenditure principles imposed by states. Since mineral production taxation is based on retention of a portion of the severed (non-renewable) resources' economic value by the state (frequently accruing to permanent trust funds), it would be inappropriate to assume that their tax base should be similar to that of a retail sales tax. The largest of the deductions from New Mexico's severance tax base reduce taxable value for royalties paid to federal, Indian, and state owners of the minerals and are treated in this *Report* as defining the tax base. Most of the remaining deductions allowed under New Mexico's minerals production taxes – such as processing and transportation deductions – recognize the costs of getting the product to market. Thus, these deductions should not be understood as tax expenditures because they define the tax base for application of severance taxes. Other provisions, such as those aimed at stimulating particular types of production, are treated as tax expenditures.

Intergovernmental Production Tax Credit

This tax expenditure reduces the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax, and the oil and gas ad valorem production tax otherwise imposed by allowing a credit for a portion of tax where an Indian nation, tribe, or pueblo also imposes taxes on production. The credit is equal to 75 percent of the lesser of: (1) the aggregate amount of tax liability in effect on March 1, 1995, imposed by the Indian nation, tribe, or pueblo upon the qualifying wells, or (2) the aggregate amount of the current tax liability imposed by the state from qualifying wells.

Table 48: Intergovernmental Oil & Natural Gas Production Tax Credit ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Intergovernmental Production Tax Credit	15	$6,102.0	12	$3,751.0	13	$2,786.0	12	$3,030.0	12	$2,346.0

The intergovernmental production tax credit has resulted in a revenue reduction to the state averaging $3.60 million over the last five fiscal years. The benefits of this intergovernmental tax credit relate to tax policy and equitable taxation where multiple tax authorities have jurisdiction. Although there is no requirement that the state forego revenues in favor of the Indian sovereign's right to impose production taxes, such tax policy prevents double taxation.

Jicarilla Apache Tribal Capital Improvement Tax Credit

A tax expenditure exists by provision of a credit against the Oil and Gas Emergency School Tax equal to the lesser of: (1) the amount of the Jicarilla Apache tribal capital improvements tax imposed by the

Jicarilla Apache Nation upon the products severed from qualifying wells, or (2) 0.7 percent of the taxable value of the products severed from qualifying wells. Table 49 summarizes the Emergency School Tax foregone revenues resulting from application of the credit to production from qualifying wells.

Table 49: Emergency School Tax Credits for the Jicarilla Tribal Capital Improvement Tax ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Jicarilla Capital Improvement Tax Credit Against Emergency School Tax	28	$2,014.8	25	$1,195.6	24	$1,055.4	23	$1,097.9	22	$1,057.0

Other Oil and Natural Gas Tax Expenditures

There are several tax expenditures related to oil and natural gas production, but the specific economic conditions that trigger them have not been present for a number of years, and no tax revenues have been foregone as a result. These tax expenditures include:

- Exemption against Oil and Gas Severance Tax for Oil, Other Liquid Hydrocarbons, or Natural Gas Restoration Wells
- Rate Differential (Based on Price) against the Oil and Gas Severance Tax, and the Oil and Gas Emergency School Tax for Oil, Other Liquid Hydrocarbons, or Natural Gas Stripper Wells
- Rate Differential (Based on Price) against Oil and Gas Severance Tax for Oil and Other Liquid Hydrocarbons for Enhancement Recovery Project, Stripper Well, and Well Workover Projects

Generally these tax expenditures are triggered by relatively low market price conditions, and, until these market price conditions return, there will be no specific tax expenditure activities related to these statutory provisions.

Intergovernmental Severance Tax Credit

An intergovernmental coal severance tax credit is allowed for taxes imposed by an Indian nation, tribe, or pueblo on coal severed from tribal land. The credit is equal to 75 percent of the lesser of the amount of the tax imposed by the tribal government or the amount of the State severance tax. This tax expenditure reduces the tax burden imposed on any person who severs coal from tribal land because the tribal tax is also imposed on the person. The benefits of this intergovernmental tax credit relate to tax policy and equitable taxation where multiple tax authorizes have jurisdiction. The tax expenditure has provided an economic benefit to coal producers averaging $3.3 million per year in the last five years.

Table 50: Intergovernmental Coal Severance Tax Credit ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Intergovernmental Production Tax Credit against Coal Severance Tax	$4,534.1	$3,810.2	$2,257.6	$3,267.4	$2,747.6

Tax Expenditures Related to Indian Nations, Tribes, or Pueblos

In prior sections of the *2013 New Mexico Tax Expenditure Report,* discussion of tax policy related to Indian nations, tribes, and pueblos has addressed issues where commerce related to Indian lands has generally been exempted from taxation as a result of New Mexico tax policy that seeks to equitably balance competitive market opportunities between business conducted within and outside the boundaries of the Indian lands. These tax policies, although generally deferential to the Indian sovereign, have sought to maintain the equity considerations and address efficiency concerns of good tax policy by reducing the distorting effects of double taxation.

Business Activity Tax Exemptions

Indian nations, tribes, and pueblos are generally exempt from taxation when conducting business on their own tribal lands. However, these entities are potentially subject to tax when doing business with non-tribal members. Because these transactions are usually subject to a tribal tax as well, a variety of provisions have been added to New Mexico statutes to reduce the double taxation of these transactions. These provisions are not treated as tax expenditures in this *Report.* An exception is made for the sale of cigarettes by tribal vendors to non-tribal members because the state's tax rate on these products is significantly higher than the tribal tax rates.

Table 51: Cigarette Tax Exemption – Estimated Tax Expenditures ($thousands)

	FY2008	FY2009	FY2010	FY2011	FY2012
	Amount	Amount	Amount	Amount	Amount
Federal, State, or Tribal Exemption against Cigarette Tax	$38,848.0	$29,416.0	$28,460.0	$41,359.0	$38,171.7

Sales Exemptions

A tax expenditure is created in the exemption against the tobacco products tax of sales to a federal government entity, Indian nation, tribe, or pueblo, and to the State of New Mexico and its political subdivisions. Tribes are now required to impose a qualifying tribal cigarette tax of $0.75, which generated approximately $17.2 million revenue to tribes in FY2012.

Section IV: Most Used and Unused Tax Expenditures

Table 52 presents a summary of the most used tax expenditures – determined by their estimated annual fiscal impacts. Each of these provisions reaches a broad spectrum of households, in some cases by reducing tax on household necessities and in other cases through income-based transfers.

Table 52: Most Used Tax Expenditures (by dollar amount) ($thousands)

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Food Sales Deductions Against GRT[25]	3,419	$219,677	3,265	$209,143	3,184	$213,445	not avail.	$217,892	not avail.	$227,344
Health Care Practitioners Deduction against Gross Receipts Tax	19,457	$58,870	19,423	$60,819	19,064	$65,521	19,281	$70,248	not avail.	$76,159
Prescription Drugs Deduction against Gross Receipts or Governmental Gross Receipts Taxes	not avail.	$54,000	not avail.	$56,000	not avail.	$58,000	not avail.	$61,000	not avail.	$61,000
NMMIP Assessment Credit against Insurance Premium Tax	not avail.	$27,946	not avail.	$36,243	not avail.	$49,629	not avail.	$55,004	not avail.	$55,576
Medical Services Deduction against Gross Receipts Tax[25]	not avail.	$39,800	not avail.	$42,900	not avail.	$45,200	not avail.	$47,100	not avail.	$49,000
Film Production Tax Credit	51	$46,027.4	78	$76,706.4	80	$65,388.5	55	$77,013.1	41	$9,494.5

Table 53 presents a set of tax expenditures which have seen little or no claims activity in recent years. Reasons for this vary. Incentives like biomass/biodiesel credits were intended to stimulate activity in an "infant" industry. Lack of use indicates that the industry has not been able to reach economic viability despite the incentive. Some oil and gas production incentives have been deliberately "turned off" as a matter of policy. These incentives become available only if the prices of those products fall below a specified level. This design feature ensures that the incentives are targeted to those periods when they are most needed to support the industry. Incentives like those for Venture Capital and Welfare to Work are probably in need of an update to achieve their intended purpose. Sometimes the desire to target incentives leads to policies that are not workable for industry. This is not necessarily a judgment on the policy goals but rather an indication that the methods themselves need to be revisited.

[25] Includes the "hold harmless" distributions to the local governments

Table 53: Unused Tax Expenditures

	FY2008		FY2009		FY2010		FY2011		FY2012	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Agricultural Biomass Credit against PIT & CIT	N/A	N/A	N/A	N/A	N/A	N/A	0	$0.0	0	$0.0
Biodiesel Blending Facility Credit against Gross Receipts or Compensating Taxes	0	$0.0	0	$0.0	0	$0.0	0	$0.0	0	$0.0
Business Facility Rehabilitation Credit against CIT & PIT	0	$0.0	0	$0.0	0	$0.0	0	$0.0	0	$0.0
Indian Tribe Reception of Special Fuels on Indian Territory Exemption against Special Fuel Excise Tax	0	$0.0	0	$0.0	0	$0.0	0	$0.0	0	$0.0
Natural Gas: Exemption against Oil and Gas Severance Tax (Restoration Well)	0	$0.0	0	$0.0	0	$0.0	0	$0.0	0	$0.0
Natural Gas: Rate Differential (Based on Price) against Oil and Gas Emergency School Tax & Severance Tax	0	$0.0	0	$0.0	0	$0.0	0	$0.0	0	$0.0
Oil and Other Liquid Hydrocarbons: Exemption against Oil and Gas Severance Tax (Restoration Well)	0	$0.0	0	$0.0	0	$0.0	0	$0.0	0	$0.0
Oil and Other Liquid Hydrocarbons: Rate Differential (Based on Price) against Oil and Gas Emergency School Tax & Severance Tax	0	$0.0	0	$0.0	0	$0.0	0	$0.0	0	$0.0
Potash: Rate Differential against the Resources Component of Resources Excise Tax	0	$0.0	0	$0.0	0	$0.0	0	$0.0	0	$0.0
Services for Electric Transmission Facilities Deduction against Gross Receipts Tax	not avail.	$0.0	not avail.	$0.0	not avail.	$0.0	not avail.	$0.0	0	$0.0
Uranium: 50 percent Deduction against Severance Tax	0	$0.0	0	$0.0	0	$0.0	0	$0.0	0	$0.0
Uranium: Deductions equal to 25 percent of difference between Indian Royalties and Taxable Value under Resources Excise Tax against Oil and Gas Conservation Tax	0	$0.0	0	$0.0	0	$0.0	0	$0.0	0	$0.0
Venture Capital Investment Tax Credit	0	$0.00	0	$0.00	0	$0.00	0	$0.00	not avail.	not avail.
Welfare to Work Programs Credit against CIT & PIT (Federal Welfare-to-Work credit was repealed 1/2008)	8	$64.4	5	$25.6	3	$124.7	0	$0.0	0	$0.0

Section V: Conclusions

The *2013 New Mexico Tax Expenditure Report* builds upon the work presented in the *2012 New Mexico Tax Expenditure Report.* Many of the challenges described in that report continue to make difficult the presentation of precise information. Nonetheless, it is clear that New Mexico's tax expenditures run the gamut from being very effective and properly used to going completely unused.

Before an analysis of the efficacy of any tax expenditure, a determination must be made whether a statutory provision constitutes a tax expenditure or is defining the tax base. Only then can the analysis focus on the amount of foregone revenue, the administrative costs, the taxpayer compliance costs, and the benefits attributable to the program.

Discussions will need to continue regarding the relative merits of requiring additional information from taxpayers in order for policymakers to have the data they need to make informed decisions, on the one hand, and keeping the administrative burden on the taxpayer as low as possible, on the other.

Appendix A-1: Description of New Mexico Tax Programs and Tax Base

Definition of Specific Tax Programs and Tax Base

The following summarizes the major tax programs of the state. In identifying each program, we will also attempt to define the tax base and baseline revenues which will be relied upon for the subsequent analysis.

Fuel Taxes

Alternative Fuel Tax

To encourage the use of alternative fuel for the propulsion of motor vehicles on the roads of New Mexico, thereby increasing the market for supplies of New Mexico natural gas and reducing harmful environmental emissions, it is the purpose of the Alternative Fuel Tax Act to provide for fair taxation of alternative fuel used for such purposes. An "alternative fuel" means liquefied petroleum gas, compressed natural gas, liquefied natural gas, or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion. The excise tax rate is $0.12 per gallon. Any user who registers, owns, or operates a motor vehicle whose gross vehicle weight does not exceed fifty-four thousand pounds that is propelled by alternative fuel may pay the alternative fuel excise tax on an annual basis that increases with vehicle weight and ranges (after January 1, 2002) from $60 to $1,100 per year.

Gasoline Tax

For the privilege of receiving gasoline in this state, there is imposed an excise tax at a rate of $0.17 per gallon "received" in New Mexico. Gasoline that is produced, refined, manufactured, blended, or compounded at a refinery in this state or stored at a pipeline terminal in this state by a person is received by that person when it is loaded there into tank cars, tank trucks, tank wagons, or other types of transportation equipment, or when it is placed there into a tank or other container from which sales or deliveries not involving transportation are made. Gasoline is also received when delivered at the refinery or pipeline terminal to a person registered as a distributor (or for the account of a distributor) (Section 7-13-4 NMSA 1978).

Petroleum Products Loading Fee

For the privilege of loading gasoline or special fuel from a rack at a refinery or pipeline terminal into a cargo tank, or importing gasoline or special fuel into this state for resale or consumption, there is imposed a fee on the distributor on each gallon of gasoline or special fuel loaded in New Mexico. A "load" means eight thousand gallons of gasoline or special fuel, and the fee shall be $150 per load. If, however, the unobligated balance of the Corrective Action Fund[26] at the end of the prior fiscal year:

(1) equals or exceeds $18,000,000, the fee shall be set at $40 per load,
(2) exceeds $12,000,000 but is less than $18,000,000, the fee shall be set at $80 per load,
(3) exceeds $6,000,000 but is less than $12,000,000, the fee shall be set at $120 per load, and
(4) is less than $6,000,000, the fee shall be set at $150 per load.

The duty to report and pay the petroleum products loading fee is imposed on the distributor when it loads the petroleum products from a rack at a refinery or pipeline terminal in this state into a cargo tank, or the person, whether a distributor or not, who imports petroleum products into New Mexico for sale or consumption in this state at the time of importation.

Special Fuel Excise Tax

New Mexico has imposed an excise tax at a rate of $0.21 per gallon of special fuel received or used in New Mexico for the privilege of receiving or using special fuel in this state. A "special fuel" is any diesel-engine fuel or kerosene used for the generation of power to propel a motor vehicle, except for gasoline, liquefied petroleum gas, compressed or liquefied natural gas, and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet engines. Special fuel imported into New Mexico is received at the time and place and by the person who owns the fuel at the time of importation. Special fuel that is produced, refined, manufactured, blended, or compounded at a refinery in this state or stored at a pipeline terminal in this state by a person is received by that person when it is loaded there into tank cars, tank trucks, tank wagons, or other types of transportation equipment, or when it is placed there into a tank or other container from which sales or deliveries not involving transportation are made. Special fuel is also received when delivered at the refinery or pipeline terminal to a person registered as a distributor (or for the account of a distributor). Any product other than special fuel that is blended in this state to produce special fuel other than at a refinery or pipeline terminal is received by the person who is the owner of the special fuel at the time and place the blending is completed.

General Excise/Sales Taxes

Compensating Tax

For the privilege of engaging in certain activities within New Mexico, a Compensating Tax is imposed on the privilege of using tangible property in New Mexico. The excise tax rate is equal to 5.125 percent of the value of use of tangible property[27] that was:

[26] The fund is intended to provide for financial assurance coverage and shall be used by the New Mexico Environment Department (to the extent that revenues are available) to take corrective action in response to a release, to pay for the costs of a minimum site assessment in excess of $10,000, to pay the state's share of federal leaking underground storage tank trust fund cleanup costs as required by the federal Resource Conservation and Recovery Act, and to make payments to or on behalf of owners and operators for corrective action taken in accordance with Section 74-6B-13 NMSA 1978. (Section 74-6B-7(A) NMSA 1978).

[27] The value of tangible property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later.

(1) manufactured by the person using the property in the state;
(2) acquired inside or outside of this state as the result of a transaction with a person located outside this state that would have been subject to the Gross Receipts Tax had the tangible personal property been acquired from a person with nexus to New Mexico; or
(3) acquired as the result of a transaction that was not initially subject to the compensating tax imposed by (2) above or the Gross Receipts Tax but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by (2) above or the Gross Receipts Tax.

For the privilege of using services rendered in New Mexico, there is imposed on the person using such services an excise tax equal to five percent of the value of the services at the time they were rendered. The services, to be taxable under this subsection, must have been rendered as the result of a transaction that was not initially subject to the Gross Receipts Tax but which transaction, because of the buyer's subsequent use of the services, should have been subject to the Gross Receipts Tax.

Governmental Gross Receipts Tax

For the privilege of engaging in certain activities within New Mexico, the Governmental Gross Receipts Tax is imposed on gross receipts received by a state or an agency, institution, instrumentality, or political subdivision from:

(1) the sale of tangible personal property other than water from facilities open to the general public;
(2) the performance of or admissions to recreational, athletic, or entertainment services or events in facilities open to the general public;
(3) refuse collection or refuse disposal or both;
(4) sewage services;
(5) the sale of water by a utility owned or operated by a county, municipality, or other political subdivision of the state; and
(6) the renting of parking, docking, or tie-down spaces or the granting of permission to park vehicles, tie-down aircraft, or dock boats.

"Governmental gross receipts" includes receipts from the sale of tangible personal property handled on consignment when sold from facilities open to the general public but excludes cash discounts taken and allowed, governmental Gross Receipts Tax payable on transactions reportable for the period, and any type of time-price differential.[28] An excise tax rate of five percent is imposed on governmental gross receipts.

If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

[28] The statutes defining governmental gross receipts provide that "facilities open to the general public" does not include point of sale registers or electronic devices at a bookstore owned or operated by a public post-secondary educational institution when the registers or devices are utilized in the sale of textbooks or other materials required for courses at the institution to a student enrolled at the institution who displays a valid student identification card.

Gross Receipts Tax

For the privilege of engaging in business, this tax is imposed on gross receipts received from certain transactions for consideration. "Gross receipts" is revenue generated by either selling property in New Mexico, leasing (or licensing) property employed in New Mexico, from granting a right to use a franchise, performing services outside of New Mexico the product of which is initially used in New Mexico, or performing services in New Mexico. Under the Gross Receipts Tax, "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit.[29] Certain types of businesses are explicitly excluded from the definition. For the privilege of engaging in business, the state imposed an excise tax rate equal to 5.125 percent of gross receipts. Local options taxes are also authorized to be imposed by counties and municipalities.

Interstate Telecommunications Gross Receipts Tax

For the privilege of engaging in interstate telecommunications business, an excise tax equal to 4.25 percent of interstate telecommunications gross receipts is imposed upon any person engaging in interstate telecommunications business in New Mexico. "Interstate telecommunications gross receipts" means the total amount of money or the value of other consideration received from providing:

(1) interstate telecommunications services, other than mobile telecommunications services, that either originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico, regardless of where the bill for such services is actually delivered; and
(2) mobile telecommunications services that originate in one state and terminate in any location outside that state, whether within or outside the United States, to a customer with a place of primary use in New Mexico.

"Interstate telecommunications gross receipts" excludes mobile telecommunications services provided to a customer with a place of primary use outside of New Mexico, cash discounts allowed and taken and interstate telecommunications Gross Receipts Tax payable for the reporting period. Also excluded from "interstate telecommunications gross receipts" are any gross receipts or sales taxes imposed by any Indian nation, tribe, or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the Interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe, or pueblo provides a reciprocal exclusion for gross receipts, sales, or gross receipts-based excise taxes imposed by the state or its political subdivisions.

Income-Related Taxes

Corporate Income and Franchise Tax

The franchise tax in the amount of $50 per taxable year or any fraction thereof is imposed on every domestic or foreign corporation employed or engaged in the transaction of business in, into, or from

[29] "Benefit" is any consideration to either party. "Benefit" is not limited to profits, pecuniary gains, or any particular kind of advantage. "Consideration" is any benefit, interest, gain, or advantage to one party, usually the seller, or any detriment, forbearance, prejudice, inconvenience, disadvantage, loss of responsibility, act, or service given, suffered, or undertaken by the other party, usually the buyer. [Regulation 3.2.1.7 NMAC]

this state or deriving any income from any property or employment within this state. A "corporation" includes every domestic and foreign corporation or other organization having or exercising its corporate franchise in this state, whether active or not, or engaging in business in or deriving income from this state, and which either is required to file a corporate income tax return under the Internal Revenue Code or is a disregarded entity for federal income tax purposes. The corporate income tax is imposed at a rate of 4.8 percent of the first $500,000 of net income, 6.4 percent of net income between $500,000 and $1 million, and 7.6 percent of net income in excess of $1 million. Net income is defined by reference to the federal Internal Revenue Code, with certain adjustments for New Mexico tax purposes.

Oil and Gas Proceeds and Pass-Through Entity Withholding Tax

A person paying oil and gas proceeds to any person ("remittee") shall deduct and withhold tax at the top personal income tax rate. The entire amount of oil and gas proceeds and net income upon which the tax was deducted and withheld shall be included in the base income of the remittee for purposes of the Personal and Corporate Income Tax Act. The amount of tax deducted and withheld or payments made by owners in lieu of withholding pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act during the taxable year shall be credited against any income tax or corporate income tax due from the remittee or owner.

Personal Income Tax

The personal income tax is imposed on individuals (whether married, heads of households, surviving spouses, estates, or trusts) as an income-graduated tax rate based on taxable income; the tax rate currently ranges from 1.7 percent to 4.9 percent of taxable income (Section 7-2-7 NMSA 1978; effective January 1, 2008). Taxable income is defined as net income, which is derived from base income adjusted and modified by numerous provisions of the tax statutes and regulations (Section 7-2-2 NMSA 1978; 3.3.1.7 NMAC).[30]

Withholding Tax

Every employer having control of the payment of wages, doing business in, or deriving income from sources within the state for whom an individual performs or performed any service as the employee of that person must deduct and withhold a portion of an employee's wages for payment of income tax under the provisions of a state withholding tax table. Additionally, withholding tax must be deducted and withheld by any person required to from winnings of a wager, and by a person making payment of a pension or annuity to an individual domiciled in New Mexico that is subject to withholding (Sections 7-3-1 and 7-3-3 NMSA 1978).

Liquor and Tobacco Taxes

Cigarette Tax

For the privilege of selling, giving, or consuming cigarettes in New Mexico, there is levied an excise tax at the following rates for each cigarette sold, given, or consumed in this state:

(1) $0.083, if the cigarettes are packaged in lots of 20 or 25;

[30] Only if requested by the individual.

(2) $0.166, if the cigarettes are packaged in lots of ten; or
(3) $0.332, if the cigarettes are packaged in lots of five (Section 7-12-3 NMSA 1978).

Only a distributor with a valid license to sell or distribute cigarettes in New Mexico issued pursuant to the Cigarette Tax Act may purchase or obtain unaffixed tax-exempt stamps, tax-credit stamps, or tax stamps.

Liquor Excise Tax
Prior to 2014, there is imposed on a wholesaler who sells alcoholic beverages an excise tax at the following rates on alcoholic beverages sold:

(1) on spirituous liquors, $1.60 per liter;
(2) on beer, except as provided in (5) below, $0.41 per gallon;
(3) on wine, except as provided in (4) and (6) below, $0.45 per liter;
(4) on fortified wine, $1.50 per liter;
(5) on beer manufactured or produced by a microbrewer and sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a microbrewer, $0.08 per gallon;
(6) on wine manufactured or produced by a small winegrower and sold in this state
    a. $0.10 per liter on the first 80,000 liters sold; and
    b. $0.20 per liter on all liters sold over 80,000 liters but less than 950,000; and
(7) on cider, $0.41 per gallon.

Deductions are provided for wholesaler sales shipped to a person in another state and transfers between winegrowers.

Beginning in 2014, there is imposed on a wholesaler who sells alcoholic beverages an excise tax at the following rates on alcoholic beverages sold:

(1) on spirituous liquors, $1.60 per liter;
(2) on beer, except as provided in (5) below, $0.41 per gallon;
(3) on wine, except as provided in (4) and (6) below, $0.45 per liter;
(4) on fortified wine, $1.50 per liter;
(5) on beer manufactured or produced by a microbrewer and sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a microbrewer,
    a. $0.08 per gallon on the first 10,000 gallons sold;
    b. $0.28 per gallon on all gallons sold more than 10,000 gallons but fewer than 15,000 gallons; and
    c. $0.41 per gallon on all gallons sold 15,000 or more.
(6) on wine manufactured or produced by a small winegrower and sold in this state
    a. $0.10 per liter on the first 80,000 liters sold;
    b. $0.20 per liter on all liters sold over 80,000 liters but not more than 950,000 liters;
    c. $0.30 per liter on each liter sold over 950,000 liters but not more than 1.5 million liters; and

d. \$0.45 per liter on all liters sold 1.5 million or more; and
(7) on cider, \$0.41 per gallon.

Deductions continue to be provided for wholesaler sales shipped to a person in another state and transfers between winegrowers.

Tobacco Products Tax
For the manufacture or acquisition of tobacco products in New Mexico to be distributed in the ordinary course of business and for the consumption of tobacco products in New Mexico, there is imposed an excise tax at the rate of 25 percent of the product value of the tobacco products. The tobacco products tax shall be paid by the first purchaser, who is a person engaging in business in New Mexico and who manufactures tobacco products or who purchases or receives on consignment tobacco products from any person outside of New Mexico, which tobacco products are to be distributed in New Mexico in the ordinary course of business.

Motor Vehicle-Related Taxes

Leased Vehicle Gross Receipts Tax
For the privilege of engaging in business of leasing vehicles for direct or indirect benefit, an excise tax equal to 5 percent of gross receipts is imposed on any person engaging in business in New Mexico. Additionally, there is imposed a surcharge on the leasing of a vehicle to another person if the lease is subject to the leased vehicle Gross Receipts Tax. The amount of this surcharge is \$2 for each day the vehicle is leased by the person, but shall not apply to the lease of a temporary replacement vehicle if the vehicle is to be used as a replacement for another vehicle that is being repaired, serviced, or replaced.

Motor Vehicle Excise Tax
An excise tax is imposed upon the sale of every vehicle, except for vehicles used in short term leasing[31] and manufactured homes, required to be registered in this state under the Motor Vehicle Code (Section 66-1-1 NMSA 1978). It is presumed that the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered under the provisions of the Motor Vehicle Code constitutes a sale for tax purposes, unless specifically exempted by the Motor Vehicle Excise Tax Act or unless there is shown proof satisfactory to the department that the vehicle for which the certificate of title is sought came into the possession of the applicant as a voluntary transfer without consideration or as a transfer by operation of law. The rate of the motor vehicle excise tax is three percent and is applied to the price paid for the vehicle. If the price paid does not represent the value of the vehicle in the condition that existed at the time it was acquired, the tax rate shall be applied to the reasonable value of the vehicle in such condition at such time. However, allowances granted for vehicle trade-ins may be deducted from the price paid or the reasonable value of the vehicle purchased.

Weight Distance Tax
A tax is imposed upon the registrants, owners and operators for the use of the highways of this state by all motor vehicles having a declared gross weight or gross vehicle weight in excess of 26,000 pounds and

[31] For a period of less than six months, pursuant to Section 7-14-7.1 NMSA 1978.

registered in this state, registered under proportional registration, or qualified under interstate commerce reciprocity agreements (Sections 65-1-32 and 65-1-33 NMSA 1978) The tax is imposed as a rate (mills per mile) that increases with the declared gross weight of the vehicle, and is reduced to two-thirds of the applicable rate if the vehicle is customarily used for a one-way haul or if 45 percent or more of the mileage traveled is traveled with an empty load. Exempted from the tax are school buses, buses used exclusively for the transportation of agricultural laborers, buses operated by religious or non-profit charitable organizations, and commercial motor carrier vehicles while operating exclusively within 10 miles of a border with Mexico in conjunction with crossing the border with Mexico (Section 7-15-2.1(B) NMSA 1978)

Severance Taxes

Copper Production Ad Valorem Tax

An ad valorem tax is levied upon the owner of each copper mineral property that is not subject to valuation and taxation under the provisions of the Property Tax Code (Articles 35 to 38 of Chapter 7 NMSA 1978). The amount of the tax shall be equal to the product of the taxable value determined for each copper mineral property owned multiplied by the rate certified to the department by DFA for nonresidential property under the provisions of Property Tax Code for the taxing jurisdictions in which the copper mineral property is located (Sections 7-37-7 and 7-37-7.1 NMSA 1978). The valuation of copper mineral property of the following types shall be determined annually, as follows:

(1) the value of any mine and all real property and personal property held or used for the mining of ore from the mine:
   (a) any part of which is mined for processing in a concentrator shall be 30 percent of the value of salable copper and other minerals contained in concentrate produced from the ore produced from the mine; or
   (b) which is mined solely for solvent extraction or electrowinning shall be 20 percent of the value of salable copper and other minerals produced through solvent extraction or electrowinning from the ore produced from the mine;
(2) the value of a concentrator and all real property and personal property held or used in connection with the concentrator shall be 25 percent of the value of salable copper and other minerals contained in concentrate produced in the concentrator;
(3) the value of a precipitation plant and all real property and personal property held or used in connection with the precipitation plant shall be 25 percent of the value of salable copper and other minerals contained in precipitate produced in the precipitation plant;
(4) the value of the solvent extraction or electrowinning plant and all real property and personal property held or used in connection with the solvent extraction or electrowinning plant shall be 135 percent of the value of salable copper and other minerals produced through the solvent extraction or electrowinning process, less four times the value of property determined for the same tax year under (b) of (1) above; and
(5) the value of a smelter and all real property and personal property held or used in connection with the smelter shall be 21 percent of the value of salable copper and other minerals produced in the smelter.

Natural Gas Processors Tax

There is levied a privilege tax on processors for the privilege of operating a natural gas processing plant in New Mexico. The tax shall be imposed on the heat content, measured in million British Thermal Units ("mmbtu"), of natural gas delivered to the processor at the inlet of the natural gas processing plant after subtracting the mmbtu deductions authorized in Subsection E of Section 7-33-4 NMSA 1978. The tax shall be imposed at the rate per mmbtu determined by multiplying the rate of $0.0065 per mmbtu by a fraction, the numerator of which is the annual average taxable value per thousand cubic feet ("mcf") of natural gas produced in New Mexico during the preceding calendar year and the denominator of which is $1.33 per mcf. The resulting tax rate shall be rounded to the nearest one-hundredth of one cent per mmbtu. A processor may deduct from the amount of mmbtus of natural gas subject to the tax the mmbtus of natural gas that are used for natural gas processing by the processor, returned to the lease from which it is produced, legally flared by the processor, or lost as a result of natural gas processing plant malfunctions or other incidences of force majeure. On or before June 15, 1999, and June 15 of each succeeding year, the department shall inform each processor in writing of the tax rate applicable for the succeeding fiscal year.

Oil and Gas Ad Valorem Production Tax

There is levied an ad valorem tax on the assessed value of products which are severed and sold from each production unit at the rate certified to the Property Tax Division by DFA under the provisions of the Property Tax Code (Section 7-37-7 NMSA 1978). Such rate shall be levied for each month following its certification and until a new rate is certified. The taxable value of products is determined by DFA based on the value of products after deducting:

(1) royalties paid or due the United States or the state of New Mexico;
(2) royalties paid or due any Indian tribe, Indian pueblo, or Indian that is a ward of the United States; and
(3) the reasonable expense of trucking any product from the production unit to the first place of market.

Every interest owner shall be liable for this tax to the extent of his interest in the value of such products, or to the extent of his interest as may be measured by the value of such products. Provided, any Indian tribe, Indian pueblo, or Indian shall be liable for this tax to the extent authorized or permitted by law.

Oil and Gas Conservation Tax

There is levied and shall be collected by the department a tax on all *oil, natural gas or liquid hydrocarbon, uranium, coal, geothermal energy, carbon dioxide, helium,* or a *non-hydrocarbon gas* that are severed and sold. The measure and rate of the tax shall be 0.19 percent of the taxable value of sold products. When the average price of west Texas intermediate crude in the previous quarter exceeds $70 per barrel, the tax rate on *oil* shall be 0.24 percent of the taxable value of the sold product. The taxable value of *coal* shall be the taxable value determined under Resource Excise Tax, less royalties paid or due any Indian tribe, Indian pueblo, or Indian that is a ward of the United States. The taxable value of *uranium* shall be 25 percent of an amount equal to the difference between the taxable value determined under Resource Excise Tax, and royalties paid or due any Indian tribe, Indian pueblo, or

Indian that is a ward of the United States. The taxable value of *geothermal energy* shall be the value at the point of first sale, less the cost of transporting it from the point of severance to the point of the first sale, less the royalties paid or due the United States or the state of New Mexico or any Indian tribe, Indian pueblo, or Indian that is a ward of the United States. Every interest owner shall be liable for this tax to the extent of the owner's interest in the value of the products or to the extent of the owner's interest as may be measured by the value of the products. An Indian tribe, Indian pueblo, or Indian shall be liable for this tax to the extent authorized or permitted by law.

Oil and Gas Emergency School Tax

There is levied a privilege tax on the business of every person severing certain products in this state. The measure of the tax shall be:

(1) on oil and other liquid hydrocarbons removed from natural gas at or near the wellhead, 3.15 percent of the taxable value;
(2) on carbon dioxide, helium, and non-hydrocarbon gases, 3.15 percent of the taxable value;
(3) on natural gas, four percent of the taxable value of the products severed and sold.

Oil and Gas Production Equipment Ad Valorem Tax

An ad valorem tax is levied on the assessed value of the equipment at each production unit. The tax shall be at the rate certified to the division DFA under the provisions of Property Tax Code (Section 7-37-7 NMSA 1978). The taxable value of equipment of each production unit is an amount equal to 27 percent of the value of products of each production unit for the previous calendar year. The assessed value of equipment of each production unit shall be determined by DFA by applying the uniform assessment ratio to the taxable value of equipment of each production unit.

Oil and Gas Severance Tax

There is imposed a tax on all natural gas, oil, other liquid hydrocarbon, carbon dioxide, helium, and non-hydrocarbon gases products that are severed and sold, at the rate of 3.75 percent of the taxable value.[32] The "value" of all natural gas, oil, and other liquid hydrocarbon products that are severed and sold is the actual price received for products at the production unit, and in determining the taxable value of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead there shall be deducted from the value of products royalties paid or due the United States or the state of New Mexico, royalties paid or due any Indian tribe, Indian pueblo, or Indian that is a ward of the United States of America; and the reasonable expense of trucking any product from the production unit to the first place of market. Actual price includes all receipts, whether the receipt is characterized as a payment for the product, a reimbursement for tax or other expense, a price adjustment pursuant the Taxation and Revenue Department's authority, or a payment or reimbursement for services such as sweetening, dehydration, measurement, compression, or gathering. The value determined by the department shall be commensurate with the actual price received for products of like quality, character, and use which are

[32] Numerous economic hardship-related reductions from the severance tax rate are provided under Section 7-29-4 NMSA 1978, including production from a qualified enhanced recovery project, a certified well workover project, and several categories of stripper wells that are generally triggered by specific market price conditions. These market conditions have not existed for a number of years.

severed in the same field or area. If there are no sales of products of like quality, character, and use severed in the same field or area, then the department shall establish a reasonable value. Reasonable value shall be determined when actual price is established in a transaction among affiliated persons or established at a point other than at the production unit.

Resources Excise Tax

The Resources Excise Tax (Sections 7-25-1 NMSA 1978 et seq.) is imposed for the privilege of severing and processing natural resources within New Mexico. To encourage the development of the extractive industries of this state, the imposed rates are less than of the Gross Receipts Tax.[33] The "taxable value" is the value after severing or processing, without deduction of any kind for any natural resource severed or processed in New Mexico unless otherwise authorized. It is presumed, in the absence of preponderant evidence of another value, that the taxable value means the total amount of money or the reasonable value of other consideration received for the severed or processed natural resource. However, if the amount of money received does not represent the value of the severed or processed natural resource or if the severed or processed natural resource is not sold, the taxable value shall be the reasonable value of the severed or processed natural resource. All natural resources severed or processed in New Mexico shall be included in determining taxable value, regardless of the place of sale or the fact that delivery may be made to points outside of New Mexico.

Processors Tax

For the privilege of processing natural resources, the Processors Tax (Section 7-25-5 NMSA 1978) is imposed on any processor of natural resources an excise tax at the following rates on the taxable value of the natural resources: (1) all natural resources except timber, potash, and molybdenum, 0.75 percent; (2) timber, 0.375 percent; (3) potash, 0.125 percent; and (4) molybdenum, 0.125 percent.

Resources Tax

For the privilege of severing natural resources, the Resources Tax (Section 7-25-4 NMSA 1978) is imposed at the following rates on the taxable value of the natural resources:

(1) all natural resources except potash and molybdenum, 0.75 percent;
(2) potash, 0.5 percent; and
(3) molybdenum, 0.125 percent.

Resources on which the Processors Tax has been paid are exempt from the Resources Tax.

Service Tax

For the privilege of severing or processing in New Mexico natural resources that are owned by another person (and are not otherwise taxed under the Resources Tax or Processors Taxes), the Service Tax (Section 7-25-6 NMSA 1978) is imposed on the service charge of any person severing or processing natural resources that are owned by another person an excise tax at the same rate that would be imposed on an owner of natural resources for performing the same function.

[33] Carter & Sons, Inc. v. New Mexico Bureau of Revenue, 92 N.M. 591, 592 P.2d 191 (Ct. App. 1979).

Severance Tax

For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax (Sections 7-26-1 NMSA 1978 et seq.) on the taxable value or the quantity of natural resources severed and saved by or for him. For all natural resources,[34] the gross value of the natural resource is the sales value of the severed and saved product at the first marketable point without any deductions, except that:

(1) for those products having a posted field or market price at the point of production, the gross value is its posted field or market price; and
(2) for those products that must be processed or beneficiated before sale, the gross value is the sales value after deducting freight charges from the point of severance to the point of first sale and the cost of processing or beneficiation.

The taxable value of all severed natural resources (except coal and uranium) is the gross value of the severed resource less rental or royalty payments belonging to the United States or the state.

The Severance Tax on *potash* (or potash products) is imposed as 2.5 percent of taxable value, which shall be 33 1/3 percent of the proceeds realized from the sale or value of products consumed in the production of potash products, less 50 percent of such reported value as a deduction for expenses of hoisting, loading, crushing, processing, and beneficiation.

The Severance Tax on *molybdenum* (and molybdenum products requiring processing or beneficiation) shall be at a rate of 0.125 percent of the value of molybdenum contained in concentrates shipped or sold from a mine site, but in no event a value less than the value that bona fide sales which reflect current market conditions would yield for the same quantity of molybdenum products contained in concentrates at the mine site, less 50 percent of that value as a deduction for the expenses of hoisting, loading, crushing, processing, and beneficiation.

The Severance Tax on the gross value for *copper* at a rate of 0.5 percent, and *lead* and *zinc* at a rate of 0.125 percent of 66 2/3 percent of the sales value established from published price data, less 50 percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing, and beneficiation. The taxable event occurs when the severer sells copper, lead, or zinc in New Mexico or when the severer ships, transmits, or transports copper, lead, or zinc out of New Mexico without first making sale of the resource.

The Severance Tax for *gold* and *silver* is at a rate of 0.2 percent of the taxable value of the severed resource. The taxable value for *gold* shall be the sales value established from published price data, less 50 percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. The taxable value for *silver* shall be 80 percent of the sales value established from published price data, less 50 percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing, and beneficiation. The taxable event occurs when the severer sells gold or

[34] Except as otherwise provided for potash, molybdenum, copper, lead, zinc, gold, silver, coal, and uranium.

silver in New Mexico or when the severer ships, transmits, or transports gold or silver out of New Mexico without first making sale of the resource.

The severance tax on *uranium* is measured by the quantity of U_3O_8 contained in and recoverable from severed and saved uranium-bearing material whether that material is ore or solution, at a rate equal to 3.5 percent of taxable value. The taxable value to be reported for severed and saved uranium-bearing material is 50 percent of the sales price per pound of the content of U_3O_8 contained in the severed and saved or processed uranium, regardless of the form in which the product is actually disposed. The taxable event is the sale, transportation out of New Mexico, or consumption of the uranium-bearing material, whichever first occurs

The severance tax on *sand, gravel, clay, fluorspar,* and *other nonmetallic minerals* is 0.125 percent of gross value, and in the absence of substantial evidence of a different posted field or market price for sand and gravel, it is presumed that the gross value of sand and gravel is $1.75 per ton. In the absence of evidence of lower deductible expenses, the maximum 50 percent deduction will be allowed.

The severance tax on *coal* is for surface coal, $0.57; and for underground coal, $0.55 per short ton (2,000 pounds) of coal severed and saved. The severance tax on coal shall be increased by a surtax at the rates of $0.60 per short ton for surface coal and $0.58 per short ton for underground coal. The surtax rate on coal is increased on July 1 each year by a price inflation amount determined by the percentage rise in the producer price index for coal, but in no case shall the surtax rate be decreased by such annual adjustment.

Property Tax

A tax is imposed upon all property subject to valuation for property taxation purposes under Article 36 of Chapter 7 NMSA 1978. The tax shall be imposed at the rates authorized and in the manner and for the purposes provided by statute. The tax rates specified by statute are the maximum rates that may be set by DFA for the use of the stated governmental units for the stated purposes. The following tax rates for the indicated purposes are the maximum tax rates authorized:

(1) for the use of each county for general purposes, a rate of $11.85 for each $1,000 of net taxable value of both residential and nonresidential property allocated to the county;
(2) for the use of each school district for general operating purposes, a rate of $.50 for each $1,000 of net taxable value of both residential and nonresidential property allocated to the school district; and
(3) for the use of each municipality for general purposes for the 1987 and subsequent property tax years, a rate of $7.65 for each $1,000 of net taxable value of both residential and nonresidential property allocated to the municipality.

In addition, there are also authorized:

(1) those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the indicated governmental units for the stated purpose of paying principal and interest on a public general obligation debt incurred under those provisions of law;

(2) those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the governmental units indicated in those provisions, are for the stated purposes authorized by those provisions, and have been approved by the voters of the governmental unit in the manner required by law;
(3) those rates or impositions necessary for the use of a governmental unit to pay a tort or workers' compensation judgment for which a county, municipality, or school district is liable, but, except as provided in Paragraph (4) of this subsection, no rate or imposition shall be authorized to pay any judgment other than one arising from a tort or workers' compensation claim; and
(4) those rates or impositions ordered by a court pursuant to Section 22-24-5.5 NMSA 1978 and for the use of a school district to pay a judgment pursuant to that section.

Appendix A-2: Distribution of Tax Revenues to Beneficiaries by Tax Program

Appendix A-2: Distribution of Revenue to Beneficiaries by Tax Program

Tax Program/Beneficiary	Statute	Distribution
Corporate Income and Franchise Tax		
– General Fund	7-1-6.1	100% of net receipts.
Personal Income Tax		
– General Fund	7-1-6.1	100% of net receipts.
Withholding Tax		
– General Fund*	7-1-6.1	Withholding revenues are treated as credit against Personal Income Tax liability.
Oil and Gas Proceeds and PTE Withholding Tax		
– General Fund*	7-1-6.1	Withholding revenues are treated as credit against Personal Income Tax liability.
Compensating Tax		
– Small Cities Assistance Fund.	7-1-6.2	10% of net receipts.
– Small Counties Assitance Fund	7-1-6.5	10% of net receipts.
– Municipal Governments	7-1-6.55	~ 8% of net receipts.
– General Fund	7-1-6.1	The balance of net receipts is distributed to the General Fund.
Gross Receipts Tax		
– Municipal Governments	7-1-6.4	23.9% of GRT generated within the boundaries of a municipality is distributed to that municipality.
– State Aviation Fund.	7-1-6.7	4.79% times taxable gross receipts from jet fuel.
– State Aviation Fund.	7-1-6.7	0.046% of net Gross Receipts Tax receipts.
– State Aviation Fund.	7-1-6.7	$250,000/month from Gross Receipts Tax receipts.
– State Building Fund	7-1-6.42	$530,000/month from Gross Receipts Tax receipts.
– Energy Efficiency and Renewable Energy Bonding Fund	7-1-6.53	Some portion of Gross Receipts Tax receipts.
– Tax increment development districts.	7-1-6.54	Tax increment from Gross Receipts Tax receipts.
– General Fund	7-1-6.1	The balance of net receipts is distributed to the General Fund.

Distributions as of July 1, 2013
2013 New Mexico Tax Expenditure Report

Appendix A-2: Distribution of Revenue to Beneficiaries by Tax Program

Tax Program/Beneficiary	Statute	Distribution
Municipal Local Option Gross Receipts Tax		
– Municipal Governments	7-1-6.12	96.75% of net receipts.
– General Fund	7-1-6.41	3.25% administrative fee is retained for use by the Taxation and Revenue Department.
Interstate Telecommunications Gross Receipts Tax		
– Municipal Governments	7-1-6.36	36.47% of ITGRT generated within the boundaries of a municipality is distributed to that municipality.
– General Fund	7-1-6.1	The balance of net receipts is distributed to the General Fund.
Governmental Gross Receipts Tax		
– New Mexico Finance Authority	7-1-6.38	75% of net receipts.
– Environment, Minerals and Natural Resources Dept.	7-1-6.38	24% of net receipts.
– Office of Cultural Affairs	7-1-6.38	1% of net receipts.
Property Tax		
– State Debt Obligations	7-38-43	~5.5% of net receipts.
– Municipal Governments	7-38-43	~8.25% of net receipts.
– County Governments	7-38-43	~35.75% of net receipts
– School Districts	7-38-43	~35.25% of net receipts
– Other Distributions	7-38-43	~15.25% of net receipts.

Distributions as of July 1, 2013
2013 New Mexico Tax Expenditure Report

Appendix A-2: Distribution of Revenue to Beneficiaries by Tax Program

Tax Program/Beneficiary	Statute	Distribution
Alternative Fuel Tax		
– State Road Fund.	7-1-6.10	100% of net receipts.
Weight Distance Tax		
– State Road Fund.	7-1-6.10	100% of net receipts.
Motor Vehicle Excise Tax		
– General Fund	7-14-10	100% of net receipts.
Leased Vehicle Gross Receipts Tax		
– Local Governments Road Fund	7-14A-10	25% of net receipts.
– Highway Infrastructure Fund	7-14A-10	75% of net receipts.
Leased Vehicle Surcharge		
– General Fund	7-1-6.1	100% of net receipts.
Cigarette Tax		
– UNM Health Services Center	7-1-6.11	0.83% of net receipts.
– New Mexico Finance Authority	7-1-6.11	1.25% of net receipts.
– New Mexico Finance Authority	7-1-6.11	8.89% of net receipts.
– New Mexico Finance Authority	7-1-6.11	3.74% of net receipts.
– New Mexico Finance Authority	7-1-6.11	9.77% of net receipts.
– New Mexico Finance Authority	7-1-6.11	0.62% of net receipts.
– General Fund	7-1-6.1	The balance of net receipts is distributed to the General Fund.
Tobacco Products Tax		
– General Fund	7-1-6.1	100% of net receipts.

Distributions as of July 1, 2012
2012 New Mexico Tax Expenditure Report

Appendix A-2: Distribution of Revenue to Beneficiaries by Tax Program

Tax Program/Beneficiary	Statute	Distribution
Liquor Excise Tax		
– DWI Grant Fund	7-1-6.40	41.5% of net receipts.
– Municipalities	7-1-6.40	$20,750/month is distributed to qualified municipalities.
– General Fund	7-1-6.1	The balance of net receipts is distributed to the General Fund.
Local Liquor Excise Tax		
– Municipalities	7-24-10.1	95% of net receipts.
– General Fund	7-24-15	5% administrative fee is retained for use by the Taxation and Revenue Department.
Gaming Tax		
– General Fund	7-1-6.1	100% of net receipts.
Insurance Premium Tax and Health Insurance Premium Surtax		
– Law Enforcement Protection Fund	39-13-3	10% of all fees, licenses, penalties and taxes from life, general casualty and title insurance, except for Health insurance premium surtax.
– Public Election Fund	1-19A-10	$100,000 from insurance premium tax collections
– Fire Protection Fund	59A-6-5	100% of receipts attributable to property and vehicle insurance business.
– General Fund	59A-6-5	The balance of net receipts is distributed to the General Fund.
Natural Gas Processors Tax		
– General Fund	7-1-6.20	100% of net receipts.
Resources Excise Tax		
– General Fund	7-1-6.20	100% of net receipts.

Appendix A-2: Distribution of Revenue to Beneficiaries by Tax Program

Tax Program/Beneficiary	Statute	Distribution
Oil and Gas Conservation Tax		
– Oil and Gas Reclamation Fund.	7-1-6.21	19.7% of net receipts.
– General Fund	7-1-6.20	The balance of net receipts is distributed to the General Fund.
Oil and Gas Ad Valorem Production Tax		
– Oil and Gas Production Tax Fund	7-1-6.22	100% of net receipts.
Oil and Gas Production Equipment Ad Valorem Tax		
– Oil and Gas Equipment Tax Fund	7-1-6.22	100% of net receipts.
Copper Production Ad Valorem Tax		
– Copper Production Tax Fund	7-1-6.22	100% of net receipts.
Severance Tax		
– Severance Tax Bonding Fund.	7-1-6.23	100% of net receipts.
Oil and Gas Severance Tax		
– Severance Tax Bonding Fund.	7-1-6.23	100% of net receipts.
Oil and Gas Emergency School Tax		
– General Fund	7-1-6.20	100% of net receipts.

Distributions as of July 1, 2012
2012 New Mexico Tax Expenditure Repor

Appendix A-3: Executive Order 2011-071

State of New Mexico

Susana Martinez
Governor

EXECUTIVE ORDER 2011-071

REQUIRING PREPARATION OF AN ANNUAL TAX EXPENDITURE BUDGET

WHEREAS, New Mexico's tax code contains provisions that reduce tax liability for qualifying taxpayers.

WHEREAS, these provisions have the effect of reducing state revenues and are thus equivalent to spending programs. For this reason they are referred to as "tax expenditures."

WHEREAS, aggregate foregone revenue through tax expenditures comprises a substantial component of total state spending.

WHEREAS, the state does not currently have a systematic means of reporting on these expenditures and of analyzing whether they meet their intended objectives.

WHEREAS, many exemptions, deductions and exclusions in the tax code are not tax expenditures but rather are needed to properly define the tax base and to prevent double taxation. These provisions should not be considered tax expenditures.

NOW THEREFORE, I, Susana Martinez, Governor of the State of New Mexico, by authority vested in me by the Constitution of the State of New Mexico and by its statutes, do hereby ORDER and DIRECT:

An annual tax expenditure budget will be prepared as a joint product of the executive branch agencies. The Taxation and Revenue Department will be the lead agency in preparation of the budget, with assistance from the Department of Finance and Administration, the Economic Development Department, the Energy, Minerals and Natural Resources Department, the Environment Department, the Department of Health and other executive branch agencies.

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The tax expenditure budget will explain the difference between tax expenditures and other exemptions, deductions and exclusions that are needed to properly define the tax base. The latter will not be included in the tax expenditure report.

The tax expenditure budget will include information on the statutory basis for each tax expenditure including an analysis of the intended purpose of the statute.

The tax expenditure budget will include an evaluation of whether each provision is achieving its intended purpose. If such information is not available, the tax expenditure budget will recommend means by which such information might be collected without violating taxpayer confidentiality.

The tax expenditure budget will include estimates of the cost effectiveness of each provision in achieving its intended purpose. If such information is not available, the tax expenditure budget will recommend means by which such information might be collected without violating taxpayer confidentiality.

The tax expenditure budget will include estimates of the revenue foregone due to each provision, including state general fund, other state funds and local government revenues.

The tax expenditure budget will make recommendations for how to improve statutory provisions when they are found to not be achieving their purpose in a cost effective manner.

THIS ORDER supersedes any other previous orders, proclamations or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until such time as the Governor rescinds it.

SIGNED AT THE EXECUTIVE OFFICE
THIS 9TH DAY OF AUGUST 2011.

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO.

SUSANA MARTINEZ
GOVERNOR

ATTEST

DIANNA J. DURAN
SECRETARY OF STATE