Revenue Options

From the *Final Report* of
Governor Richardson's Budget Balancing Task Force
December 21, 2010

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Gross Receipts Tax Overview

DESCRIPTION: The gross receipts tax was first levied in 1934 (as the emergency school tax) as a temporary measure to keep the schools open; it was made permanent in 1935. The tax applied to almost all business sectors, including services. This contrasted markedly with other early-adopter states, like Mississippi, which taxed only sales of tangible goods. In 1966, the tax was reorganized and renamed as the gross receipts tax.

The gross receipts tax generally attaches to the transaction in which the good or service leaves the stream of commerce. A general problem with this design is that the gross receipts tax applies to many intermediate transactions, particularly those involving services; this is called "pyramiding".

BASE: New Mexico's gross receipts tax is imposed on the gross receipts of persons engaging in business in New Mexico with receipts from:

- the sale of property in New Mexico;
- the lease or licensing of property employed in New Mexico;
- granting a right to use a franchise employed in New Mexico;
- selling services performed outside New Mexico, the product of which is initially used in New Mexico (research & development); or
- performing services in New Mexico.

"Property" includes real property, tangible personal property, franchises and licenses (other than licenses of copyrights, trademarks or patents). "Tangible personal property" includes electricity and manufactured homes.
Exemptions: receipts from wages, insurance premiums, dividends and interest, and isolated and occasional transactions.

Taxability of Receipts to the Final Consumer
Individuals - Receipts from sales to an individual end user are generally subject to gross receipts tax with the exception of the following major deductions and exemptions: receipts from the sale of food; receipts from the provision of most medical services and prescription drugs; and receipts from the sale of gasoline and motor vehicles (subject to separate taxes).

Governments and Nonprofits
Receipts from the performance of services for the government or a 501(c)(3) organization are subject to gross receipts tax, but receipts from the sale of tangible personal property to the government or a 501(c)(3) organization are deductible.

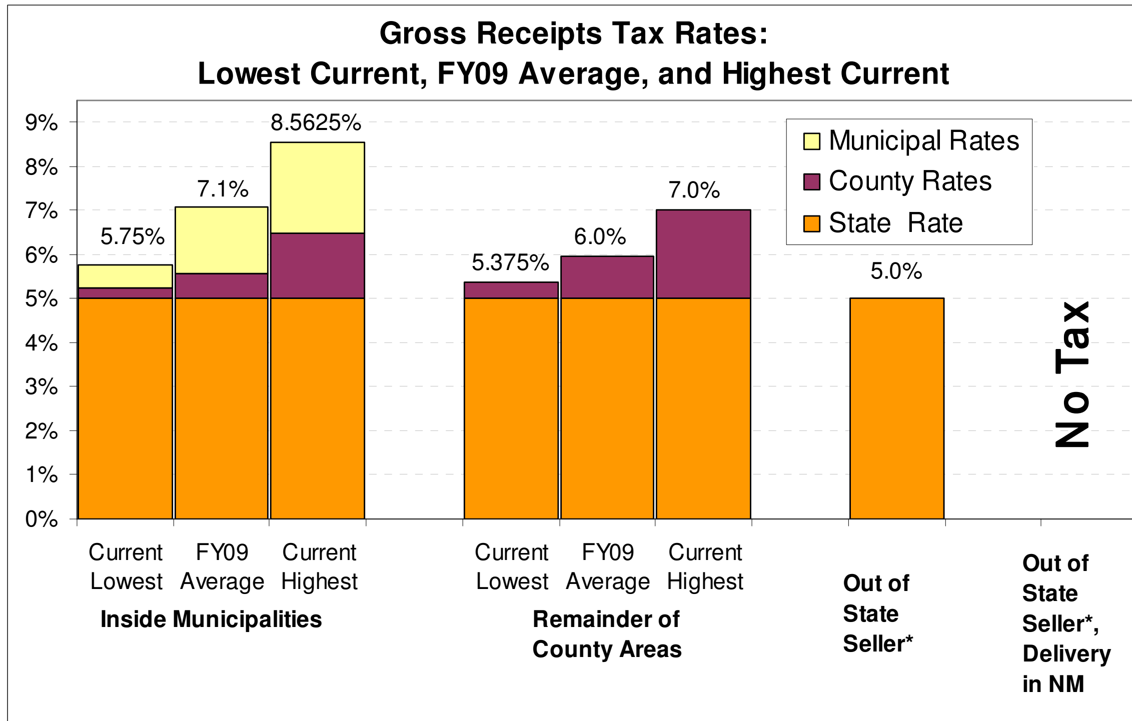
Business to Business - Receipts from sales to other businesses may qualify for various resale deductions created to address pyramiding, the following are some examples: services for resale; construction services and materials incorporated into a construction project; and manufacturing services performed on a manufactured product and materials incorporated into a manufactured product

Note: The tax base (with two small exceptions) for all the state-administered tribal gross receipts taxes and the county and municipal local option taxes is the same as the state's.

RATE: The total gross receipts tax rate is made up of the State rate along with county and municipal local option gross receipts taxes for any in-state locations. The State rate has been 5% since July 1, 1990, when it was increased from 4.75%. Prior to January 1, 2005, a credit of 0.5% was allowed against the state rate for municipal option taxes.

New Mexico's weighted average gross receipts tax rates in FY09 were:

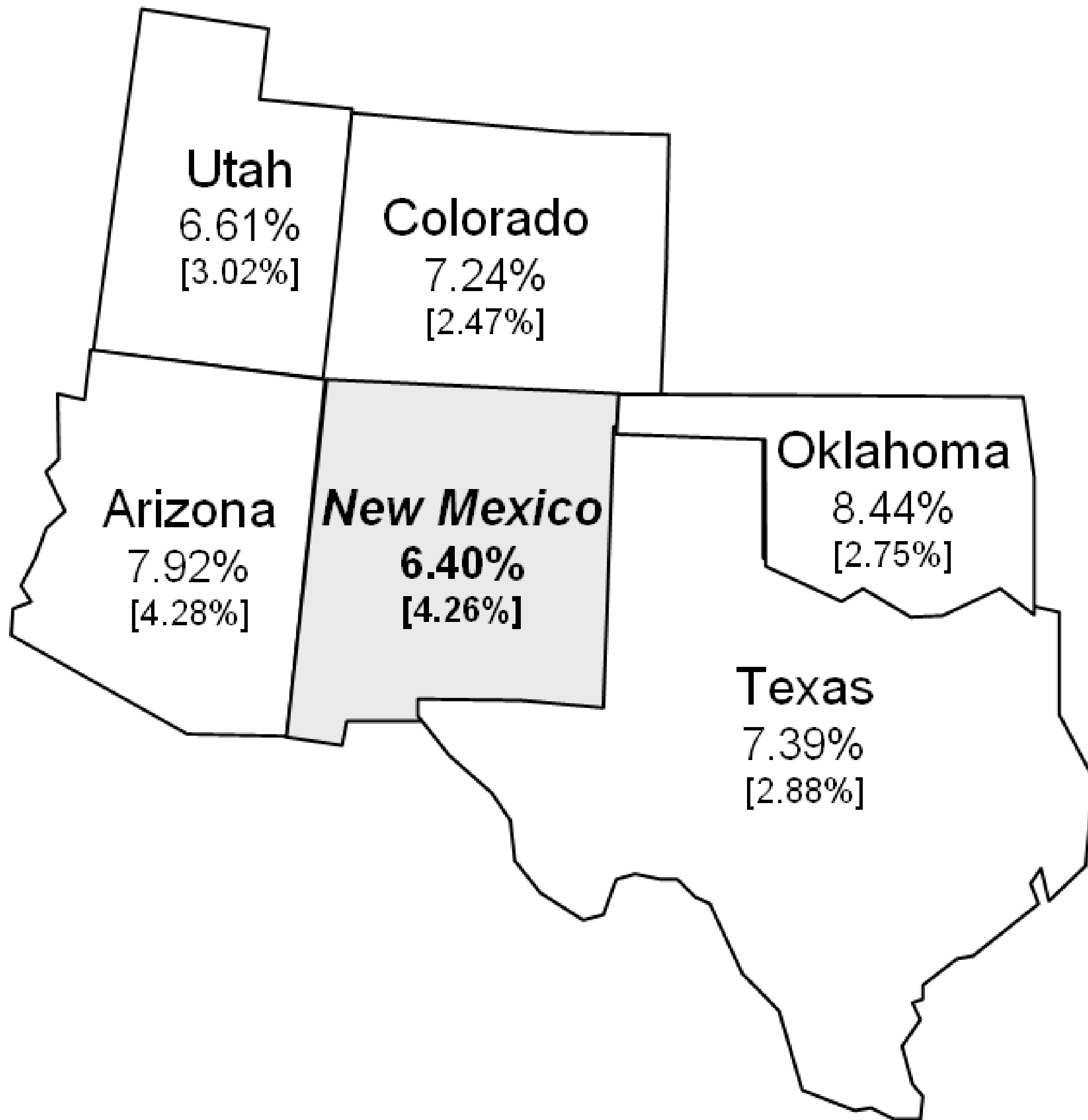
- 7.1% inside municipalities
- 6.0% remainder of county areas
- 6.7% statewide (including out-of-state locations)



* Seller without nexus in New Mexico

RATES IN OTHER STATES: The map on the following page shows for New Mexico and surrounding states the average combined state and local sales tax rate (the top percentages) and total state and local general sales tax revenue as a percentage of personal income (the bottom **[**Bracketed**]** percentages).

The table following the map shows that New Mexico's average tax rate is the 28th highest out of the 46 states with a sales tax. However, New Mexico ranks fifth highest in terms of sales tax revenue as a percent of personal income, a result of both the relatively low level of personal income in New Mexico and the broad base of New Mexico's gross receipts tax.


Utah
6.61%
[3.02%]
Colorado
7.24%
[2.47%]
Arizona
7.92%
[4.28%]
New Mexico
6.40%
[4.26%]
Oklahoma
8.44%
[2.75%]
Texas
7.39%
[2.88%]

States Ranked Alphabetically

State	Combined Average Sales Tax Rate		Revenue as a % of Personal Income	
	Rate	Rank	Percent	Rank
Alabama	6.15%	31	2.65%	19
Alaska	1.13%	47	0.64%	47
Arizona	7.92%	9	4.28%	4
Arkansas	7.79%	10	4.23%	6
California	9.06%	2	2.66%	18
Colorado	7.24%	13	2.47%	23
Connecticut	6.00%	32	1.56%	42
Delaware	none	n/a	none	n/a
Dist. of Columbia	6.00%	40	2.23%	32
Florida	7.01%	18	3.39%	10
Georgia	7.02%	17	3.00%	14
Hawaii	4.38%	46	4.89%	1
Idaho	6.00%	33	2.60%	20
Illinois	8.40%	6	1.71%	41
Indiana	7.00%	19	2.54%	22
Iowa	6.94%	24	2.18%	33
Kansas	6.95%	23	2.90%	15
Kentucky	6.00%	34	2.13%	35
Louisiana	8.43%	5	4.55%	3
Maine	5.00%	44	2.29%	30
Maryland	6.00%	35	1.30%	45
Massachusetts	6.25%	29	1.26%	46
Michigan	6.00%	36	2.32%	28
Minnesota	7.22%	14	2.10%	36
Mississippi	7.00%	20	3.66%	9
Missouri	7.18%	15	2.42%	25
Montana	none	n/a	none	n/a
Nebraska	6.51%	27	2.59%	21
Nevada	7.59%	11	3.36%	11

States Ranked by Combined State and Local Average Sales Tax Rate (1)

State	Combined Average Sales Tax Rate		Revenue as a % of Personal Income	
	Rate	Rank	Percent	Rank
Tennessee	9.41%	1	4.01%	7
California	9.06%	2	2.66%	18
Washington	8.78%	3	4.83%	2
Oklahoma	8.44%	4	2.75%	17
Louisiana	8.43%	5	4.55%	3
Illinois	8.40%	6	1.71%	41
New York	8.30%	7	2.38%	26
North Carolina	8.07%	8	2.25%	31
Arizona	7.92%	9	4.28%	4
Arkansas	7.79%	10	4.23%	6
Nevada	7.59%	11	3.36%	11
Texas	7.39%	12	2.88%	16
Colorado	7.24%	13	2.47%	23
Minnesota	7.22%	14	2.10%	36
Missouri	7.18%	15	2.42%	25
South Carolina	7.04%	16	2.37%	27
Georgia	7.02%	17	3.00%	14
Florida	7.01%	18	3.39%	10
Indiana	7.00%	19	2.54%	22
Mississippi	7.00%	20	3.66%	9
New Jersey	7.00%	21	1.98%	39
Rhode Island	7.00%	22	2.07%	38
Kansas	6.95%	23	2.90%	15
Iowa	6.94%	24	2.18%	33
Ohio	6.83%	25	2.32%	29
Utah	6.61%	26	3.02%	13
Nebraska	6.51%	27	2.59%	21
New Mexico	**6.40%**	**28**	**4.26%**	**5**
Massachusetts	6.25%	29	1.26%	46

States Ranked by Sales Tax Revenue as a Percent of Total Statewide Personal Income (2)

State	Combined Average Sales Tax Rate		Revenue as a % of Personal Income	
	Rate	Rank	Percent	Rank
Hawaii	4.38%	46	4.89%	1
Washington	8.78%	3	4.83%	2
Louisiana	8.43%	5	4.55%	3
Arizona	7.92%	9	4.28%	4
New Mexico	**6.40%**	**28**	**4.26%**	**5**
Arkansas	7.79%	10	4.23%	6
Tennessee	9.41%	1	4.01%	7
Wyoming	5.38%	43	3.76%	8
Mississippi	7.00%	20	3.66%	9
Florida	7.01%	18	3.39%	10
Nevada	7.59%	11	3.36%	11
South Dakota	5.52%	41	3.34%	12
Utah	6.61%	26	3.02%	13
Georgia	7.02%	17	3.00%	14
Kansas	6.95%	23	2.90%	15
Texas	7.39%	12	2.88%	16
Oklahoma	8.44%	4	2.75%	17
California	9.06%	2	2.66%	18
Alabama	6.15%	31	2.65%	19
Idaho	6.00%	33	2.60%	20
Nebraska	6.51%	27	2.59%	21
Indiana	7.00%	19	2.54%	22
Colorado	7.24%	13	2.47%	23
North Dakota	6.00%	37	2.44%	24
Missouri	7.18%	15	2.42%	25
New York	8.30%	7	2.38%	26
South Carolina	7.04%	16	2.37%	27
Michigan	6.00%	36	2.32%	28
Ohio	6.83%	25	2.32%	29

States Ranked Alphabetically				
	Combined Average Sales Tax Rate		Revenue as a % of Personal Income	
State	Rate	Rank	Percent	Rank
New Hampshire	none	n/a	none	n/a
New Jersey	7.00%	21	1.98%	39
New Mexico	**6.40%**	**28**	**4.26%**	**5**
New York	8.30%	7	2.38%	26
North Carolina	8.07%	8	2.25%	31
North Dakota	6.00%	37	2.44%	24
Ohio	6.83%	25	2.32%	29
Oklahoma	8.44%	4	2.75%	17
Oregon	none	n/a	none	n/a
Pennsylvania	6.22%	30	1.83%	40
Rhode Island	7.00%	22	2.07%	38
South Carolina	7.04%	16	2.37%	27
South Dakota	5.52%	41	3.34%	12
Tennessee	9.41%	1	4.01%	7
Texas	7.39%	12	2.88%	16
Utah	6.61%	26	3.02%	13
Vermont	6.00%	38	1.45%	43
Virginia	5.00%	45	1.41%	44
Washington	8.78%	3	4.83%	2
West Virginia	6.00%	39	2.07%	37
Wisconsin	5.42%	42	2.15%	34
Wyoming	5.38%	43	3.76%	8

States Ranked by Combined State and Local Average Sales Tax Rate (1)				
	Combined Average Sales Tax Rate		Revenue as a % of Personal Income	
State	Rate	Rank	Percent	Rank
Pennsylvania	6.22%	30	1.83%	40
Alabama	6.15%	31	2.65%	19
Connecticut	6.00%	32	1.56%	42
Idaho	6.00%	33	2.60%	20
Kentucky	6.00%	34	2.13%	35
Maryland	6.00%	35	1.30%	45
Michigan	6.00%	36	2.32%	28
North Dakota	6.00%	37	2.44%	24
Vermont	6.00%	38	1.45%	43
West Virginia	6.00%	39	2.07%	37
Dist. of Columbia	6.00%	40	2.23%	32
South Dakota	5.52%	41	3.34%	12
Wisconsin	5.42%	42	2.15%	34
Wyoming	5.38%	43	3.76%	8
Maine	5.00%	44	2.29%	30
Virginia	5.00%	45	1.41%	44
Hawaii	4.38%	46	4.89%	1
Alaska	1.13%	47	0.64%	47
Delaware	none	n/a	none	n/a
Montana	none	n/a	none	n/a
New Hampshire	none	n/a	none	n/a
Oregon	none	n/a	none	n/a

States Ranked by Sales Tax Revenue as a Percent of Total Statewide Personal Income (2)				
	Combined Average Sales Tax Rate		Revenue as a % of Personal Income	
State	Rate	Rank	Percent	Rank
Maine	5.00%	44	2.29%	30
North Carolina	8.07%	8	2.25%	31
Dist. of Columbia	6.00%	40	2.23%	32
Iowa	6.94%	24	2.18%	33
Wisconsin	5.42%	42	2.15%	34
Kentucky	6.00%	34	2.13%	35
Minnesota	7.22%	14	2.10%	36
West Virginia	6.00%	39	2.07%	37
Rhode Island	7.00%	22	2.07%	38
New Jersey	7.00%	21	1.98%	39
Pennsylvania	6.22%	30	1.83%	40
Illinois	8.40%	6	1.71%	41
Connecticut	6.00%	32	1.56%	42
Vermont	6.00%	38	1.45%	43
Virginia	5.00%	45	1.41%	44
Maryland	6.00%	35	1.30%	45
Massachusetts	6.25%	29	1.26%	46
Alaska	1.13%	47	0.64%	47
Delaware	none	n/a	none	n/a
Montana	none	n/a	none	n/a
New Hampshire	none	n/a	none	n/a
Oregon	none	n/a	none	n/a

(1) "Sales Tax: Combined State and Average Local Rates" as of September 29, 2009; Tax Foundation; www.TaxFoundation.org.
Note: Tax rates within each state are not averaged using a weighting of sales tax revenue from each location but an aproximate weighted average is calculated using personal income levels and sales tax rates in correspondeding zip codes.

(2) State & Local Government Finance Data Query System. http://www.taxpolicycenter.org/tpc/pages.cfm. The Urban Institute-Brookings Institution Tax Policy Center. Data from U.S. Census

RECEIPTS

(millions of dollars)

	Fiscal Year 2004	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009
Receipts to Local Governments	894	1,010	1,171	1,287	1,345	1,323
Receipts to General Fund and other State Funds	1,431	1,528	1,707	1,856	1,881	1,855
Total Receipts	**2,325**	**2,538**	**2,878**	**3,143**	**3,226**	**3,208**

COMPENSATING TAX OVERVIEW

DESCRIPTON: Every state that levies a general sales or gross receipts tax also imposes a companion tax, usually named a use or compensating tax. The idea is to protect instate businesses from untaxed competition from out-of-state vendors.

BASE: Tax is imposed on the buyer for using, consuming or, in some cases, storing tangible personal property in New Mexico. Tax base measured by the value of the property (at the time of introduction into New Mexico or use, whichever is later) of property: manufactured by the person using the property; or acquired outside the state as the result of a transaction that would have been subject to the gross receipts tax if the transaction had occurred in New Mexico (***Dell*** decision issue). Note that unlike the gross receipts tax, compensating tax does not apply to use of services or intangible personal property.

New Mexico also uses the compensating tax as a penalty when a buyer violates the conditions of a gross receipts deduction. This is the only circumstance in which a transaction involving services can be subject to the compensating tax.

Generally the same exemptions and deductions apply as under the gross receipts tax rate. Contributions of inventory to certain charitable organizations or governments may be deducted.

RATE: The tax rate is a uniform 5%, which matches the state gross receipts tax rate. No local option rates apply.

PAYMENT DUE: On or before the 25th day of the month following the month in which the taxable transaction occurs.

COLLECTED BY: The Taxation and Revenue Department.

DISPOSITION: Deposited in the tax administration suspense fund at the state treasury. After necessary refunds and interest are paid, 10% of receipts are distributed to the small cities assistance fund, 10% of receipts are distributed to the small counties assistance fund, a portion by formula to municipalities and the remainder is transferred to the general fund.

Discussion Draft

RECEIPTS

(thousands of dollars)

	Fiscal Year 2004	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009
Local Governments	8,412.7	10,836.7	12,909.9	14,916.5	16,611.0	20,003.4
General Fund	33,650.6	43,346.7	51,639.5	59,665.9	65,184.2	69,928.0
Total Receipts	**42,063.3**	**54,183.3**	**64,549.4**	**74,582.4**	**81,795.2**	**89,931.3**

OPTION 1

INCREASE GROSS RECEIPTS AND COMPENSATING TAX RATE

Description

The State gross receipts tax rate is currently 5.0%. Additional municipal and county local option gross receipts tax rates bring the average rate to 7.1% inside municipalities and 6.0% outside of municipalities (remainder of county areas). The compensating tax rate is the same as the State gross receipts tax rate, 5.0%. The interstate telecommunications gross receipts tax rate is 4.25%, and the governmental gross receipts tax rate is 5.0%.

This option would increase the State gross receipts tax (GRT), compensating tax (Comp), interstate telecommunications gross receipts tax (ITGRT), and governmental gross receipts tax (GGRT) rates with all increased revenue accruing to the State General Fund (all options effective July 1, 2010).

Option 1a: Increase all rates 0.25%.

Option 1b: Increase all rates 0.5%.

Option 1c: Increase all rates 1.0%.

Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	
Option 1a. 0.25%							
GRT	0	114,762	121,074	127,370	132,974	496,179	
Comp	0	3,941	4,158	4,374	4,567	17,040	
GGRT	0	1,453	1,533	1,613	1,684	6,284	
ITGRT	0	204	215	226	236	882	
Total	**0**	**120,360**	**126,980**	**133,583**	**139,461**	**520,385**	**General Fund**
Option 1b. 0.5%							
GRT	0	229,524	242,148	254,739	265,948	992,359	
Comp	0	7,882	8,316	8,748	9,133	34,079	
GGRT	0	2,907	3,067	3,226	3,368	12,567	
ITGRT	0	408	431	453	473	1,765	
Total	**0**	**240,721**	**253,961**	**267,166**	**278,922**	**1,040,770**	**General Fund**
Option 1c. 1.00%							
GRT	0	459,048	484,295	509,479	531,896	1,984,717	
Comp	0	15,764	16,631	17,496	18,266	68,158	
GGRT	0	5,813	6,133	6,452	6,736	25,135	
ITGRT	0	816	861	906	946	3,529	
Total	**0**	**481,442**	**507,921**	**534,333**	**557,844**	**2,081,540**	**General Fund**

Discussion Draft

Effects of Option

- Option 1a would increase New Mexico's ranking from 28th highest to 26th highest of the 46 states with a sales taxes.[1]
- Option 1b would increase New Mexico's ranking from 28th highest to 25th highest.
- Option 1c would increase New Mexico's ranking from 28th highest to 12th highest.

Pros

- This option would be simple to implement and has minimal administrative and compliance costs.
- This option could quickly raise a very large amount of revenue.
- The gross receipts and compensating taxes have a broad base, with a sizeable portion of the taxes imposed on sales to nonresidents, and are more stable sources of revenue than severance or income tax revenues.
- There is generally broader public acceptance of reliance on these taxes than on other major taxes.

Cons

- Pyramiding, the imposition of gross receipts tax on business purchases that will be taxed again on business sales, causes economic distortions that would be exacerbated by any increase in the rate.
    - These economic distortions reduce business activity and incomes in New Mexico, and increase exponentially with increases in the tax rate.
- Increasing the rate would discourage some businesses from locating or expanding in New Mexico.
- Raising the gross receipts tax rate without any other changes to New Mexico's overall tax system, such as Option 6, would make the tax structure more regressive.

Discussion Draft

[1] "Sales Tax: Combined State and Average Local Rates" as of September 29, 2009; Tax Foundation; www.TaxFoundation.org. Note: These are based on mean average rates of all possible locations for each state and are not weighted average rates. Further, New Mexico's ranking will be affected by actions in other states.

OPTION 2

INCREASE GROSS RECEIPTS TAX RATE WITH CREDIT FOR LOCAL OPTION RATES

Description

The State gross receipts tax rate is currently 5.0%. Additional municipal and county local option gross receipts tax rates bring the average rate to 7.1% inside municipalities and 6.0% outside of municipalities in the remainder of county areas.

This option would increase the State gross receipts tax rate by 1.0% to 6.0%, provide a credit inside municipalities of 0.75% for municipal local options and 0.25% for county options and provide a credit in remainder of county areas (outside municipalities) of 0.5% for county local options. The combined effect of the rate increase and the credits would be no change to rates inside municipalities, a 0.5% higher rate in remainder of county areas, and a 1.0% higher rate on out-of-state purchases. Taxpayers would continue to report and pay gross receipts tax based on the total combined State and local option tax rate net of the new rate credits.

Albuquerque can serve as an example of how the option would work. The current total rate in Albuquerque is 6.875%, which is made up of the 5.0% State rate, 1.0625% municipal local option rates, and 0.8125% county local option rates. The option would increase the State rate to 6.0% but provide a 0.75% credit against the municipal local options and a 0.25% credit against the county local options. Therefore, taxpayers in Albuquerque would pay the same total rate of 6.875% under the option as they do under current law. In the remainder of Bernalillo County the total rate is currently 5.9375%, made up of the 5.0% State rate and 0.9375% county local option rates. The option would increase the State rate to 6.0% but provide a 0.5% credit against the county local option rates. Therefore, the combined tax rate in the remainder of Bernalillo county net of the credit would increase by 0.5% to 6.4375% under the option. Sales made in Albuquerque by vendors with sufficient New Mexico nexus but no in-state business location would be taxed at the new out-of-state gross receipts tax rate of 6.0%, a 1.0% increase from the current 5.0% rate.

This option would also increase the Compensating, Governmental Gross Receipts, and Interstate Telecommunications Gross Receipts tax rates by 1.0% with all increased revenue from these taxes going to the General Fund.

Effective Date: July 1, 2010.

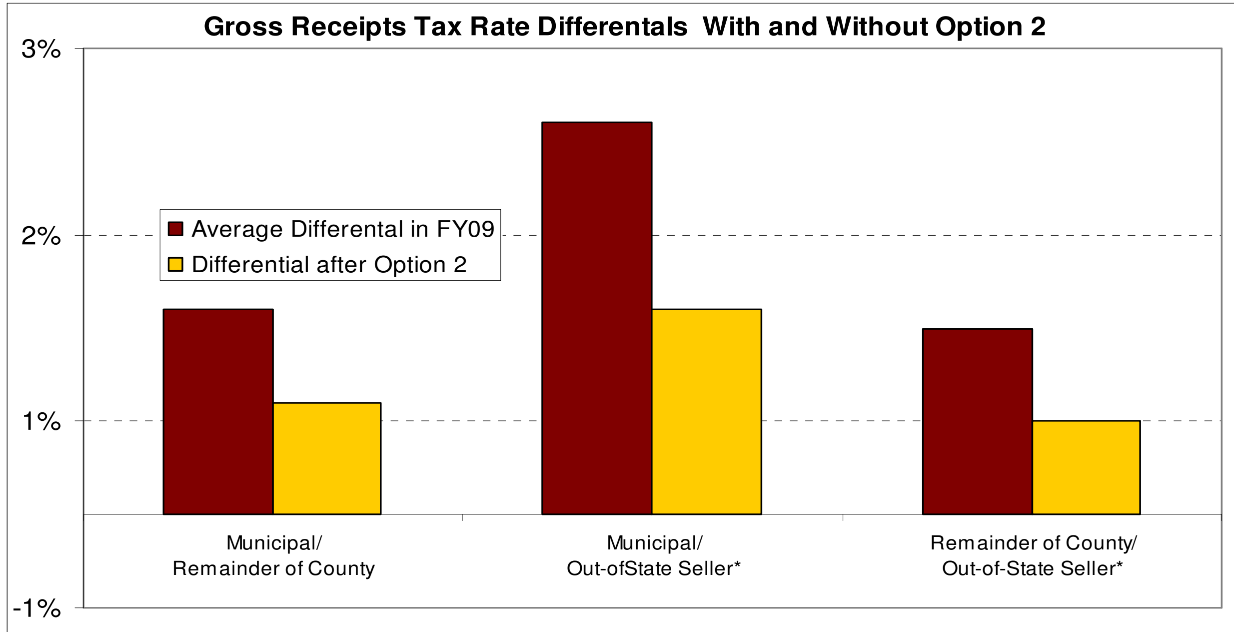
Estimated Revenue Impact (000)						Fund(s) Affected
FY10	FY11	FY12	FY13	FY14	FY10-14	
0	107,000	113,000	119,000	124,000	463,000	General Fund
0	1,500	1,600	1,700	1,800	6,600	Local Governments*

*Lea and Lincoln counties currently have county local option rates imposed in the remainder of their county areas totaling 0.375%. Under this option they could increase their remainder of county imposed rates by another 0.125% and capture increased revenue without increasing their total rate by taking advantage of the full 0.5% credit. The revenue estimate assumes both counties increase their remainder of county local option rates by 0.125%. A similar circumstance exists for the village of Maxwell and the same assumption is applied.

Discussion Draft

Effects of Option

This option would raise revenue for the State while at the same time reducing the existing rate differentials between locations as shown in the following graph:



* Seller without New Mexico business location or sales subject to the compensating tax

Discussion

Pros

- This option would reduce the economic distortions created by the widening gross receipts tax rate differentials in New Mexico.
- Current rate differentials encourage businesses to make purchases out-of-state and to locate outside of municipalities.
- Current rate differentials also encourage consumers to change their purchasing patterns in favor of out-of-state sellers.

Cons

- Pyramiding, the imposition of gross receipts tax on business purchases that will be taxed again on business sales, causes economic distortions that would be exacerbated by any increase in the rate on business purchases.
  - These economic distortions reduce business activity and incomes in New Mexico, and increase exponentially with increases in the tax rate.

- There would be a rate increase in rural areas, but none (except for purchases out of state) in municipalities.

- Raising the gross receipts tax rate without any other changes to New Mexico's overall tax system, such as Option 6, would make the tax structure more regressive.

Discussion Draft

OPTION 3

EXTEND COMPENSATING TAX TO SALES IN NEW MEXICO

Description

Under current law sales in New Mexico by an out-of-state business that does not have nexus with the State are not taxed under either the gross receipts or compensating taxes.

This option would amend the compensating tax to make it apply to sales in New Mexico.

Effective date: July 1, 2010.

Estimated Revenue Impact (000)						
FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Fund(s) Affected**
0	11,600	12,200	12,900	13,500	50,200	General Fund
0	2,500	2,700	2,800	3,000	11,000	Municipalities
0	1,600	1,700	1,800	1,800	6,900	Counties
0	**15,700**	**16,600**	**17,500**	**18,300**	**68,100**	**Total**

Note: There is a high degree of uncertainty in this estimate; it could be lower or much higher. There is no direct data available to make this estimate, which depends on both the level of economic activity in New Mexico and how New Mexico businesses choose to structure their purchases now and in the future.

Effects of Option

By applying the compensating tax to sales in New Mexico this option would close a gap in the gross receipts and compensating taxes. This gap provides an incentive for New Mexico businesses to buy from out-of-state non-nexus sellers and structure the sale to occur in New Mexico. The option removes the tax incentive to purchase out-of-state, so New Mexico businesses would be more likely to purchase from other New Mexico businesses and pay the gross receipts tax.

Pros

- New Mexico sellers would no longer be at a disadvantage to out-of-state sellers when selling to other New Mexico businesses.
- Choices on where to purchase and who to purchase from would be based on economic efficiency instead of tax avoidance.
- This option would broaden the compensating tax base and strengthen the stability of both the compensating and gross receipts taxes.

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Cons

- The majority of sales affected by the option are business inputs, so taxing them raises the general pyramiding issue with the gross receipts and compensating taxes.

- Additional reporting by sellers would be required to insure that transactions were not taxed under both the gross receipts tax and the compensating tax.

Discussion Draft

OPTION 4

USE NEW MEXICO PURCHASER'S LOCATION FOR CERTAIN OUT-OF-STATE SELLERS AND PURCHASES

Description

Currently all businesses with sufficient nexus are subject to the gross receipts tax on their sales in New Mexico. If a business has an in-state business location it reports its gross receipts to that location and pays all applicable local option gross receipts taxes. If a business does not have an in-state business location it pays the out-of-state tax rate of 5.0% but no local option rates. Similarly, when New Mexico businesses make out-of-state purchases subject to the compensating tax they pay a rate of 5.0% (there are no local option rates).

This option would make the reporting location for out-of-state businesses the location of the purchaser, thereby including the corresponding local option gross receipts tax rates. It would also add local option rates to the compensating tax equal to the local option gross receipts rates. The compensating tax would be applied and reported based on the location of the purchaser regardless of where the sale or seller was located, so this option incorporates Option 3.

Effective Date: July 1, 2010.

Estimated Revenue Impact (000)						
FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Fund(s) Affected**
0	(16,000)	(17,000)	(18,000)	(19,000)	(70,000)	General Fund
0	68,000	71,000	75,000	77,000	292,000	Municipalities
0	23,000	24,000	25,000	27,000	99,000	Counties
0	**75,000**	**78,000**	**82,00**	**85,00**	**321,000**	**Total**

Note: There is a high degree of uncertainty in the portion of this estimate corresponding to the actions in Option 3; it could be lower or much higher. There is no direct data available to make the estimate for Option 3, which depends on both the level of economic activity in New Mexico and how New Mexico businesses choose to structure their purchases now and in the future. The uncertainty in the other portion of this estimate is much lower.

Effects of Proposal

This option would create uniform destination sourcing (purchaser's location) for out-of-state vendors and maintain origin based sourcing (seller's location) for in-state vendors. It would remove the current gross receipts and compensating tax rate differentials and the corresponding incentive to purchase from out-of-state vendors for both taxes.

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Pros

- New Mexico sellers would no longer be at a disadvantage relative to out-of-state sellers when selling to other New Mexico businesses.

- Choices on where to purchase and who to purchase from would be based on economic efficiency instead of tax avoidance.

- As local option tax rates increase over time the importance and impact of reducing the in-state/out-of-state differential will increase.

- This option would directly address a concern that municipalities and counties have increasingly voiced, and would provide significant revenue to local governments.

Cons

- This option would increase the overall average gross receipts plus compensating tax rate, which would increase the economic inefficiencies associated with these taxes.

- Reporting the compensating tax to the purchaser's location will increase compliance costs for businesses and have a large initial administrative impact, likely requiring a contract with the private vendor to accommodate TRD IT systems changes.

- This option alone would cause a net revenue loss to the General Fund because (even though it raises revenue overall) because it apportions some revenue to local governments that currently only accrues to the State.
  - However, the option could be combined with other options to offset the effect of this option on General Fund revenues and the negative effect of other options on local government revenues.

Discussion Draft

OPTION 5

CHANGE TAX TREATMENT OF THE FOOD DEDUCTION AND FOOD "HOLD HARMLESS" DISTRIBUTIONS

Description

In 2005 New Mexico made receipts from the sale of food for home consumption deductible from the gross receipts tax. At the same time, a distribution was created to hold counties and municipalities harmless from any revenue loss due to the new deduction.

Option 5a would repeal the food deduction and corresponding hold harmless distributions.

Option 5b would repeal the food deduction but create a 5% credit for food. The hold harmless distribution of the State's 1.225% to municipalities would remain in place. (Local option gross receipts taxes would be applied to food, so local governments would not lose revenue from loss of the remaining hold harmless distributions from the State.)

Option 5c is the same as option 5b, but with no hold harmless distribution to municipalities of the State's 1.225%.

Option 5d: Retain the food deduction and hold harmless distributions for everything except soft drinks and candy (as defined by the Streamlined Sales Tax Project). Excluding candy and soft drinks from the food deduction would make them subject to the gross receipts tax under most circumstances.

All options effective: July 1, 2010.

The following example illustrates the revenues and distributions under current law and under options 5a, 5b and 5c associated with a $100,000 food sale in Ruidoso where the county imposed local option rates are currently 0.25% and the municipal local option rates are currently 2.5625% for a total rate of 7.8125%.[2]

Options	Total Tax Revenue	Tax Revenue to the State General Fund	Hold Harmless Distributions from the General Fund	Distributions to Ruidoso	Distribution to Lincoln County
Current Law	0	0	(4,037.50)	3,787.50	250.00
Option 5a.	7,812.50	3,775.00	0	3,787.50	250.00
Option 5b.	2,812.50	0	(1,225.00)	3,787.50	250.00
Option 5c.	2,812.50	0	0	2,562.50	250.00

[2] For simplicity this illustration and the estimate do not include adjustments due to the administrative fee of 3.25% which do not impact distributions under current law but would slightly affect distributions in all options.

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Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	FY11	FY12	FY13	FY14	FY10-14	
Option 5a.	0	228,000	239,000	250,000	262,000	979,000	General Fund
	0	0	0	0	0	0	Municipalities
	0	0	0	0	0	0	Counties
Option 5b.	0	68,000	71,000	76,000	79,000	294,000	General Fund
	0	0	0	0	0	0	Municipalities
	0	0	0	0	0	0	Counties
Option 5c.	0	104,000	109,000	115,000	120,000	448,000	General Fund
	0	(36,000)	(38,000)	(40,000)	(42,000)	(155,000)	Municipalities
	0	0	0	0	0	0	Counties
Option 5d.	0	18,000	19,000	20,000	21,000	78,000	General Fund

Effect of Options

Options 5a, b, and c:
These options would remove or partially remove the food deduction created in 2005. The majority of states with a sales tax exempt food purchased for home consumption, tax it at a lower rate, or provide an offsetting personal income tax credit. The table on the following page shows that out of the 47 states (including DC) with a sales tax 28 (including New Mexico) do not currently tax food under state or local rates. Seven states tax food at a lower rate and five states only apply certain local tax rates. Seven states tax food at the normal rate; however, all but two of these states provide an offsetting personal income tax credit.

Option 5d:
Under current law, candy and soft drinks are included in the definition of "food" for purposes of the food deduction. This means that candy and soft drinks sold in grocery and other qualifying stores are not subject to any gross receipts tax (State or local option). There is no revenue loss to local governments (municipalities and counties) on these sales, since the State makes a "hold harmless" distribution to local governments of the amount of revenue they would have collected on the sales from their local option gross receipts taxes and the 1.225% of the State 5% gross receipts tax rate. The State therefore loses its own tax revenue (3.775% inside municipalities and 5% outside), plus the "hold harmless" distributions.

Option 5d would simply remove candy and soft drinks from the food deduction. This would mean these items would be subject to both the State and local option gross receipts taxes. Local governments would receive the actual gross receipts tax revenue (including the 1.225% distribution to municipalities) on these items in place of the "hold harmless" distributions from the State, so there would be no change in revenue for local governments. The State, however, would now collect its gross receipts tax on these items (3.775% inside municipalities and 5% outside), and would also stop making "hold harmless" distributions on these items. So, all of the revenue gain is realized by the State under Option 5d, as is true for Option 5a which would repeal the food deduction for all items.

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State	Sales Tax on Food Generally					Sales Tax on Candy and Soft Drinks	
	Taxed at Regular Rate	Taxed at Regular Rate, but Income Tax Credit	Taxed at Reduced Rate	Local Tax Rates Only	Not Taxed	Candy	Soft Drinks
Alabama	✓					✓	✓
Alaska				✓		✓(L)	✓(L)
Arizona				✓		✓(L)	✓(L)
Arkansas			✓			✓(R)	✓(R)
California					✓		✓
Colorado					✓		
Connecticut					✓	✓	✓
Delaware	------------------ No state or local sales taxes ------------------						
Dist. of Columbia					✓		
Florida					✓	✓	✓
Georgia				✓		✓(L)	✓(L)
Hawaii		✓				✓	✓
Idaho		✓				✓(L)	✓
Illinois			✓			✓(R)	✓
Indiana					✓	✓	✓
Iowa					✓	✓	✓
Kansas		✓				✓	✓
Kentucky					✓	✓	✓
Louisiana				✓		✓(L)	✓(L)
Maine					✓	✓	✓
Maryland					✓	✓	✓
Massachusetts					✓		
Michigan					✓		
Minnesota					✓	✓	✓
Mississippi	✓					✓	✓
Missouri			✓			✓(R)	✓(R)
Montana	------------------ No state or local sales taxes ------------------						
Nebraska					✓		
Nevada					✓		
New Hampshire	------------------ No state or local sales taxes ------------------						
New Jersey					✓	✓	✓
New Mexico					✓		
New York					✓	✓	✓
North Carolina				✓		✓	✓
North Dakota					✓	✓	✓
Ohio					✓		✓
Oklahoma		✓				✓	✓
Oregon	------------------ No state or local sales taxes ------------------						
Pennsylvania					✓		✓
Rhode Island					✓	✓	✓
South Carolina					✓		
South Dakota		✓				✓	✓
Tennessee			✓			✓	✓(R)
Texas					✓	✓	✓
Utah			✓			✓(R)	✓(R)
Vermont					✓		
Virginia			✓			✓(R)	✓(R)
Washington					✓		✓
West Virginia			✓			✓(R)	✓
Wisconsin					✓	✓	✓
Wyoming					✓		

(R) Tax on candy or soft drinks is at a reduced rate, (L) Only local tax rates applied

Sources: Federation of Tax Administrators "State Sales Taxes--Food and Drug Exemptions." http://www.taxadmin.org/fta/rate/sales.html AND ImpacTeen. A"State Snack and Soda sales Tax Data." http://www.impacteen.org/statetaxdata/state_fta_snack_soda_rest_tax_07_08_forweb_rev051809.xls, AND Chriqui, J.F., Eidson, S.S., Bates, H., Kowalczyk, S., & Chaloupka, F.J. (2008). State sales tax rates for soft drinks and snacks sold through grocery stores and vending machines, 2007. Journal of Public Health Policy; 29: 226-249

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Pros

Options 5a, b, and c:

- The food deduction proved to be much more costly than originally anticipated; removing the deduction has the potential to raise a large amount of revenue.

- Option 5a would greatly simplify compliance and administration of the gross receipts tax.

- Food purchased with food stamps are already tax exempt, and would remain tax exempt under all options.

- Purchases of food are currently tax-favored relative to all other consumer purchases, including restaurant meals. These options would remove at least some of this differential treatment.

Option 5d:

- A tax on soft drinks and candy will slightly lower consumption of these items and may reduce long term health care expenses.

- Using the Streamlined Sales Tax definitions for soft drinks and candy would still allow New Mexico to participate in the Streamlined Sales Tax program.

Cons

Options 5a, b, and c:

- Many low-income families do not receive food stamps.

- Low-income families that do receive food stamps typically must pay for a portion of their food purchases out-of-pocket.

- Food would be one of the more slowly growing components of the gross receipts tax base, so would provide a declining share of gross receipts tax revenue.

- Taxing food, even at reduced rate, without any other changes to New Mexico's overall tax system, such as Option 6, would make the tax structure more regressive.

Option 5d:

- This option will have a significant compliance cost for retailers because they would have to differentiate between products that qualify for food stamps and products that qualify for the food deduction (they are currently the same set of products).

OPTION 6

EXPAND AND RESTRUCTURE LICTR AND THE LOW- AND MIDDLE-INCOME EXEMPTION

Description

The Low Income Comprehensive Tax Rebate (LICTR) and the low- and middle-income exemption provide important tax relief to lower-income families by reducing the regressivity of the State and local tax system.

This option would expand and restructure LICTR and the low- and middle-income exemption to mitigate the effects on low-income families of any changes to the food deduction or other increases in gross receipts or excise taxes. LICTR amounts would be increased from their current levels (set in 1998) and restructured. LICTR amounts would begin at 1.5% of the federal poverty guideline amount for each family size (up to 9 or more rather than 6 or more), and would remain constant until the beginning of the phase out. The phase out would begin at one-quarter the poverty guideline level and end at 100% of the poverty guideline level for each family size, rather than the current phase out which applies at $22,000 for all family sizes. (For families of four or fewer, the phase out would end at $23,000 since that is more than 100% of the federal poverty guideline for these families and avoids reducing the current LICTR amount for families on the "cliff" in current law LICTR.) In addition, the definition of MGI would be amended so that MGI is simply federal adjusted gross (AGI) income plus social security and railroad retirement benefits excluded from AGI.

The phase out of the low- and middle-income exemption would also be modified, in two ways. First, rather than phase out with AGI the exemption would phase out with "tax table income" which would be defined as AGI plus NM additions to AGI less: (a) the excess of itemized deductions over the standard deduction, (b) NM subtractions (e.g., interest on NM state & local bonds, capital gains) and (c) NM uncompensated medical care deduction. For most taxpayers eligible for the exemption, "tax table income" is simply AGI. Second, the phase out of exemptions for dependents would begin where the current phase out ends, and be sequential for each dependent at a rate of 40%.
Effective Date: Taxable years beginning on or after January 1, 2010.

Estimated Revenue Impact (000)						Fund(s) Affected
FY10	FY11	FY12	FY13	FY14	FY10-14	
0	(21,378)	(21,749)	(22,126)	(22,509)	(87,762)	General Fund

A simulation model was used to estimate initial calendar year tax liability changes at 2007 income levels (the most recent year for which complete tax return data is available). Population growth factors were used to increase the liability estimates for future calendar years, which were converted to fiscal years by assuming all revenue impacts occur with the filing of tax returns.

Effects of Option

The option expands LICTR and the phase out of the low- and middle-income exemption to mitigate the effect of changes in the gross receipts or excise taxes. The proposed LICTR and low- and middle-income structures are shown in the following tables. Under the option, the LICTR amount is generally increased

for all family sizes and income levels. Further, both LICTR and the low- and middle-income exemption are phased out for larger families at higher income levels than under current law.

LICTR Phaseout Threshholds and Maximum Credit Amounts

Number of Exemptions	Phaseout Begin	Phaseout End	Maximum LICTR
1	$2,708	$23,000	$162
2	$3,643	$23,000	$219
3	$4,578	$23,000	$275
4	$5,513	$23,000	$331
5	$6,448	$25,790	$387
6	$7,383	$29,530	$443
7	$8,318	$33,270	$499
8	$9,253	$37,010	$555
≥9	$10,188	$40,750	$611

Low- and Middle-Income Exemption Phaseout Threshholds

Number of Exemptions	Singles		Joints and HoH		MFS	
	Begin	End	Begin	End	Begin	End
1	$20,000	$36,667	$30,000	$55,000	$15,000	$27,500
2	$20,000	$42,917	$30,000	$55,000	$15,000	$33,750
3	$20,000	$49,167	$30,000	$61,250	$15,000	$40,000
4	$20,000	$55,417	$30,000	$67,500	$15,000	$46,250
5	$20,000	$61,667	$30,000	$73,750	$15,000	$52,500
6	$20,000	$67,917	$30,000	$80,000	$15,000	$58,750
7	$20,000	$74,167	$30,000	$86,250	$15,000	$65,000
8	$20,000	$80,417	$30,000	$92,500	$15,000	$71,250
≥9	$20,000	$86,667	$30,000	$98,750	$15,000	$77,500

Approximately 421,000 taxpayers would have an average tax decrease of $52 under the option, while approximately 4,200 taxpayers would have an average tax increase of $12. The table on the next page shows the distributional impact of the option.

Pros

- Expansion of exemptions and rebates designed to reduce the tax liability of lower-income taxpayers imposes a greater portion of the tax burden on taxpayers with greater ability to pay.
- This option would be a very targeted approach to providing tax relief to lower-income taxpayers.
- Because LICTR and the low- and middle-income exemption are components of the existing tax system, the proposed changes in their structures will have minimal compliance and administrative costs.

Cons

- The option would not increase LCITR sufficiently to offset the regressivity of some options, such as option 5a.

- The tax relief from LICTR and the low- and middle-income exemption are not received by non-filers, and are received by filers only after filing rather than at the time of making taxed purchases.

- Defining MGI as federal AGI plus social security and railroad retirement may enable a few high-income individuals with business or capital losses to qualify for credits designed to aid low-income individuals.

Option 7

APPLY THE GROSS RECEIPTS AND COMPENSATING TAXES TO MOTOR FUELS

Description

The receipts from gasoline, special fuel (diesel), and alternative fuel (liquefied petroleum gas - LPG, compressed natural gas - CNG, liquefied natural gas - LNG, or water-phased hydrocarbon fuel emulsions) are currently exempted from the gross receipts tax if they are also subject to a motor fuels (highway use) tax.

This two-part option would make all gasoline and alternative fuel subject to the gross receipts tax, and subject special fuel to a new tax similar to compensating tax based on retail price.

Option 7a – Impose gross receipts tax on gasoline and alternative fuel at ordinary gross receipts tax rates. Revenue distribution shares would be the same as other gross receipts tax revenue.

Option 7b – Impose a new tax on the price of special fuel (diesel) at the same rate as the compensating tax (5.0%), with all revenue distributed to the General Fund.

Option 7c – Combine Options 7a and 7b.

Effective date for all options: July 1, 2010.

Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	
7a. GRT on Gasoline	0	98,700	98,700	98,700	98,700	394,800	General Fund
	0	49,450	49,450	49,450	49,450	197,800	Municipalities
	0	16,350	16,350	16,350	16,350	65,400	Counties
	0	11,200	11,200	11,200	11,200	44,800	Pueblos/Tribes
	0	**175,700**	**175,700**	**175,700**	**175,700**	**702,800**	**Total**
7b. 5% on Diesel	0	68,750	68,750	68,750	68,750	275,000	General Fund
7c. Total (7a + 7b)	0	167,450	167,450	167,450	167,450	669,800	General Fund

Effects of Option

- The gasoline excise tax of $0.17 cents per gallon has remained unchanged since 1995. Imposition of a 7.1% gross receipts tax in municipal areas would increase the price per gallon by about $0.18 to $0.20 per gallon.

- The special fuels excise tax was increased in 2004 from $0.18 to $0.21 per gallon. Imposition of a 5.0% value tax would increase the price per gallon of on-highway diesel by about $0.14 to $0.15 per gallon.

- The tax on off-highway diesel would actually decrease from the current gross receipts tax rate of about 6.0% or 7.0% to a rate of 5.0%.

- States that fully or partially apply general sales taxes to gasoline include California, Colorado, Georgia, Illinois, Indiana, Michigan, and New York.

- Alternative Fuels include liquefied petroleum gas (LPG), compressed natural gas (CNG), liquefied natural gas (LNG), or water-phased hydrocarbon fuel emulsions, that are used to propel a motor vehicle on the highways. Alternative fuels are taxed under the Alternative Fuel Tax Act (Chapter 7, Article 16B) at a rate of $0.12 per gallon, or users may elect to pay an annual permit fee in lieu of the tax per gallon. Annual permit fees, payable in conjunction with vehicle registration, are:
  - $60 per year for vehicles weighing up to 6,000 pounds;
  - $100 per year for vehicles weighing over 6,000 up to 16,000 pounds;
  - $300 per year for vehicles weighing over 16,000 up to 26,000 pounds;
  - $700 per year for vehicles weighing over 26,000 up to 40,000 pounds;
  - $1,100 per year for vehicles weighing over 40,000 up to 54,000 pounds,

Pros

- Taxes on value provide better *adequacy* (revenue growth in the face of price increases) than do unit taxes (tax per gallon) such as the current gasoline excise tax. The gasoline excise tax revenue ($0.17 per gallon) tends to stagnate or even decrease as gasoline prices rise.

- The design of the 5.0% statewide tax on special fuel diesel is intended to include on-highway users while accommodating the state apportionment issues presented by interstate trucking activity and the International Fuel Tax Agreement (IFTA).

- Some special fuel (diesel) used for off-highway purposes is already subject to gross receipts tax at a higher tax rate than proposed in this option (the revenue gain comes from on-highway users). However, it is likely that when diesel prices are around $3.00 per gallon or less, off-highway users may prefer to purchase diesel that has been taxed for highway use, and receive a gross receipts tax exemption. In either case, the tax on off-highway diesel under this option would tend to be lower than the current tax when prices are below $4.00 per gallon.

- A large proportion of the special fuel (diesel) revenue gain would be paid by out-of-state entities (interstate trucking activity).

Cons

- Taxes imposed on the value of motor fuels would probably eliminate the possibility of future increases in the gasoline excise and special fuels excise taxes that support highway construction and maintenance. Additional General Fund support of state highway expenditures would probably be required.

- To the extent that motor fuels are an input (cost) to business activity, the increased tax would add to tax pyramiding. This issue applies to gasoline and to on-highway diesel (however, the tax paid on off-highway diesel would actually decrease).

- This option may impact rural areas more, because fuels prices tend to be higher in rural areas.

- Raising taxes, particularly on diesel fuel, would encourage tax avoidance and evasion.

OPTION 8

AMEND INSURER PREEMPTION

Description

The New Mexico Insurance Code licenses certain insurers, HMOs, and other health care plans including third-party administrators for health care plans, and applies the insurance premium tax to these entities' premiums receipts. The Insurance Code preempts these entities from all other taxes except property taxes. As a result, all non-premium receipts of these entities are exempt from gross receipts tax. This provision of the Insurance Code conflicts with the gross receipts tax exemption which provides that only receipts from premiums is exempt from gross receipts tax.

This option would amend the preemption under the Insurance Code to conform to the existing gross receipts tax exemption, and allow the gross receipts tax to apply to receipts that are not subject to the insurance premium tax, including non-premium receipts of third-party administrators for health plans. Additionally, in order to protect domestic third-party administrators from untaxed out-of-state competitors, the option would extend the gross receipts tax to out-of-state third-party administrators with nexus in New Mexico, and extend the compensating tax to cover the purchase for primary use in New Mexico of third-party administrative services from an out-of-state (non-nexus) provider.

Effective Date: July 1, 2010.

Estimated Revenue Impact (000)						
FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Fund(s) Affected**
0	6,135	6,748	7,423	8,165	28,471	General Fund
0	4,420	4,862	5,348	5,883	20,513	Municipalities
0	939	1,033	1,137	1,250	4,359	Counties
0	**11,494**	**12,643**	**13,908**	**15,298**	**53,343**	**Total**

This estimate was made using data from Mathematica's 2007 report "Quantitative and Comparative Analysis of Reform Option for Extending Health Care coverage in New Mexico." The estimate uses the percent of self-insured employer plans that make up total private insurance and the non-medical expenditures under private insurance. Downward adjustments were made to these amounts to account for lower self-insured administrative costs and expenditures not affected by this proposal.

Effects of Option

- The option would place businesses that engage in both insurance and non-insurance activities on an equal footing with other businesses engaged in the same non-insurance activities.

- The option would remove the significant incentive created by current law for a business to offer some type of insurance that is subject to the insurance premiums tax in order to avoid paying gross receipts taxes.

- State exemptions of insurance companies from other taxes were enacted in a long-past era when businesses (particularly financial businesses) were generally less diversified and conglomerated, and other taxes were levied (if at all) at much lower rates.

Pros

- The option would remove the favorable tax treatment currently provided to the non-insurance activities of insurance companies.

- The option would remove the incentive for companies to engage in a minor amount of insurance activity to obtain an exemption from taxes other than the premium tax and property taxes.

- The option would extend the gross receipts and compensating taxes to cover the purchase for primary use in New Mexico of third-party administrative services from an out-of-state provider, thereby protecting domestic third-party administrators from untaxed out-of-state competitors.

Cons

- Most states allow a wide exemption of insurance companies from most state and local taxes.

MOTOR VEHICLE EXCISE TAX MOTOR VEHICLE CERTIFICATE OF TITLE EXCISE TAX OVERVIEW

DESCRIPTION: An excise tax is imposed on the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered in this state in the case of sale or resale thereof, except mobile homes and certain other vehicles specifically exempted. Exemptions from the tax include:

- Vehicles acquired out-of-state more than 30 days prior to establishing a domicile in New Mexico;
- Vehicles owned by the same person that were previously titled in New Mexico;
- Government-owned vehicles;
- Vehicles modified to accommodate the owner's physical disability;
- Vehicles owned by persons with certain armed forces related injuries (loss of use of arm or leg);
- Vehicles leased for six months or longer and subject to the Leased Vehicle Gross Receipts Tax.

Note: the exemption for gasoline-electric hybrid vehicles getting at least 27.5 mpg expired on June 30, 2009.

For any vehicle purchased out-of-state, a credit is allowed against New Mexico Motor Vehicle Excise Tax for the amount of gross receipts, sales, compensating, or similar tax paid in the other state.

BASE: Sales price or reasonable value of vehicle at time of sale, less trade-in. A credit is allowed for the leased vehicle gross receipts tax paid.

RATE: 3%

PAYMENT DUE: At the time application is made for issuance of a certificate of title.

COLLECTION BY: The Motor Vehicle Division of the Taxation and Revenue Department.

DISPOSITION: Motor Vehicle Suspense Fund for monthly distribution to the General Fund.

RECEIPTS

(thousands of dollars)

	Fiscal Year 2004	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009
Receipts (000)	115,606.2	118,880.3	122,430.2	130,592.8	127,568.1	100,446.4

RATE COMPARISON WITH SURROUNDING STATES

Arizona	8 +/-% (applicable sales tax rate)
Colorado	2.9% (plus RTD and City taxes – 7.72% total in Denver)
New Mexico	**3.00%**
Oklahoma	3.25%
Texas	6.25%
Utah	6 +/- % (applicable sales tax rate)

Motor Vehicle Excise Tax Rate and Distribution History

1935	Taxed under Emergency School tax at rates as follows: sales of automobiles and farm implements .5%; and, trucks and tractors .25%.
1941	Raised Emergency School Tax on automobiles, trucks and tractors to 1% but eliminated tax on other agricultural implements. Trade-in deduction allowed. A reduced compensating tax rate of 1% and a deduction for trade-ins provided for the storage, use or consumption of new or second-hand automobiles, trucks or tractors.
1955	Motor vehicle sales removed from Emergency School Tax (and Compensating Tax Act) and taxed under separate Motor Vehicle Excise Tax at a rate of 1% of sales price less trade-in allowance. Receipts allocated to the General Fund.
1963	Motor Vehicle Excise Tax rate increased to 1.5%
1969	Motor Vehicle Excise Tax rate increased to 2%.
1979	Distribution of MVX tax receipts changed to 25% to State Road Fund and 75% to General Fund.
1980	Distribution of MVX tax receipts changed to 75% to State Road Fund and 25% to General Fund
1981	Distribution for MVX changed to 100% to Road Fund.
1986	MVX rate increased to 2.75%, effective 7/1/87 (this delayed enactment did not take place as scheduled. 1987 legislation superseded.) Distribution changed to 73% to State Road Fund (2% of net sales amount -- holding SRF harmless) and 27% to General Fund (.75% of net sales amount).
1987	MVX rate increased to 3%, effective 7/1/87. Distribution of tax receipts changed to 5/12 to State Road Fund (decreasing SRF share to 1.25% of net sales amount); 1/4 to Local Government Road Fund; 1/3 to General Fund.
1991	Allocation of motor vehicle excise tax revenues changed to 3/4 to General Fund; 1/4 to Local Government Road Fund.
1994	Distribution of motor vehicle excise tax proceeds is modified with the General Fund now receiving 100% in exchange for dedicating $0.02 per gallon of the gasoline tax to the Local Governments Road Fund.
2004	The motor vehicle excise tax does not apply to gas-electric hybrid vehicles that register over 27.5 mpg according to United States Environmental Protection Agency standards. The one-time New Mexico exemption applies when the original certificate of title is issued. The exemption is available for five years. Language maintains the exemption from gross receipts and compensating tax on sales of such vehicles even when they are exempt from motor vehicle excise tax. (Chapter 66-- SB-86).

State Tax Rate Comparisons

The table on the following page attempts to compare state taxation of motor vehicle sales transactions, but may not be entirely consistent in all cases. The information was obtained from the 2009 NADA Title and Registration Textbook, and some state rates cited either do not include county and local rates or vary based on those rates. For Arizona and Colorado, for example, the NADA information shows only the state portion of the tax rate, while for certain other states local portions of the tax are included. To determine the tax ranking for Colorado, the tax rate applicable in the Denver area (obtained from other sources) was used.

Motor Vehicle Excise Tax – State Comparisons							
State	**Tax Rate Range**		**Type of Tax**	**Comments**	**Rank**	**State**	**Rate**
Alabama	annual		Property Tax	ad valorem property tax	1	Alabama	annual
Alaska	0		none	no state tax	2	California	8.25%
Arizona	5.60%		Sales Tax		3	Colorado	7.72%
Arkansas	6.00%		Sales Tax		4	Indiana	7.00%
California	8.25%	10.75%	Sales Tax	sales tax varies by county	5	New Jersey	7.00%
Colorado	2.90%	7.72%	Sales Tax	(2.9% plus RTD and City taxes – 7.72% total in Denver)	6	Rhode Island	7.00%
Connecticut	6.00%		Sales Tax		7	Tennessee	7.00%
D.C.	6.00%	8.00%	Excise Tax		8	Minnesota	6.50%
Delaware	3.65%		Other	3.65% vehicle document Fee	9	Nevada	6.50%
Florida	6.00%		Sales Tax		10	Washington	6.50%
Georgia	4.00%	8.00%	Sales Tax		11	Illinois	6.25%
Hawaii	4.00%		Sales Tax		12	Texas	6.25%
Idaho	6.00%		Sales Tax		13	Arkansas	6.00%
Illinois	6.25%		Sales Tax		14	Connecticut	6.00%
Indiana	7.00%		Sales Tax		15	D.C.	6.00%
Iowa	5.00%		Other	5.0% one-time registration fee	16	Florida	6.00%
Kansas	5.30%		Sales Tax		17	Idaho	6.00%
Kentucky	6.00%		Other	6.0% motor vehicle usage tax	18	Kentucky	6.00%
Louisiana	4.00%		Sales Tax		19	Maryland	6.00%
Maine	5.00%		Sales Tax		20	Michigan	6.00%
Maryland	6.00%		Excise Tax		21	Pennsylvania	6.00%
Massachusetts	5.00%		Sales Tax		22	Vermont	6.00%
Michigan	6.00%		Sales Tax		23	Utah	5.75%
Minnesota	6.50%		Sales Tax		24	Arizona	5.60%
Mississippi	5.00%		Sales Tax		25	Nebraska	5.50%
Missouri	4.23%		Sales Tax		26	Ohio	5.50%
Montana	0		none	flat registration fees – no separate tax	27	Kansas	5.30%
N. Carolina	3.00%		Other	Highway use tax	28	Iowa	5.00%
N. Dakota	5.00%		Excise Tax		29	Maine	5.00%
Nebraska	5.50%		Sales Tax		30	Massachusetts	5.00%
Nevada	6.50%	7.75%	Sales Tax		31	Mississippi	5.00%
New Hampshire	0		none	permit fee based on list price and age	32	N. Dakota	5.00%
New Jersey	7.00%		Sales Tax		33	S. Carolina	5.00%
New Mexico	**3.00%**		**Excise Tax**	5.0% for vessels	34	West Virginia	5.00%
New York	4.00%		Sales Tax		35	Wisconsin	5.00%
Ohio	5.50%		Sales Tax		36	Missouri	4.23%
Oklahoma	3.25%		Excise Tax		37	Georgia	4.00%
Oregon	0		none		38	Hawaii	4.00%
Pennsylvania	6.00%	7.00%	Sales Tax		39	Louisiana	4.00%
Rhode Island	7.00%		Sales Tax		40	New York	4.00%
S. Carolina	5.00%		Sales Tax		41	Wyoming	4.00%
S. Dakota	3.00%		Excise Tax		42	Delaware	3.65%
Tennessee	7.00%		Sales Tax		43	Oklahoma	3.25%
Texas	6.25%		Sales Tax		44	N. Carolina	3.00%
Utah	5.75%	8.00%	Other	5.75% - 8% fee in lieu of property tax	**45**	**New Mexico**	**3.00%**
Vermont	6.00%		Sales Tax		46	S. Dakota	3.00%
Virginia	3.00%		Sales Tax		47	Virginia	3.00%
Washington	6.50%		Sales Tax		48	Alaska	0
West Virginia	5.00%		Sales Tax		49	Montana	0
Wisconsin	5.00%		Sales Tax		50	New Hampshire	0
Wyoming	4.00%	7.00%	Sales Tax	plus county registration fees	51	Oregon	0

OPTION 9

MOTOR VEHICLE EXCISE TAX

Description

The motor vehicle excise tax is imposed on the issuance of every original and subsequent certificate of title for vehicles, except for mobile homes and vehicles specifically exempted. The tax base is generally the selling price of the vehicle at time of sale, less the value of any trade-in vehicle. The tax is currently imposed at the rate of 3% and the revenue goes entirely to the General Fund.

Option 9a: 1.0% increase in the rate from 3% to 4%.
Option 9b: 2.0% increase in the rate from 3% to 5%.
Option 9c: 3.0% increase in the rate from 3% to 6%.
Option 9d: Increase in the rate to equalize with the average GRT of 7.1%.

Effective date for all options: July 1, 2010.

	Estimated Revenue Impact (000)						
Option	**FY10**	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Fund(s) Affected**
9a. – 4.0% Rate	0	34,300	37,700	39,000	40,700	151,700	General Fund
9b. – 5.0% Rate	0	68,700	75,300	78,000	81,300	303,300	General Fund
9b. – 6.0% Rate	0	103,000	113,000	117,000	122,000	455,000	General Fund
9d. – 7.1% Rate	0	140,800	154,400	159,900	166,700	621,800	General Fund

Effects of Option

Comparison with other states: New Mexico's motor vehicle excise tax rate is lower than in surrounding states:

Arizona	8 +/-% (applicable sales tax rate)
Colorado	2.9% (plus RTD and City taxes – 7.72% total in Denver)
New Mexico	**3.00%**
Oklahoma	3.25%
Texas	6.25%
Utah	6 +/- % (applicable sales tax rate)

Equity and Economic Efficiency: There is little tax policy justification to tax vehicles at lower rates than other tangibles purchased in New Mexico. The lower tax rate applied to vehicle sales reduces the price of vehicles relative to other goods and services, distorting consumer spending patterns. It appears other states may be tending to move toward imposition of regular sales taxes on vehicles.

One historic argument in favor of a lower tax rate on vehicles is that the purchase of a vehicle is one of the largest purchases many people make. Another argument is that vehicles may be resold several times, whereas few other previously-owned goods tend to be resold through business establishments where they would be subject to tax. Applying a tax on each sale effectively raises the tax rate. For example, a tax of 3% on a new value, plus 3% on half the original value after 5 years, plus 3% on one-quarter of the

original value after 10 years, discounted to present value using a 5% discount rate, is comparable to a one-time tax rate of 4.6%. This one-time rate is above 3%, but is well below the average gross receipts tax rate for in-state sales in FY2009 of 6.8% and the average rate in municipal areas of 7.1%. Further, if sales are made by dealers of traded-in vehicles (for which a deduction was allowed) no additional tax is actually paid on the used car.

Pros

- Increased tax rate would more closely approximate the general gross receipts tax rate and enhance economic efficiency by lessening the tax preference for vehicles.
- The current administrative mechanism of the tax is fairly simple and probably much easier to administer than would the direct imposition of the gross receipts and compensating taxes on vehicles.
- New Mexico's rate would remain below or not much above the rate in any surrounding state except Oklahoma.

Cons

- Since vehicles in some circumstances are subject to tax several times over the life of the vehicle, an increase in the motor vehicle excise tax rate should take into account the (discounted present value) of the effective rate of tax on motor vehicles relative to the gross receipts tax rate.
- The motor vehicle excise on vehicles used for business purposes may cause tax pyramiding.

INSURANCE PREMIUM TAX OVERVIEW

DESCRIPTION: Every insurance company, health maintenance organization and property bondsman authorized to transact business in New Mexico is required to pay a gross premiums tax. The premium tax also applies to surplus line insurance, insurance independently procured from a non-admitted insurer, preferred provider arrangements, nonprofit health care plans, prepaid dental care plans, prearranged funeral plans, group self-insurance companies providing workers' compensation coverage, risk retention groups and employers mutual companies.

Exempt are premiums attributable to insurance or contracts purchased by the state or any political subdivision for its active or retired employees, and federal medicare payments received by health maintenance organizations, prepaid dental plans and prearranged funeral plans.

The premium tax is in lieu of "all other taxes, licenses and fees of every kind..." imposed by the state or any political subdivision, except property taxes and income tax on agents and solicitors. This preemption is mirrored by the gross receipts tax exemption for receipts of insurers and agents from premiums and of property bondmen as security or surety and the total exemption from corporate income tax and franchise tax of insurance companies, reciprocal or inter-insurance exchanges that pay a premium tax.

Note: Most states that impose a corporate income or similar tax exempt insurance companies. Some (Louisiana, Nebraska, New Hampshire and Oregon) impose corporate income tax but grant a credit for the amount of any premium tax paid to the state. Florida allows the amount of corporate income tax paid to be credited against premium tax due. Indiana allows an election between the taxes. Illinois, Mississippi and Wisconsin impose corporate income tax on at least some insurers regardless of premium tax paid.

BASE: The tax is levied on "... gross premiums and membership and policy fees... on insurance ... covering risks within the state during the preceding calendar year, less all return premiums, including dividends paid or credited to policyholders... and premiums received for reinsurance on New Mexico risks".

RATE: Effective July 1, 2003, the rate increased from 3% to 3.003%. Effective July 1, 2004, in addition to the 3.003% base rate, health insurance premiums, including health maintenance organizations (excluding dental or vision only contracts), nonprofit health care plans and hospital and medical expense insurance, are subject to a surtax of 1%, for a total tax rate of 4.003%.

Assessments are imposed on health care insurers to support the New Mexico Medical Insurance Pool, and either 50% or 75% (for insurers participating in certain government funded programs) of those assessments may be taken as a credit on the premium tax return.

A reduced premiums tax of .9% applies to group self-insurance companies providing workers' compensation coverage.

PAYMENT DUE: Quarterly estimated tax payments are due on April 15, July 15, October 15 and January 15, and the actual amount is due the following April 15. Members participating in the New Mexico health insurance alliance receive a credit against their premium tax of 50% of their prior year's assessment for net reinsurance losses.

COLLECTED BY: The tax is collected by the Superintendent of Insurance, head of the Insurance Division of the Public Regulation Commission.

DISPOSITION: Payments are credited to the insurance department suspense fund. After refunds, receipts are distributed as follows:

- $100,000 is transferred annually to the public election fund;
- receipts derived from property and vehicle insurance business are transferred at the end of the month to the fire protection fund;
- 10% of receipts derived from premiums from life, general casualty and title insurance are transferred to the law enforcement protection fund; and
- the remaining receipts are transferred to the general fund.

The fire protection fund, less appropriations for expenses of the state fire marshal's office, is distributed annually to county and municipal fire districts on a statutory allotment basis. The balance in the fund at the end of the fiscal year, less $100,000 and less 75% of the state fire marshal budget, is transferred to the general fund.

Law enforcement protection fund balances are distributed annually to municipal, county, tribal and university police and sheriff departments. The balance in the fund at the end of the fiscal year is transferred to the general fund.

General Fund Revenue Distributions

(thousands of dollars)

	Fiscal Year 2004	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009
Insurance Premium to General Fund	87,794.7	95,463.9	103,100.0	107,590.6	108,700.0	121,892.5

Source: Legislative Finance Committee Staff

INSURANCE PREMIUMS TAX BASE AND RATE HISTORY

1909	Enacted various filing fees plus tax of 2% on the gross amount of premiums; specified that insurance companies shall be subject to no other taxes, except upon real estate.
1955	Provided for reduced filing fees and for a premiums tax rate of .5% for an insurance company which had 50% of its admitted assets invested in New Mexico investments during the preceding calendar year (i.e. domestic companies).
1961	Increased filing fees by about 50% and increased premiums tax rate to .75% for domestic companies and 2.5% for others.
1975	Lowered requirement for eligibility for reduced insurance premiums tax rate from 50% to 40% of admitted assets invested in New Mexico investments.
1983	Increased premiums tax rate to .9% for domestic companies and 3% for others. Required quarterly estimated payments.
1988	Tightened requirements for eligibility for reduced domestic insurance premiums tax rate by phasing out allowance for U.S. obligations as part of domestic assets and increasing share of corporate assets in New Mexico needed to qualify corporate bonds as domestic assets. Exempted Medicare payments to HMO's from premium tax. Equalized domestic and non-domestic tax rates at 2.75% in the event a court of final jurisdiction overturns reduced domestic rates and provided a .005% one-time surtax on domestic insurers to pay for court costs. Receipts of property bail bondsmen made subject to insurance tax.
1991	Provided for a phase-in of higher rates for domestic companies beginning January 1, 1992 and ending July 1, 1993 when the full 3% rate becomes applicable to domestic companies.
2003	Effective July 1, 2003, the rate increased from 3% to 3.003%.
2004	In addition to the 3.003% base rate, health insurance premiums, including health maintenance organizations (excluding dental or vision only contracts), nonprofit health care plans and hospital and medical expense insurance, are subject to a surtax of 1%, for a total tax rate of 4.003%.

Comparison of State Insurance Premiums Tax Rates & "In Lieu" Provisions

STATE	RATE	"IN LIEU" LANGUAGE & STATUTES	CASE LAW
Alabama	2.3 % life insurance 1.6 % health insurance 3.6% on all other insurance	Premium tax "exclusive and shall be in lieu of all other and additional taxes and licenses of the state or county imposed on, based upon or measured by premiums" Ala. Code § 27-4A-5	
Alaska	2.7% of premium income for domestic and foreign insurers 6% of gross premiums less claims paid for hospital and medical insurance co. 1% title companies	Premium tax "in lieu of all other taxes . . . upon premiums, franchise, privilege, or other taxes measured by income of the insurer" Alaska Stat. § 21.09.210(e)	*Northern Adjusters, Inc. v. Dept. of Revenue,* 627 P.2d 205 (Alaska 1981) (gross receipts tax exemption for "insurance businesses" not include adjusters because adjusters not subject to premium tax)
Arizona	2% of net premiums except fire insurance .66% fire insurance	Premium tax in lieu of all other "demands" of state except real and personal property tax, privilege and use taxes Ariz. Rev. Stat. Ann. § 20-226	
Arkansas	2.5% net premiums	Ark. Code Ann. § 26-57-603	
California	2.35% on gross premiums	Premium tax in lieu of all other taxes and licenses upon insurers and their property except real estate taxes, motor vehicle registration license fees and any other tax or license imposed by the state on vehicles Cal. Const. art. XIII, § 28 (f)	*Mutual Life Ins. Co. of NY v. City of Los Angeles,* 787 P.2d 996 (Cal. 1990) (since premium tax is on gross premiums (not net), in lieu provision intended to preclude state and political subdivisions from exacting any other revenue from the insurance companies except real estate and motor vehicle taxes; income from incidental to the operation of commercial real estate business not subject to state or local taxes)
Colorado	2%	Colo. Rev. Stat. § 10-3-209	
Connecticut	1 3/4 %	Premium tax in lieu of other taxes on intangible assets or income of insurance companies and all other taxes on franchises of insurance companies, but companies are subject to real and tangible personal property taxes Conn. Gen. Stat. § 12-209; 12-210	
Delaware	1 ¾ % on net premiums	Del. Code Ann. 18 § 702	
Florida	1.75% of gross premiums	No political subdivision or agency in the state may impose taxes measured by premiums, income or volume of transaction upon insurers and their agents.[1] Fla. Stat. § 624.520	

[1] Other states may only preempt local taxes; not all collected on this chart.

Comparison of State Insurance Premiums Tax Rates & "In Lieu" Provisions

STATE	RATE	"IN LIEU" LANGUAGE & STATUTES	CASE LAW
Georgia	2 ¼% of gross premiums	License fee in lieu of all other license fees. No political subdivision may impose any tax except ad valorem property tax upon insurance companies and their agents measured by premiums, income or volume of transactions. Ga. Code Ann. § 33-8-3; 33-8-8	
Idaho	1.7% in 2009 1.5% in 2010 and later	Premium tax in lieu of all other taxes upon premiums, income, franchise, personal property, but real property subject to tax Idaho code § 41-405	
Hawaii	4.265%	Insurance taxes in lieu of all other taxes and fess except as expressly otherwise provided, taxes on real property, taxes on purchase, use, or ownership of tangible personal property and taxes on gross income, gross proceed or gross rental. Must pay withholding Haw. Rev. Stat. § 431:19-116; 431:7-204	
Illinois	.5% of net taxable premium income ; .4 % on HMOs, limited health service organization	Insurance taxes in lieu of all other taxes imposed by local government except property tax[3] ILCS § 5/415	
Indiana	1.3% of gross premiums less allowable deductions	Insurance companies can elect to be taxed either under premium tax or adjusted gross income tax and supplemental income tax; if chose premium tax, tax in lieu of all license fees or tax levied or assessed by the state or political subdivision except real and tangible personal property taxes Ind. Code Ann. §27-1-18-2(h)	
Iowa	1%	No "in lieu" language, but insurers are exempt from corp. income tax (§ 422.34) [4] Iowa Code § 432.1; § 135.120	
Kansas	2%	Premium tax in lieu of taxes or fees levied on basis of income, premiums, gross receipts and intangible property except real and tangible personal property taxes and municipal occupation taxes not levied on income or gross receipts Kan. Stat. Ann. § 40-252b	
Kentucky	2%	Tax imposed by state on life insurance companies in lieu of all other taxes except city and county may impose tax on taxable capital and may impose real and tangible personal property taxes Ky. Rev. Stat. Ann. § 136.320	
Louisiana	$140 if gross annual premiums are $7000 or less; More than $7000, $225 for each additional $10,000	HMO license tax on gross amount of its receipts from contacts and coverage agreements in lieu of state income tax and corporate franchise tax La. Rev. Stat. Ann. § 22:270	

[4] I did not collect all state statutes that provided exemptions from certain taxes for insurers.

Comparison of State Insurance Premiums Tax Rates & "In Lieu" Provisions

STATE	RATE	"IN LIEU" LANGUAGE & STATUTES	CASE LAW
Maine	2% of gross premiums on most policies	Premium tax in lieu of any other tax measured by income of the insurer Me. Rev. Stat. Ann. § 605	
Maryland	2% of gross premiums	Md. Code Ann. Ins. § 6-103	
Massachusetts	2.28%	Mass. Gen. L. Chap. 63, §20	
Michigan	1.25% gross premiums	Premium tax in lieu of all other taxes except tax on real and personal property, general sales tax, use tax and otherwise provided in the Insurance Code. Mich. Comp. Laws Ann. §208.1235 (Eff. 1/1/08)	
Minnesota	2% of gross premiums less returns	Minn. Stat. § 297I.05	
Mississippi	3% gross premiums	Tax in lieu of all licenses and privilege taxes. Miss. Code Ann. § 27-15-81; § 27-15-103(1)	
Missouri	2% of premiums	Premium tax in lieu of income and franchise taxes ("in lieu of the taxes imposed under the provisions of chapters 143 and 147") Mo. Rev. Stat. § 148.370 (eff. 8-28-09)	
Montana	2.75% of net premiums	Premium tax in lieu of "all other demands for any and all state . . . taxes, licenses fees and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property" and fire insurance premium taxes Mont. Code Ann. § 33-2-705 (Eff. 4-18-09)	
Nebraska	1% of gross premiums; capitation payments 5%; group sickness and accident 0.5%	Neb. Rev. Stat. § 77-908	
Nevada	3.5%	Premium tax in lieu of taxes imposed "upon premiums or upon income of insurers and of franchise, privilege or other taxes measured by income of the insurer." Nev. Rev. Stat. § 680B.037	

Comparison of State Insurance Premiums Tax Rates & "In Lieu" Provisions

STATE	RATE	"IN LIEU" LANGUAGE & STATUTES	CASE LAW
New Hampshire	2% of net premiums; minimum tax of $200	Premium tax on health service corporation, HMO. Health service corporation – "exempt from all taxes, other than taxes on real property situation within this state, fees on motor vehicles registered in this state, fees prescribed by this chapter, and the premium tax under RSA-A:32. . . . Nor shall any tax be levied on any revenues of such a health service corporation that are derived from any business of the corporation where the corporation has assumed no insurance risk and is providing administrative services only." HMOs also do not pay premium tax ASO contracts. N.H. Rev. Stat. Ann. 400-A:32; 420-A:27; 420-B:17	
New Jersey	2% of premiums collected; group accident and health insurance 1.35% for 2009	N.J. Rev. Stat. § 54:18A-2	
New Mexico	3.003% gross premiums less return premiums; health insurance premium surtax of 1%	Taxes, licenses and fees in Insurance Code "in lieu of all other licenses and fees of every kind now or hereafter imposed by this state" NMSA 1978, § 59A-6-2; § 59A-6-6	
New York	Non-life insurance 1.75% on gross direct premiums and 2% on all other premiums	Premium tax in "addition to any other taxes imposed for such privilege" (privilege of exercising corporate franchise or for carrying on business within the state) N.Y. Tax Law § 1502	
North Carolina	1.9% gross premiums	N.C. Gen. Stat. § 105-228.5(d)(2)	
North Dakota	2% life insurance; 1.75% all other	Insurers pay annual tax on gross premiums, membership fees, subscriber fees and services fees collected by third-party administrators providing administrative services to a self insured group. Insurers subject to premium tax are exempt from corporate income tax and taxes on personal property. N.D. Cent. Code § 26.1-03-17, 57-02-08; 57-38-09	
Ohio	1.4% of gross premiums	Premium tax in lieu of all other taxes on the other property and assets of the insurance company except real estate and personal property owned by an insurance company and leased to a person other than an insurance company for use in business, and "all other taxes, charges and excises" Ohio Rev. Code Ann. § 5725.25	*Celina Mutual Ins. Co. v. Bowers,* 213 N.E.2d 175 (Ohio 1965) ("in lieu of" provision refers to taxes on property and excises and does not apply to Ohio sale and use taxes which are on "transactions – the exercise of a privilege."

Comparison of State Insurance Premiums Tax Rates & "In Lieu" Provisions

STATE	RATE	"IN LIEU" LANGUAGE & STATUTES	CASE LAW
Oklahoma	2.25% of direct premiums	Annual license fee and tax on premiums in lieu of "all other state taxes or fees, except those taxes and fees provided for in the Insurance Code, and the taxes and fees of any subdivision or municipality of the state, except ad valorem taxes" and fire insurance premium taxes. 36 Okla Stat. § 624	*Professional Investors Life Ins. Co. v. Oklahoma Tax Commission,* 825 P.2d 1292 (Okla. 1991) (in lieu of provision not apply to sales taxes on goods purchased by insurance company; "annual premium tax is only in lieu of all other licenses or privilege fees or agency taxes."
Pennsylvania	2%	Pa.Stat. Ann. 72 § 7902	
Rhode Island	2% of gross premiums	R.I. Gen. Laws § 44-17-1	
South Carolina	Life insurance: 0.75% of premiums Fire insurance: 1% Most other insurers: 1.255 of total premiums collected	S.C. Code Ann. § 38-7-20	
South Dakota	Most domestic companies: 2.5% of premiums Life insurance: 1.25%	Every company that pays premium tax "is exempt from all other taxes, state and local, except taxes upon real property as may be owned by the company and the retail sales tax and the use tax on tangible personal property and any product transferred electronically." S.D. Codified Laws § 10-44-8; § 10-44-2	*In the Matter of State Sales and Use Tax Liability of Townley,* 417 N.W.2d 398 (S.D. 1987) (car rental business that sells insurance not in the business of insurance and therefore subject to sales and use tax).
Tennessee	2.5% of gross premiums Life insurance: 1.75% Minimum tax $150	Tenn. Code Ann. § 56-4-205	
Texas	Property & casualty: 1.6% of taxable premium receipts Life, health and accident: 1.75%	"Except as otherwise provided by this code or the Labor Code, an insurer or health maintenance organization subject to a tax imposed by Chapter 4, 221, 222, 224 or 257 may not be required to pay any additional tax imposed by this state or a county or municipality in proportion to the insurer's or health maintenance organizations' gross premium receipts." This does not "prohibit the imposition and collection of state, county, and municipal taxes on the property of insurers or health maintenance organizations or state, county and municipal taxes imposed by other laws of this state, unless a specific exemption for insurers or health maintenance organizations is provided in those laws." Tex.Ins. Code Ann. § 221.002(a) Tex. Ins. Code Ann. § 222.003(a) Tex. Ins. Code Ann. § 203.001	
Utah	2.25% of premiums	Utah Code Ann. § 5909-101	
Vermont	2% on gross premiums	Vt. Stat. Ann. 32 § 8551	
Virginia	2 ¼ % premium income	Va. Code § 58.1-2501	

Comparison of State Insurance Premiums Tax Rates & "In Lieu" Provisions

STATE	RATE	"IN LIEU" LANGUAGE & STATUTES	CASE LAW
Washington	2% of premiums collected	Premium tax other than on title insurers and health service contractors and HMOs is in lieu of all other taxes except taxes on real and tangible personal property and excise taxes on sale, purchase, use or possession of real property, tangible personal property, services, extended warranties, digital goods and codes. With respect to health plans, no in lieu of provision, but § 48.14.0201 states: (7) Beginning January 1, 2000, the state does hereby preempt the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision shall have the right to impose any such taxes upon such taxpayers. This subsection shall be limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW, health maintenance organizations under chapter 48.46 RCW, and self-funded multiple employer welfare arrangements as defined in RCW 48.125.010. The preemption authorized by this subsection shall not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the employees of a health maintenance organization under chapter 48.46 RCW. Wash. Rev. Code § 48.14.080; 48.14.020	
West Virginia	2% plus an additional premium tax of 1%	W.Va. Code § 33-3-14	
Wisconsin	2% gross premiums (not on all insurers)	Wis. Stat. § 76.63-76.65	
Wyoming	.75% on taxable premium income.	Premium tax instead of all taxes imposed by state upon premiums or upon income and of franchise, privilege or other taxes "measured by the insurer's income." Wyo. Stat. § 26-4-103	

Option 10

INCREASE TAX RATE ON HEALTH INSURANCE PREMIUMS

Description

New Mexico currently exempts health insurance premiums from the gross receipts tax and imposes a separate insurance premiums tax on them at lower rates. Most health insurance premiums are subject to a combined rate of 4.003% (including HMOs, nonprofit health care plans, and hospital and medical expense insurance). The total tax is comprised of a 3.003% premium tax and a 1.00% health insurance premium surtax.

This option would increase the surtax rate imposed on health insurance premiums by the following amounts:

- Option 10a: increase the surtax rate by 1%.
- Option 10b: increase the surtax rate by 2%.
- Option 10c: increase the surtax rate by 3%.
- Option 10d: increase the surtax rate to the average gross receipts tax rate inside municipalities of 7.1%.

Effective Date (all Options): January 1, 2011.

Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	FY11	FY12	FY13	FY14	FY10-14	
10a. 1% increase	0	19,200	42,300	46,500	51,200	159,200	General Fund
10b. 2% increase	0	38,400	84,600	93,000	102,400	318,400	General Fund
10c. 3% increase	0	57,600	126,900	139,500	153,600	477,600	General Fund
10d. 3.1% increase	0	59,500	131,100	144,100	158,700	493,400	General Fund

The revenue impact estimate should be considered to be only an initial rough estimate, based on the current 1% health insurance premium surtax revenue. No affects attributable to changes in the industry or federal health care legislation were considered. The FY2011 revenue impact assumes the entire half-year impact would be captured in two quarterly estimated payments.

Effect of Options

The options would reduce or remove a current distortion in the tax treatment of health expenditures reimbursed by health insurance relative to the tax treatment of other goods and services (including health-related services paid for out-of-pocket). Most health expenditures reimbursed by health insurance are not subject to gross receipts tax due to the medical deduction, the hospital credit, or the exemption for non-profit hospitals. The premium tax on health insurance can be thought of as a pre-payment of gross receipts tax based on “expected” rather than actual health-related expenditures that are reimbursed by insurance. The rate on health insurance should therefore approximate the gross receipts tax rate so that there is no gross receipts-type tax incentive for purchasing health-related services through insurance rather than other goods and services, including out-of-pocket health-related spending.

Insurance Premiums Tax Rates in Surrounding States

Arizona	2% of net premiums except fire insurance; .66% fire insurance
Colorado	2%
Kansas	2%
New Mexico	3.003% gross premiums less return premiums; health insurance premium surtax of 1%
Oklahoma	2.25% of direct premiums
Texas	Property & casualty: 1.6% of taxable premium receipts; Life, health and accident: 1.75%
Utah	2.25% of premiums

Pros

- Reduces or removes the current tax incentive that favors purchases of insurance reimbursed health-related services relative to other goods and services, which may contribute to rising medical costs.

- Reduces or removes the disparity between health-related services paid through health insurance and the same services paid for out-of-pocket, which many experts believe leads to too much spending on health.

Cons

- Can be expected to increase health insurance premiums, which are rising more rapidly than other costs.
    - Higher premium costs may particularly burden small businesses purchases of health insurance, and individuals who purchase insurance in the non-group market.
    - Higher premiums might also lower insurance coverage.

- New Mexico's health insurance premium rate is already higher than in any other state except Hawaii, and New Mexico health insurers also pay an "assessment" (only partially offset by a premium tax credit) to fund low-income health insurance pools.

- Federal legislation may alter the health insurance market in important ways, so it may be prudent to wait until those changes take effect before changing New Mexico's taxation of health insurance.

CIGARETTE TAX OVERVIEW

DESCRIPTION: An excise tax is imposed on the manufacture or acquisition of tobacco products to be distributed in the ordinary course of business, or for the consumption of tobacco products (other than cigarettes) at the rate of 25% of the product value.

BASE: The tax is imposed on any product made from or containing tobacco, other than cigarettes. "Roll-your-own" cigarette tobacco is defined as a cigarette and taxed under the Cigarette Tax Act. Exemptions from the tax are allowed for tobacco products sold to the United States government, to the state of New Mexico or any political subdivision, or tobacco products to be distributed on a reservation or pueblo grant by the governing body or any enrolled tribal member licensed by the governing body of any Indian nation, tribe or pueblo.

RATE: 25% of product value (generally wholesale value).

PAYMENT DUE DATE: The tax is to be paid by the 25th day of the month following the month in which the distribution or sale occurs.

COLLECTED BY: The Taxation and Revenue Department.

DISPOSITION: Revenues are deposited in the Tax Administration Suspense Fund and distributed to the General Fund.

TOBACCO PRODUCTS TAX RECEIPTS

(thousands of dollars)

	Fiscal Year 2004	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009
Receipts (000)	4,924	5,118	4,909	5,535	5,578	6,453

Tobacco Products Tax History

1986	New tax imposed on tobacco products other than cigarettes of 25% of the purchase price paid by the first purchaser. Tax receipts transferred to the State Operating Reserve.
1987	Tobacco products tax receipts allocated to General Fund.

State Tax Rates on Other Tobacco Products

(as of January 1, 2008)

State	Tax Base	Tax Rate (1)
Alabama	Cigars (2)	4.0¢-40.5¢/ 10 cigars
	Tobacco/Snuff	0.6¢-5.25¢/ ounce
Alaska		75% Wholesale Price
Arizona	Cigars (2)	44.1¢-$2.60/ 20 cigars
	Tobacco/Snuff	23.8¢/ounce
Arkansas		32% Manufactures Price
California (3)		45.13% Wholesale Price
Colorado		40% Manufactures Price
Connecticut (5)		20% Wholesale Price
Delaware		15% Wholesale Price
Florida		25% Wholesale Price
Georgia	Little Cigars	2.5¢/10 cigars
	Other Cigars	23% Wholesale Price
	Tobacco	10% Wholesale Price
Hawaii		40% Wholesale Price
Idaho		40% Wholesale Price
Illinois		18% Wholesale Price
Indiana		24% Wholesale Price
Iowa		50% Wholesale Price
Kansas		10% Wholesale Price
Kentucky		7.5% Wholesale Price
Louisiana	Cigars	8%-20% Manufacture Price
	Tobacco/Snuff	33% Manufactures Price
Maine	Chewing Tobacco./Snuff	78% Wholesale Price
	Smoking Tobacco/Cigars	20% Wholesale Price
Maryland		15% Wholesale Price
Massachusetts	Smokeless Tobacco	90% Wholesale Price
	Smoking Tobacco/Cigars	30% Wholesale Price
Michigan		32% Wholesale Price
Minnesota		70% Wholesale Price
Mississippi		15% Manufactures Price
Missouri		10% Manufactures Price
Montana		50% Wholesale Price
Nebraska		20% Wholesale Price
Nevada		30% Wholesale Price
New Hampshire		19% Wholesale Price
New Jersey		30% Wholesale Price
New Mexico		**25% Product (wholesale) value**

State Tax Rates on Other Tobacco Products

(as of January 1, 2008)

State	Tax Base	Tax Rate (1)
New York		37% Wholesale Price
North Carolina		3% Wholesale Price
North Dakota	Cigars & Tobacco	28% Wholesale Price
	Chew Tobacco/Snuff	16¢-60¢/ounce
Ohio		17% Wholesale Price
Oklahoma	Cigars (2)	36¢-120¢/ 10 cigars
	Tobacco/Snuff	60%-80% factory list price
Oregon		65% Wholesale Price
Rhode Island		40% Wholesale Price
South Carolina		5% Manufactures Price
South Dakota		35% Wholesale Price
Tennessee		6.6% Wholesale Price
Texas	Cigars (2)	1.0¢-15.0¢/10 cigars
	Tobacco/Snuff	40% Manufactures Price
Utah		35% Manufactures Price
Vermont (6)		41% Manufactures Price
Virginia		10% Wholesale Price
Washington		75% Wholesale Price
West Virginia		7% Wholesale Price
Wisconsin		50% Manufactures Price
Wyoming (4)		20% Wholesale Price

Source: Compiled by the Federation of Tax Administrators (FTA) from various sources.

(1) The volume based tax rates were converted to cents per 10 cigars or per ounce for consistency.
(2) Tax rate on cigars varies based on the selling price.
(3) Tax rate is adjusted annually by the state, effective July 1st of each year.
(4) or 10% of the retail price.
(5) Snuff tobacco taxed at 40 cents per ounce.
(6) Little cigars are taxed as cigarettes.

State Cigarette Tax Rates
(as of July 1, 2009)

State	Cigarette Tax (Per Pack)	State Ranking (Highest = 1)
Alabama	$0.425	45
Alaska	$2.000	9
Arizona	$2.000	10
Arkansas	$1.150	26
California	$0.870	32
Colorado	$0.840	33
Connecticut	$2.000	11
D.C.	$2.000	12
Delaware	$1.150	27
Florida	$1.339	23
Georgia	$0.370	46
Hawaii	$2.600	4
Idaho	$0.570	42
Illinois	$0.980	30
Indiana	$0.995	29
Iowa	$1.360	21
Kansas	$0.790	35
Kentucky	$0.600	40
Louisiana	$0.360	47
Maine	$2.000	13
Maryland	$2.000	14
Massachusetts	$2.510	6
Michigan	$2.000	15
Minnesota	$1.504	19
Mississippi	$0.680	37
Missouri	$0.170	50
Montana	$1.700	17
N. Carolina	$0.350	48
N. Dakota	$0.440	44
Nebraska	$0.640	38
Nevada	$0.800	34
New Hampshire	$1.780	16
New Jersey	$2.700	3
New Mexico	**$0.910**	**31**
New York	$2.750	2
Ohio	$1.250	24
Oklahoma	$1.030	28
Oregon	$1.180	25
Pennsylvania	$1.350	22
Rhode Island	$3.460	1
S. Carolina	$0.070	51
S. Dakota	$1.530	18
Tennessee	$0.620	39
Texas	$1.410	20
Utah	$0.695	36
Vermont	$2.240	7
Virginia	$0.300	49
Washington	$2.025	8
West Virginia	$0.550	43
Wisconsin	$2.520	5
Wyoming	$0.600	41

State	Cigarette Tax (Per Pack)	State Ranking (Highest = 1)
Rhode Island	$3.460	1
New York	$2.750	2
New Jersey	$2.700	3
Hawaii	$2.600	4
Wisconsin	$2.520	5
Massachusetts	$2.510	6
Vermont	$2.240	7
Washington	$2.025	8
Alaska	$2.000	9
Arizona	$2.000	10
Connecticut	$2.000	11
D.C.	$2.000	12
Maine	$2.000	13
Maryland	$2.000	14
Michigan	$2.000	15
New Hampshire	$1.780	16
Montana	$1.700	17
S. Dakota	$1.530	18
Minnesota	$1.504	19
Texas	$1.410	20
Iowa	$1.360	21
Pennsylvania	$1.350	22
Florida	$1.339	23
Ohio	$1.250	24
Oregon	$1.180	25
Arkansas	$1.150	26
Delaware	$1.150	27
Oklahoma	$1.030	28
Indiana	$0.995	29
Illinois	$0.980	30
New Mexico	**$0.910**	**31**
California	$0.870	32
Colorado	$0.840	33
Nevada	$0.800	34
Kansas	$0.790	35
Utah	$0.695	36
Mississippi	$0.680	37
Nebraska	$0.640	38
Tennessee	$0.620	39
Kentucky	$0.600	40
Wyoming	$0.600	41
Idaho	$0.570	42
West Virginia	$0.550	43
N. Dakota	$0.440	44
Alabama	$0.425	45
Georgia	$0.370	46
Louisiana	$0.360	47
N. Carolina	$0.350	48
Virginia	$0.300	49
Missouri	$0.170	50
S. Carolina	$0.070	51

SOURCE: The Tax Foundation

Option 11

INCREASE THE CIGARETTE TAX

Description

The current cigarette tax is $0.91 per pack. This option would increase the cigarette tax by the amounts shown below, and make corresponding adjustments to the stamp discounts allowed and the distribution percentages for cigarette tax revenue so all of the revenue increase would accrue to the State General Fund (with other recipients of cigarette tax revenue unaffected).

Option 11a: Increase the cigarette tax by $0.50 to $1.41 per pack.

Option 11b: Increase the cigarette tax by $1.00 to $1.91 per pack.

Effective Date (both options): July 1, 2010.

	Estimated Revenue Impact (000)						Fund(s)
Option	**FY10**	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Affected**
11a. +$0.50/pack	0	20,474	20,474	20,474	20,474	81,896	General Fund
11b. +$1.00/pack	0	33,145	33,145	33,145	33,145	132,580	General Fund

(1) The "Cigarette Inventory Tax" (Section 7-12-3.1 NMSA 1978) is distinctly separate from the "Cigarette Tax" and is distributed entirely to the State General Fund. The estimate has assumed that approximately one-half of the first month's additional revenue would be collected as inventory tax, and that retailer purchases in the first month would be weaker than normal after stocking to capacity in June to beat the tax increase. Thus, some strength in FY2010 June revenue may be expected, but that impact has not been included in the estimated revenue.

(2) Revenue to the NMFA Credit Enhancement Account is ultimately forwarded to the State General Fund. The total General Fund impact with inclusion of the NMFA Credit Enhancement Account is shown as "General Fund".

Effect of Options

State taxable cigarette consumption would be expected to decline by about 12.4% as a result of a $0.50 per pack state tax increase, and by about 24.8% as a result of a $1.00 per pack increase. Much of that taxable consumption will likely shift to Tribal tax-exempt sales. Currently, taxable cigarette volume accounts for about 65% of cigarette consumption and tax-exempt stamps account for about 35% of cigarette consumption.

On March 31, 2009, the federal cigarette tax rate increased from 39 cents per pack to $1.01 per pack, which is expected to decrease cigarette consumption by about 8%. The federal tax increase is expected to affect the volume of both taxable and Tribal tax-exempt sales.

Pros

- Cigarette consumption imposes significant costs on non-smokers through second hand smoke and health-related costs that are paid directly or indirectly by non-smokers.
- Higher cigarette taxes would discourage non-smokers from becoming smokers.
- An increase in the cigarette excise tax is reported to have significant public support in comparison to other taxes.

Cons

- Both options would divert additional cigarette sales to Tribal tax-exempt sales unless an alternative to tax-exempt sales is adopted (see Option 13).
- Both options would encourage purchases of cigarettes from out of state sellers, either directly (by traveling out of state) or through internet purchases.
- Cigarette taxes are regressive.
- This increase would be on top of the federal increase of $0.39 per pack that came into effect earlier this year.

Option 12

INCREASE TOBACCO PRODUCTS TAX

Description

New Mexico currently imposes a tobacco products tax equal to 25% of the wholesale value of the product.

This option would increase the tobacco products tax rate.

Option 12a would increase the rate to 40%.

Option 12b would approximately equalize the tobacco products rate, on the basis of wholesale value, with a cigarette excise rate of $1.41 per pack (a $0.50 increase from the current cigarette rate) and the current Master Settlement Agreement (MSA) payment of approximately 2 cents per cigarette. The tax rate would be about 65% of wholesale value.

Option 12c would approximately equalize the tobacco products rate, on the basis of wholesale value, with a cigarette excise rate of $1.91 per pack (a $1.00 increase from the current cigarette rate) and the current Master Settlement Agreement (MSA) payment of approximately 2 cents per cigarette. The tax rate would be about 80% of wholesale value.

	Estimated Revenue Impact (000)						**Fund(s)**
Option	**FY10**	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Affected**
12a. 40% rate	0	3,050	3,150	3,300	3,400	12,900	General Fund
12b. 65% rate	0	6,550	6,750	7,000	7,200	27,500	General Fund
12c. 80% rate	0	7,700	7,900	8,300	8,500	32,400	General Fund

Effects of Option

Non-cigarette tobacco products vary widely in price, quality, and weight of tobacco. Comparisons against cigarette taxes by weight of tobacco incorporated in the product was not considered useful due to type, quality and moisture content of the tobacco. The revenue options were analyzed based on a comparison of state taxes against approximated pre-tax wholesale prices of cigarettes.

Pros

- Many of the negative externalities (i.e., health issues) associated with tobacco consumption are similar across the various tobacco products, but non-cigarette tobacco products are currently taxed at a lower level than cigarettes; the options would reduce or eliminate this tax differential.

Cons

- It is difficult to assure comparable taxation of various products through a single tax rate based on wholesale price because they vary widely in price, quality, and weight of tobacco.

- Higher taxes would encourage purchases over the internet and out of state.

- Little cigars are already taxed as cigarettes in New Mexico, and the increase on other tobacco products would be on top of the federal increase that came into effect earlier this year.

Option 13

REPEAL OR REVISE NATIVE AMERICAN TAX-EXEMPT STAMPS

Description

New Mexico currently has provisions allowing cigarette tax-exempt stamps for sales that occur on Native American tribal lands, including sales to non-tribal members even though exemption of such sales is not required by federal law.

Options 13a, 13b, and 13c would repeal the tax-exempt cigarette stamp provisions and create distributions to a new fund that would be allocated to Native American Nations, tribes, and pueblos based on estimates of their members' purchases of cigarettes on their tribal lands. The Nations, tribes and pueblos would use the allocated funds to reimburse their members for the cigarette excise tax on purchases of cigarettes on tribal lands.

- Option 13a would repeal the tax-exempt cigarette stamp provisions and create distributions to a new Tribal Cigarette Fund that would be allocated to Nations, tribes, and pueblos based on estimates of their members' purchases of cigarettes on their tribal lands. Cigarette tax revenue distribution shares would be adjusted to direct the additional tax revenue to the new Tribal fund and the General Fund.

- Option 13b is similar to Option 13a, but includes an additional revenue component associated with Option 11a, a $0.50 per pack cigarette tax increase. The revenue shown under this option is in addition to the revenue shown for the Option 11a cigarette tax increase.

- Option 13c is similar to Option 13a, but includes an additional revenue component associated with Option 11b, a $1.00 per pack cigarette tax increase. The revenue shown under this option is in addition to the revenue shown for the Option 11b cigarette tax increase.

Options 13d and 13e, would replace the current tax-exempt Native American cigarette stamps with a tax-reduced stamp that is $0.91 less than the state tax rate. Under the current cigarette tax rate, the tax-reduced Native American tax stamps would be zero, unchanged from current law. Option 13d and Option 13e illustrate the additional revenue gains if the cigarette tax rate increases proposed under Option 11a and Option 11b were to become effective in conjunction with a Native American tax-reduced stamp. These two options also would create distributions to a new fund that would be allocated to Native American Nations, tribes, and pueblos based on estimates of their members' purchases of cigarettes on their tribal lands. The Nations, tribes and pueblos would use the allocated funds to reimburse their members for the portion of cigarette excise tax imposed on purchases of cigarettes on tribal lands.

- Option 13d includes the additional revenue component associated with Option 11a, a $0.50 per pack cigarette tax increase, combined with a Native American tax-reduced stamp that is $0.50 ($0.91 below the Option 11a total cigarette excise rate of $1.41). The revenue shown under this option is in addition to the revenue shown for the Option 11a cigarette tax increase.

- Option 13e includes the additional revenue component associated with Option 11b, a $1.00 per pack cigarette tax increase, combined with a Native American tax-reduced stamp that is $1.00 ($0.91

below the Option 11b total cigarette excise rate of $1.91). The revenue shown under this option is in addition to the revenue shown for the Option 11b cigarette tax increase.

Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	FY11	FY12	FY13	FY14	FY10-14	
13a. Repeal Tax Exempt with no tax rate change	0	4,900	4,950	5,000	5,050	19,900	Tribal Cigarette Fund
	0	23,300	23,250	23,200	23,150	92,900	General Fund
13b. Repeal Tax Exempt and Option 11a (+$0.50)	0	7,600	7,670	7,740	7,800	30,810	Tribal Cigarette Fund
	0	39,900	39,830	39,760	39,700	159,100	General Fund
13c. Repeal Tax Exempt and Option 11b (+$1.00)	0	10,300	10,400	10,500	10,600	41,800	Tribal Cigarette Fund
	0	59,300	59,200	59,100	59,000	236,600	General Fund
13d. $0.91 tax stamp differential and Option 11a (+$0.50)	0	2,700	2,725	2,750	2,775	10,950	Tribal Cigarette Fund
	0	18,200	18,175	18,150	18,125	72,650	General Fund
13e. $0.91 tax stamp differential and Option 11b (+$1.00)	0	5,400	5,450	5,500	5,550	21,900	Tribal Cigarette Fund
	0	39,050	39,000	38,950	28,900	155,900	General Fund

Effects of Option

The Option 13a, 13b and 13c would yield approximately $28 million in revenue in FY2011 attributable to the current tax rate of $0.91 per pack (Option 13a).

The Options 13b and 13c would substantially increase the revenue yield associated with a cigarette tax rate increase. This result is caused by two factors: 1) an additional 31 million packs in the tax base, currently tax exempt, would be subject to the tax increase; and, 2) the apparent price elasticity applicable to taxable volumes of cigarettes would be substantially reduced. The apparent price elasticity effect on taxable volumes associated with a state tax increase is estimated to be about -1.146 (mostly a shift in consumer purchases to tax-exempt cigarettes from Tribal retailers). Assuming elimination of the availability of tax-exempt cigarettes, the price elasticity effect would be something in the range of -0.50 (representing real decreases in cigarette consumption).

The Options 13d and 13e would, for similar reasons but to a somewhat lesser extent, alter the revenue yield associated with any cigarette tax rate increase.

Pros

- Tax-exempt stamps have been found to be subject to abuse and to contribute to problems in tax compliance.

- A large majority of the cigarette tax-exempt purchases are associated with non-Tribal consumers.

- The availability of tax-exempt cigarettes hinders the effectiveness of state health initiatives to discourage cigarette consumption by increasing cigarette taxes, and also significantly reduces the revenue gains associated with such tax increases.

- Option 13d and Option 13e maintain the current existing Native American price differential of $0.91 per pack, while increasing State revenue gains from cigarette excise tax rate increases.

Cons

- The options would repeal or revise the tribal exemption, which has been in place for 35 years, without changing the exemption for sales to the federal or State governments.

- Tribal sellers of cigarettes would experience reduced sales to non-tribal members if the entire tax differential were removed (Options 13a, 13b, and 13c).
  - It is possible that some of these sellers would go out of business.

- Tribal revenues from tribal cigarette excises and other taxes generated from cigarette sales would be reduced if the entire tax differential were removed (Options 13a, 13b, and 13c).
  - Some tribal cigarette excises might have to be repealed in order to restore some of the competitiveness of tribal sales.

- Elimination of cigarette tax-exempt stamps (Options 13a, 13b, and 13c) would probably make the issue of “bootlegging” out-of-state cigarettes more prominent than it is today.

Calculation of Tax Reimbursement to Native American Smokers Living on Reservations
(calculated at the current $0.91 per pack tax rate)

Geographic Area	Total Population (2000 Census)	Native American (1) Population (2000 Census)	Estimated 2010 Total Population	Native American Population age 18 and over	Native American Adult Smokers (2)	Estimated Cigarette Tax that would be paid by Native American Smokers (3)
AMERICAN INDIAN RESERVATION AND OFF-RESERVATION TRUST LAND — FEDERAL All areas	**138,839**	**104,823**	**114,705**	**70,764**	**14,577**	**$4,894,940**
Acoma Pueblo and Off-Reservation Trust Land, NM	2,802	2,724	2,981	1,932	398	$133,642
Cochiti Pueblo, NM	1,502	695	761	561	116	$38,806
Isleta Pueblo, NM	3,166	2,675	2,927	1,985	409	$137,308
Jemez Pueblo, NM	1,958	1,940	2,123	1,380	284	$95,458
Jicarilla Apache Reservation, NM	2,755	2,474	2,707	1,635	337	$113,097
Laguna Pueblo and Off-Reservation Trust Land, NM	3,815	3,670	4,016	2,671	550	$184,760
Mescalero Reservation, NM	3,156	2,888	3,160	1,849	381	$127,900
Nambe Pueblo and Off-Reservation Trust Land, NM	1,764	455	498	365	75	$25,248
Navajo Nation Reservation and Off-Reservation Trust Land, NM (part)	69,524	67,369	73,720	44,011	9,066	$3,044,361
Picuris Pueblo, NM	1,801	166	182	132	27	$9,131
Pojoaque Pueblo, NM	2,712	263	288	210	43	$14,526
Sandia Pueblo, NM	4,414	499	546	370	76	$25,594
San Felipe Pueblo, NM	3,185	2,465	2,697	1,718	354	$118,839
San Ildefonso Pueblo, NM	1,524	527	577	405	83	$28,015
San Juan Pueblo, NM	6,748	1,329	1,454	1,015	209	$70,210
Santa Ana Pueblo, NM	487	473	518	335	69	$23,173
Santa Clara Pueblo, NM	10,658	1,332	1,458	1,057	218	$73,116
Santo Domingo Pueblo, NM	3,166	3,084	3,375	2,079	428	$143,810
Taos Pueblo and Off-Reservation Trust Land, NM	4,492	1,330	1,455	1,131	233	$78,234
Tesuque Pueblo and Off-Reservation Trust Land, NM	806	355	388	264	54	$18,262
Ute Mountain Reservation and Off-Reservation Trust Land, NM (part)	0	n/a	n/a	n/a	n/a	n/a
Zia Pueblo and Off-Reservation Trust Land, NM	646	645	706	460	95	$31,819
Zuni Reservation and Off-Reservation Trust Land, NM (part)	7,758	7,424	8,124	5,199	1,071	$359,629
San Felipe/Santa Ana joint use area, NM	0	n/a	n/a	n/a	n/a	n/a
San Felipe/Santo Domingo joint use area, NM	0	n/a	n/a	n/a	n/a	n/a

(1) "Native American" based on Census definition of "American Indian and Alaska Native".
(2) "Smokers" assumed to be 20.6% of adult population.
(3) Estimated Cigarette Tax that would be paid by Native American smokers assumes average consumption of 369 packs per year per smoker.

Source: U.S. Census Bureau, Census 2000 Summary File 1, Matrix P8.
Source: U.S. Census Bureau, Census 2000 Summary File 1, Matrices PCT12 and P13.
Calculations by TRD/TAR&S Office from Census percentages of population for age and race.

LIQUOR EXCISE TAX OVERVIEW

DESCRIPTION: An excise tax is imposed on any wholesaler who sells alcoholic beverages.

BASE: Liters or gallons sold. Deductions are allowed for interstate sales. Sales to the armed forces are exempt. A refund or credit is allowed for liquor excise tax paid on destroyed or damaged alcoholic beverages.

RATE: The following rates apply:

- on spirituous liquors, $1.60 per liter;
- on beer or cider, $.41 per gallon, except beer produced by microbreweries that produce less than 5,000 barrels annually for which the rate is $.08 per gallon;
- on wine, $.45 per liter, except wine from small wineries that produce less than 950,000 liters annually for which the rate is $.10 per liter on the first 80,000 liters and $.20 per liter for volumes above 80,000 liters (and below 950,000 liters); and
- on fortified wine, $1.50 per liter.

PAYMENT DUE: On or before the 25th day of the month following the month in which the taxable event occurs.

COLLECTED BY: The Taxation and Revenue Department.

DISPOSITION: Effective July 1, 2007, 41.5% of net receipts are distributed to the Local DWI Grant Fund. (Previously, 34.57% of net receipts were distributed to the Local DWI Grant Fund). Proceeds in this fund are appropriated as follows:

- $2,500,000 to the Local Government Division of the Department of Finance and Administration to make grants to municipalities and counties in accordance with the provisions of the Local DWI Grant Program Act. No more than $600,000 may be used by the division for administrative expenses;
- $2,800,000 to six counties for funding of alcohol detoxification and treatment facilities, including $1,700,000 to Bernalillo, $300,000 each to San Juan and Santa Fe, $200,000 to Rio Arriba and $150,000 each to Sandoval and Socorro Counties;
- $300,000 to the Local Government Division of the Department of Finance and Administration to fund the costs of installing and removing ignition interlock devices for indigent people who are required by law to have those devices; and
- the remainder is distributed to all counties based on a formula provided by the Local DWI Grant Program.

The remaining 58.5% of net liquor excise tax receipts is distributed as follows:

- Effective July 1, 2009, $20,750 monthly to the City of Farmington for alcohol treatment and rehabilitation services for street inebriates; and
- the remainder to the General Fund.

RECEIPTS

(thousands of dollars)

	Fiscal Year 2004	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009
Receipts	39,752.6	40,333.5	44,841.7	41,188.7	42,979.9	44,203.9

	Beer	Wine	Spirits
Approximate "Drinks" per Year	532.7 million	102.2 million	258.3 million

TAX RATE HISTORY

1963

Changed liquor excise tax rates:

Beer	$.08 per gallon
Wine	$.40 per gallon
Spirits (not over 100 proof)	$1.50 per gallon
Spirits (over 100 proof)	$2.40 per gallon

1967

Imposed wholesalers tax (.5% of gross receipts). Repealed wholesalers privilege tax (.125% of gross receipts)

1981

Repealed wholesalers tax (.5%). Reimposed wholesalers tax at 4.25% of gross receipts. Changed liquor excise tax and dedicated it to a new Community Alcoholism Treatment Fund. (Note that the result of the new wholesalers tax increase and the excise tax was an effective rate increase.):

Beer	$.09 per gallon
Wine	$.12 per gallon
Spirits (not over 100 proof)	$.43 per liter
Spirits (over 100 proof)	$.69 per liter

1983

Repealed the liquor wholesalers tax. Changed liquor excise tax rates, effective July 1, 1983*:

	Total	General Fund	CATD Fund
Beer (per gallon)	$.18	$.09	$.09
Wine (per liter)	$.25	$.13	$.12
Spirits (per liter)	$1.04	$.53	$.51

1987

Repealed exemption from excise tax for New Mexico vintners and enacted a temporary lower excise tax rate schedule for wines sold by New Mexico winers and growers. Rate varies by volume of liters sold and sales period as follows:

	Tax Rate on Domestic Wine	
	First 80,000 liters	Over 80,00 liters
7/1/87-6/30/90	$.01	$.05
7/1/90-6/30/92	.05	.10
7/1/92-6/30/94	.10	.20
7/1/94 and after	.25	.25

1993

General tax rates increased in two steps, as follows:

	7/93	7/94
Beer (per gallon)	$.35	$.41
Wine (per liter)	$.34	$.45
Spirits	$1.50	$1.60
Fortified wines (14%+ alcohol, per liter)	$1.50	$1.50

The tax on wines from small winers remains at $.10 per liter until 7/94 when it will go to $.25 per liter, as provided by prior law. Beer produced in a micro-brewery (5,000 gallons or less per year) will be taxed at $.25 per gallon. Repealed earmarking for Community Alcoholism Treatment and Detoxification Fund.

State Beer Tax Rates
(as of July 1, 2009)

State	Beer Tax (Per Gallon)	State Ranking (Highest = 1)
Alabama	1.05000	2
Alaska	1.07000	1
Arizona	0.16000	30
Arkansas	0.21000	20
California	0.20000	21
Colorado	0.08000	46
Connecticut	0.20000	22
D.C.	0.09000	43
Delaware	0.16000	31
Florida	0.48000	7
Georgia	1.01000	3
Hawaii	0.93000	4
Idaho	0.15000	34
Illinois	0.18500	26
Indiana	0.11500	40
Iowa	0.19000	25
Kansas	0.18000	27
Kentucky [(a)]	0.08000	47
Louisiana	0.32000	13
Maine	0.35000	12
Maryland	0.09000	44
Massachusetts	0.11000	41
Michigan	0.20000	23
Minnesota	0.15000	35
Mississippi	0.42680	8
Missouri	0.06000	49
Montana	0.14000	36
N. Carolina	0.53177	6
N. Dakota	0.16000	32
Nebraska	0.31000	14
Nevada	0.16000	33
New Hampshire	0.30000	15
New Jersey	0.12000	39
New Mexico	**0.41000**	**9**
New York	0.14000	37
Ohio	0.18000	28
Oklahoma	0.40000	11
Oregon	0.08390	45
Pennsylvania	0.08000	48
Rhode Island	0.11000	42
S. Carolina	0.77000	5
S. Dakota	0.27000	16
Tennessee [(b)]	0.14000	38
Texas	0.20000	24
Utah	0.41000	10
Vermont	0.26500	17
Virginia	0.25650	19
Washington	0.26000	18
West Virginia	0.18000	29
Wisconsin	0.06000	50
Wyoming	0.01900	51

State	Beer Tax (Per Gallon)	State Ranking (Highest = 1)
Alaska	1.07000	1
Alabama	1.05000	2
Georgia	1.01000	3
Hawaii	0.93000	4
S. Carolina	0.77000	5
N. Carolina	0.53177	6
Florida	0.48000	7
Mississippi	0.42680	8
New Mexico	**0.41000**	**9**
Utah	0.41000	10
Oklahoma	0.40000	11
Maine	0.35000	12
Louisiana	0.32000	13
Nebraska	0.31000	14
New Hampshire	0.30000	15
S. Dakota	0.27000	16
Vermont	0.26500	17
Washington	0.26000	18
Virginia	0.25650	19
Arkansas	0.21000	20
California	0.20000	21
Connecticut	0.20000	22
Michigan	0.20000	23
Texas	0.20000	24
Iowa	0.19000	25
Illinois	0.18500	26
Kansas	0.18000	27
Ohio	0.18000	28
West Virginia	0.18000	29
Arizona	0.16000	30
Delaware	0.16000	31
N. Dakota	0.16000	32
Nevada	0.16000	33
Idaho	0.15000	34
Minnesota	0.15000	35
Montana	0.14000	36
New York	0.14000	37
Tennessee [(b)]	0.14000	38
New Jersey	0.12000	39
Indiana	0.11500	40
Massachusetts	0.11000	41
Rhode Island	0.11000	42
D.C.	0.09000	43
Maryland	0.09000	44
Oregon	0.08390	45
Colorado	0.08000	46
Kentucky [(a)]	0.08000	47
Pennsylvania	0.08000	48
Missouri	0.06000	49
Wisconsin	0.06000	50
Wyoming	0.01900	51

(a) There is an additional 11% wholesale sales tax on all alcoholic beverages in Kentucky.
(b) There is an additional 17% wholesale tax on beer in Tennessee.
SOURCE: The Tax Foundation

State Spirits Tax Rates

(as of July 1, 2009)

State	Spirits Tax (Per Gallon)	State Ranking (Highest = 1)
Alabama (a)	$18.78	4
Alaska	$12.80	6
Arizona	$3.00	37
Arkansas	$2.58	39
California	$3.30	35
Colorado	$2.28	44
Connecticut	$4.50	26
D.C.	$1.50	47
Delaware	$3.75	31
Florida	$6.50	16
Georgia	$3.79	30
Hawaii	$5.98	20
Idaho (a)	$10.96	9
Illinois	$8.55	13
Indiana	$2.68	38
Iowa (a)	$12.47	7
Kansas	$2.50	40
Kentucky (b)	$6.46	17
Louisiana	$2.50	41
Maine (a)	$5.21	23
Maryland	$1.50	48
Massachusetts	$4.05	28
Michigan (a)	$10.91	10
Minnesota	$5.08	24
Mississippi (a)	$6.75	14
Missouri	$2.00	45
Montana (a)	$8.62	12
N. Carolina (a)	$13.39	5
N. Dakota	$2.50	42
Nebraska	$3.75	32
Nevada	$3.60	34
New Hampshire (c)	$0.00	50
New Jersey	$5.50	22
New Mexico	**$6.06**	**19**
New York	$6.44	18
Ohio (a)	$9.04	11
Oklahoma	$5.56	21
Oregon (a)	$24.63	2
Pennsylvania (a)	$6.54	15
Rhode Island	$3.75	33
S. Carolina	$4.97	25
S. Dakota (d)	$3.93	29
Tennessee	$4.46	27
Texas	$2.40	43
Utah (a)	$11.41	8
Vermont (a)	$0.68	49
Virginia (a)	$20.13	3
Washington (a)	$26.45	1
West Virginia (a)	$1.85	46
Wisconsin	$3.25	36
Wyoming (c)	$0.00	51

State	Spirits Tax (Per Gallon)	State Ranking (Highest = 1)
Washington (a)	$26.45	1
Oregon (a)	$24.63	2
Virginia (a)	$20.13	3
Alabama (a)	$18.78	4
N. Carolina (a)	$13.39	5
Alaska	$12.80	6
Iowa (a)	$12.47	7
Utah (a)	$11.41	8
Idaho (a)	$10.96	9
Michigan (a)	$10.91	10
Ohio (a)	$9.04	11
Montana (a)	$8.62	12
Illinois	$8.55	13
Mississippi (a)	$6.75	14
Pennsylvania (a)	$6.54	15
Florida	$6.50	16
Kentucky (b)	$6.46	17
New York	$6.44	18
New Mexico	**$6.06**	**19**
Hawaii	$5.98	20
Oklahoma	$5.56	21
New Jersey	$5.50	22
Maine (a)	$5.21	23
Minnesota	$5.08	24
S. Carolina	$4.97	25
Connecticut	$4.50	26
Tennessee	$4.46	27
Massachusetts	$4.05	28
S. Dakota (d)	$3.93	29
Georgia	$3.79	30
Delaware	$3.75	31
Nebraska	$3.75	32
Rhode Island	$3.75	33
Nevada	$3.60	34
California	$3.30	35
Wisconsin	$3.25	36
Arizona	$3.00	37
Indiana	$2.68	38
Arkansas	$2.58	39
Kansas	$2.50	40
Louisiana	$2.50	41
N. Dakota	$2.50	42
Texas	$2.40	43
Colorado	$2.28	44
Missouri	$2.00	45
West Virginia (a)	$1.85	46
D.C.	$1.50	47
Maryland	$1.50	48
Vermont (a)	$0.68	49
New Hampshire (c)	$0.00	50
Wyoming (c)	$0.00	51

(a) States where the state government controls all sales. The implied excise tax rate is calculated.
(b) There is an additional 11% wholesale sales tax on all alcoholic beverages in Kentucky.
(c) Control state where the implied excise tax rate as calculated by DISCUS is less then zero
(d) There is an additional 2% wholesale tax on wine and spirits in South Dakota.
SOURCE: The Tax Foundation

State Wine Tax Rates

(as of July 1, 2009)

State	Wine Tax (Per Gallon)	State Ranking (Highest = 1)
Alabama	$1.70	4
Alaska	$2.50	1
Arizona	$0.84	18
Arkansas	$0.77	20
California	$0.20	46
Colorado	$0.28	43
Connecticut	$0.60	25
D.C.	$0.30	39
Delaware	$0.97	13
Florida	$2.25	2
Georgia	$1.51	6
Hawaii	$1.38	8
Idaho	$0.45	34
Illinois	$0.73	21
Indiana	$0.47	33
Iowa	$1.75	3
Kansas	$0.30	40
Kentucky (a)	$0.50	31
Louisiana	$0.11	47
Maine	$0.60	26
Maryland	$0.40	37
Massachusetts	$0.55	28
Michigan	$0.51	30
Minnesota	$0.30	41
Mississippi	$0.427	35
Missouri	$0.42	36
Montana	$1.06	11
N. Carolina	$0.79	19
N. Dakota	$0.50	32
Nebraska	$0.95	14
Nevada	$0.70	23
New Hampshire (b)	$0.00	48
New Jersey	$0.875	16
New Mexico	**$1.70**	**5**
New York	$0.30	42
Ohio	$0.32	38
Oklahoma	$0.72	22
Oregon	$0.67	24
Pennsylvania (b)	$0.00	49
Rhode Island	$0.60	27
S. Carolina	$1.08	10
S. Dakota (c)	$0.93	15
Tennessee	$1.21	9
Texas	$0.204	45
Utah (b)	$0.00	50
Vermont	$0.55	29
Virginia	$1.51	7
Washington	$0.87	17
West Virginia	$1.00	12
Wisconsin	$0.25	44
Wyoming (b)	$0.00	51

State	Wine Tax (Per Gallon)	State Ranking (Highest = 1)
Alaska	$2.50	1
Florida	$2.25	2
Iowa	$1.75	3
Alabama	$1.70	4
New Mexico	**$1.70**	**5**
Georgia	$1.51	6
Virginia	$1.51	7
Hawaii	$1.38	8
Tennessee	$1.21	9
S. Carolina	$1.08	10
Montana	$1.06	11
West Virginia	$1.00	12
Delaware	$0.97	13
Nebraska	$0.95	14
S. Dakota (c)	$0.93	15
New Jersey	$0.875	16
Washington	$0.87	17
Arizona	$0.84	18
N. Carolina	$0.79	19
Arkansas	$0.77	20
Illinois	$0.73	21
Oklahoma	$0.72	22
Nevada	$0.70	23
Oregon	$0.67	24
Connecticut	$0.60	25
Maine	$0.60	26
Rhode Island	$0.60	27
Massachusetts	$0.55	28
Vermont	$0.55	29
Michigan	$0.51	30
Kentucky (a)	$0.50	31
N. Dakota	$0.50	32
Indiana	$0.47	33
Idaho	$0.45	34
Mississippi	$0.427	35
Missouri	$0.42	36
Maryland	$0.40	37
Ohio	$0.32	38
D.C.	$0.30	39
Kansas	$0.30	40
Minnesota	$0.30	41
New York	$0.30	42
Colorado	$0.28	43
Wisconsin	$0.25	44
Texas	$0.204	45
California	$0.20	46
Louisiana	$0.11	47
New Hampshire (b)	$0.00	48
Pennsylvania (b)	$0.00	49
Utah (b)	$0.00	50
Wyoming (b)	$0.00	51

(a) There is an additional 11% wholesale sales tax on all alcoholic beverages in Kentucky.
(b) All wine sales are through state-run stores. Revenue in these states is generated from various taxes, fees and net profits
(c) There is an additional 2% wholesale tax on wine and spirits in South Dakota.
SOURCE: The Tax Foundation

OPTION 14

UNIFORM RATE ON BEER, WINE, AND SPIRITS BASED ON ALCOHOL CONTENT

Description

Current liquor excise tax rates vary by beverage and vary significantly relative to the alcohol content of the beverage. The current rates are $0.41 per gallon of beer (approximately 3.8 cents per drink), $0.45 per liter of wine (approximately 6.7 cents per drink), and $1.60 per liter of spirits (approximately 7.1 cents per drink).

Option 14a would impose a single liquor excise rate applied to the alcohol content of each specific alcoholic beverage *product*. The revenue option is calculated based on a tax rate of $4.00 per liter of pure alcohol (equivalent to the current tax rate of $1.60 per liter on 80 proof spirits). The rate on micro-brewer beer would be adjusted to maintain the current $0.33 per gallon tax differential. The rate on small wine producers would be adjusted to maintain the current $0.35 and $0.25 differentials. Revenue distribution provisions would be adjusted to maintain current revenue levels to the DWI Grant Fund, and direct additional revenue to the General Fund.

Option 14b would equalize the per drink tax rates based on the average alcohol content of each beverage *class*, using the same beverage class types as defined in the current liquor excise tax rate structure. The revenue option is calculated based on a tax rate of $4.00 per liter of pure alcohol, and is equivalent to the current tax rate of $1.60 per liter on spirits (for either 80 proof or 100 proof spirits). The rate on micro-brewer beer would be adjusted to maintain the current $0.33 per gallon tax differential. The rate on small wine producers would be adjusted to maintain the current $0.35 and $0.25 differentials. Revenue distribution provisions would be adjusted to maintain current revenue levels to the DWI Grant Fund, and direct additional revenue to the General Fund.

Option 14c is similar to Option 14b, but is calculated based on a *total* tax rate of 10 cents per drink rather than the current tax rate on spirits of 7.1 cents per drink (this is not the *additional* 10 cents per drink proposal). This revenue option is similar to Option 14b, except the tax rate is calculated based on $5.64 per liter of pure alcohol (approximately equivalent to "10 cents per drink"). The rate on micro-brewer beer would be adjusted to maintain the current $0.33 per gallon tax differential. The rate on small wine producers would be adjusted to maintain the current $0.35 and $0.25 differentials. Revenue distribution provisions would be adjusted to maintain current revenue levels to the DWI Grant Fund, and direct additional revenue to the General Fund.

Effective Date for All Options: July 1, 2010.

Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	FY11	FY12	FY13	FY14	FY10-14	
14a. Tax on Content	0	18,000	18,100	18,200	18,300	72,600	General Fund
14b. Equalize by Class	0	17,880	18,000	18,100	18,200	72,180	General Fund
14c. $0.10 per drink	0	42,600	43,100	43,500	44,100	130,700	General Fund

Note: Option 14a raises slightly more revenue than Option 14b, based on a slightly higher tax rate applied to specialty and micro-brewer beers of higher alcohol content, and to higher proof spirits. The actual volume of higher than normal alcohol content beverages is not known.

Effect of Options

The tax rate on beer would be significantly higher than its current relatively low level, increasing from $0.41 per gallon to $0.757 per gallon under Options 14a and 14b, and increasing from $0.41 per gallon to $1.067 per gallon under Option 14c.

The tax rate on micro-brewed beer would be adjusted to maintain the current $0.33 per gallon tax differential from regular beer, increasing from $0.08 per gallon to $0.427 per gallon under Options 14a and 14b, and increasing from $0.08 per gallon to $0.737 per gallon under Option 14c.

The tax rate on small wine producers would be adjusted to maintain the current $0.35 and $0.25 per liter differentials from regular wine, increasing from $0.10 per liter to $0.13 per liter (first 80,000 liters), and from $0.20 per liter to $0.23 per liter (over 80,000 liters) under Options 14a and 14b. The increase under Option 14c would be from $0.10 per liter to $0.327 per liter (first 80,000 liters), and from $0.20 per liter to $0.427 per liter (over 80,000 liters).

The tax rate on "Fortified Wine" under all options would actually be less than the current tax rate of $1.50 per liter. This may be appropriate since the higher tax rate was originally established to address the cheaper "wino" wines and the availability of such wines has decreased.

Illustration of Tax Rates on a Typical Drink

	Current Tax	Option 14a	Option 14b	Option 14c
Beer	$0.0384	$0.0710	$0.0710	$0.1001
Wine	$0.0665	$0.0710	$0.0710	$0.1001
Spirits (80 proof)	$0.0710	$0.0710	$0.0710	$0.1001
Spirits (100 proof)	$0.0710	$0.0887	$0.0710	$0.1001
Fortified Wine (assume 3.0 oz drink)	$0.1464	$0.0710	$0.0710	$0.1001
Micro-brew Beer	$0.0075	$0.0400	$0.0400	$0.0691
Small Winer (first 80,000 liters)	$0.0148	$0.0192	$0.0192	$0.0483
Small Winer (over 80,000 liters)	$0.0295	$0.0340	$0.0340	$0.0631

A "Drink" is assumed to be 12 oz of beer, 5 oz of wine, and 1.5 oz of spirits. Fortified Wine is illustrated as a 3.0 oz drink for alcohol content equivalence comparison (assuming 20% alcohol).

Illustration of Tax Rates per Gallon and Liter

	Current Tax	Option 14a	Option 14b	Option 14c
Beer (per gallon)	$0.410	$0.757	$0.757	$1.067
Wine (per liter)	$0.450	$0.480	$0.480	$0.677
Spirits (80 proof – per liter)	$1.600	$1.600	$1.600	$2.256
Spirits (100 proof – per liter)	$1.600	$2.000	$1.600	$2.256
Fortified Wine (assume 3.0 oz drink)	$1.500	$0.800	$0.800	$1.128
Micro-brew Beer (per gallon)	$0.080	$0.427	$0.427	$0.737
Small Winer (first 80,000 liters)	$0.100	$0.130	$0.130	$0.327
Small Winer (over 80,000 liters)	$0.200	$0.230	$0.230	$0.427

Pros

- The costs imposed on others by drinking alcohol, including victims of vehicle accidents and medical costs that are directly or indirectly paid by non-drinkers and responsible drinkers, are related to the alcohol content of beverages, and all options would reflect this relationship.
- Higher taxes on alcoholic beverages would reduce under-age and problem drinking, leading to fewer DWI injuries and fatalities.
- Option 14a in particular would apply an appropriate tax rate to innovative beverage products with any unusual alcohol content (such as a stronger version of an "alcopop" or higher proof spirits).
- An increase in liquor excise taxes is reported to have significant public support.
- All three options are designed to maintain the current tax differential for micro-brewed beer relative to regular beer, and for small producer wine relative to regular wine.

Cons

- New Mexico's tax rates on beer and wine are already high relative to most states and all surrounding states, and would be higher under all three options and higher on spirits under Option 14c.
- All three options would encourage purchases of liquor from out of state sellers, either directly (by traveling out of state) or through internet purchases.
- Option 14a would impose additional administrative complication for tax reporting and auditing since the tax rate would be determined by the alcohol content of each specific beverage.

PERSONAL INCOME TAX OVERVIEW

DESCRIPTION: The personal income tax is imposed on the taxable income of every resident individual and upon the taxable income from business, property, or employment in New Mexico of nonresident individuals. The tax also applies to estates and trusts.

BASE: Taxable income is defined as:

Taxable income is computed under current law as follows:
Federal AGI
+ NM additions (e.g., interest on federally tax-exempt bonds)
- Federal standard or itemized deductions
- Federal personal exemption amount
- NM low- and middle-income exemption
- NM subtractions (e.g., interest on NM state and local bonds, capital gains)
- NM uncompensated medical care deduction
= NM taxable income

First-year residents must allocate and apportion their tax within and without New Mexico, as must non-residents with business income within the state and certain other resident taxpayers.

RATE: Tax liability is established under a graduated rate table, with separate tables provided for married individuals filing separately; head of household, surviving spouse, and married individuals filing joint returns; and single individuals, estates, and trusts. There are four tax brackets with marginal tax rates of 1.7%, 3.2%, 4.7%, and 4.9%. The top marginal tax rate of 4.9% is imposed at taxable incomes in excess of:

- $24,000 for heads of household, surviving spouses, and married individuals filing jointly;
- $16,000 for married individuals filing separately; or
- $12,000 for single individuals, estates, and trusts.

In some cases a credit is allowed for taxes paid to another state.

CREDITS AND REBATES: Tax credits and rebates are subtracted from tax liability. Most credits are nonrefundable. Refundable rebates and credits (except the Working Families Tax Credit) are based on "Modified Gross Income" (MGI).

PAYMENT DUE DATE: Tax returns must be filed by April 15th of the year following the taxable year. Taxpayers who file and pay their tax electronically must file by April 30th. Fiscal-year taxpayers must file by the 15th day of the 4th month following the close of their fiscal year.

DISPOSITION: Revenues are deposited in the Tax Administration Suspense Fund, with small portions distributed to the Retiree Health Care Fund and the Legislative Retirement Fund. The remainder is distributed to the General Fund.

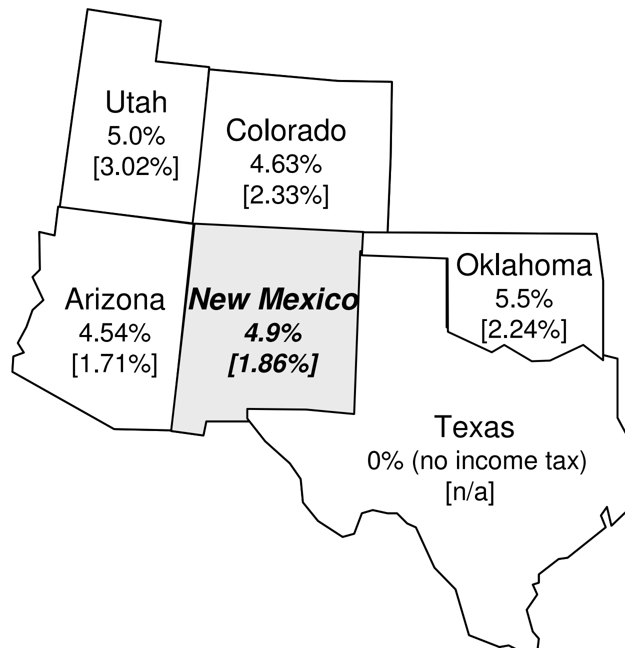
PERSONAL INCOME TAX RATE HISTORY

Year	Change
1978	Rate tables restructured to provide first year rate reduction of about 25%; number of brackets increased to 19; rates for married filing joint (MFJ) ranged from .8% for $2,000 or less to 9% for $200,000 or more.
1981	Reduced rates by 25% for 1981 and by 33.3% for 1982 and thereafter.
1983	Increased rates by 30% from 1982 levels.
1986	Rate tables restructured to reduce number of brackets from 19 to 7 and provide 15% average tax increase; MFJ rates range from 2.4% to 8.5%.
1988	A separate rate table added for heads of household (HOH) instead of applying MFJ table to these taxpayers. HOH rates range from 1.8% at AGI below $5,200 to 8.5% for AGI above $52,000.
1994	Rates decline by an average of 5.6% over 3 years. New rates range from 1.7% to 8.5% for seven different marginal rate categories. Most tax relief to married persons, addressing the so-called "marriage tax penalty".
1998	Top marginal rate for all filing statuses decreased from 8.5% to 8.2%.
2003	Legislation passed to collapse state personal income tax rates and categories beginning in tax year 2003 and ending in 2007. The legislation ultimately reduces the number of tax brackets from seven to four and the top marginal tax rate from 8.2% to 4.9%.

COMPARISON OF NEW MEXICO AND SURROUNDING STATES

The map on the following page provides information regarding the top marginal tax rate and personal income tax revenues as a percent of personal income [in square brackets] for New Mexico and surrounding states.

The table that follows the map provides similar information for all states and the District of Columbia. Of the states with a personal income tax, New Mexico's top marginal tax rate ranks 37th highest. States with a lower top marginal tax rate are: Arizona, Colorado, Illinois, Indiana, Michigan, North Dakota, and Pennsylvania. New Mexico's personal income tax revenues as a percent of personal income ranks 38th highest. States with personal income tax revenues that are a lower percent of personal income are: Arizona, Illinois, Mississippi, New Hampshire, North Dakota, and Tennessee.



States Ranked Alphabetically				
	Top Marginal Tax Rate		Revenue as a % of Personal Income	
State	Rate	Rank	Percent	Rank
Alabama	5.00%	32	2.01%	37
Alaska	n/a	n/a	n/a	n/a
Arizona	4.54%	40	1.71%	40
Arkansas	7.00%	15	2.42%	31
California	10.55%	4	3.39%	6
Colorado	4.63%	39	2.33%	32
Connecticut	5.00%	32	3.26%	10
Delaware	6.95%	17	3.11%	11
Dist. of Columbia	8.50%	9	3.50%	5
Florida	n/a	n/a	n/a	n/a
Georgia	6.00%	23	2.67%	21
Hawaii	11.00%	1	2.99%	16
Idaho	7.80%	12	2.86%	18
Illinois	3.00%	44	1.76%	39
Indiana	3.40%	42	2.44%	30
Iowa	8.98%	7	2.57%	23
Kansas	6.45%	21	2.64%	22
Kentucky	6.00%	23	3.06%	13
Louisiana	6.00%	23	2.08%	35
Maine	8.50%	9	2.94%	17
Maryland	6.25%	22	4.06%	3
Massachusetts	5.30%	31	3.53%	4
Michigan	4.35%	41	2.01%	36
Minnesota	7.85%	11	3.34%	9
Mississippi	5.00%	32	1.62%	41
Missouri	6.00%	23	2.49%	27
Montana	6.90%	18	2.56%	24
Nebraska	6.84%	19	2.46%	29
Nevada	n/a	n/a	n/a	n/a

States Ranked by Top Marginal Personal Income Tax Rate				
	Top Marginal Tax Rate		Revenue as a % of Personal Income	
State	Rate	Rank	Percent	Rank
Hawaii	11.00%	1	2.99%	16
Oregon	11.00%	1	4.21%	2
New Jersey	10.75%	3	2.70%	20
California	10.55%	4	3.39%	6
Rhode Island	9.90%	5	2.56%	25
Vermont	9.40%	6	2.48%	28
Iowa	8.98%	7	2.57%	23
New York	8.97%	8	4.61%	1
Dist. of Columbia	8.50%	9	3.50%	5
Maine	8.50%	9	2.94%	17
Minnesota	7.85%	11	3.34%	9
Idaho	7.80%	12	2.86%	18
North Carolina	7.75%	13	3.35%	8
Wisconsin	7.75%	13	3.06%	14
Arkansas	7.00%	15	2.42%	31
South Carolina	7.00%	15	2.29%	33
Delaware	6.95%	17	3.11%	11
Montana	6.90%	18	2.56%	24
Nebraska	6.84%	19	2.46%	29
West Virginia	6.50%	20	2.49%	26
Kansas	6.45%	21	2.64%	22
Maryland	6.25%	22	4.06%	3
Georgia	6.00%	23	2.67%	21
Kentucky	6.00%	23	3.06%	13
Louisiana	6.00%	23	2.08%	35
Missouri	6.00%	23	2.49%	27
Tennessee	6.00%	23	0.12%	44
Ohio	5.93%	28	3.39%	7
Virginia	5.75%	29	3.07%	12

States Ranked by PIT Revenue as a Percent of Total Statewide Personal Income				
	Top Marginal Tax Rate		Revenue as a % of Personal Income	
State	Rate	Rank	Percent	Rank
New York	8.97%	8	4.61%	1
Oregon	11.00%	1	4.21%	2
Maryland	6.25%	22	4.06%	3
Massachusetts	5.30%	31	3.53%	4
Dist. of Columbia	8.50%	9	3.50%	5
California	10.55%	4	3.39%	6
Ohio	5.93%	28	3.39%	7
North Carolina	7.75%	13	3.35%	8
Minnesota	7.85%	11	3.34%	9
Connecticut	5.00%	32	3.26%	10
Delaware	6.95%	17	3.11%	11
Virginia	5.75%	29	3.07%	12
Kentucky	6.00%	23	3.06%	13
Wisconsin	7.75%	13	3.06%	14
Utah	5.00%	32	3.02%	15
Hawaii	11.00%	1	2.99%	16
Maine	8.50%	9	2.94%	17
Idaho	7.80%	12	2.86%	18
Pennsylvania	3.07%	43	2.74%	19
New Jersey	10.75%	3	2.70%	20
Georgia	6.00%	23	2.67%	21
Kansas	6.45%	21	2.64%	22
Iowa	8.98%	7	2.57%	23
Montana	6.90%	18	2.56%	24
Rhode Island	9.90%	5	2.56%	25
West Virginia	6.50%	20	2.49%	26
Missouri	6.00%	23	2.49%	27
Vermont	9.40%	6	2.48%	28
Nebraska	6.84%	19	2.46%	29

States Ranked Alphabetically				
	Top Marginal Tax Rate		Revenue as a % of Personal Income	
State	Rate	Rank	Percent	Rank
New Hampshire	5.00%	32	0.19%	43
New Jersey	10.75%	3	2.70%	20
New Mexico	**4.90%**	**37**	**1.86%**	**38**
New York	8.97%	8	4.61%	1
North Carolina	7.75%	13	3.35%	8
North Dakota	4.86%	38	1.35%	42
Ohio	5.93%	28	3.39%	7
Oklahoma	5.50%	30	2.24%	34
Oregon	11.00%	1	4.21%	2
Pennsylvania	3.07%	43	2.74%	19
Rhode Island	9.90%	5	2.56%	25
South Carolina	7.00%	15	2.29%	33
South Dakota	n/a	n/a	n/a	n/a
Tennessee	6.00%	23	0.12%	44
Texas	n/a	n/a	n/a	n/a
Utah	5.00%	32	3.02%	15
Vermont	9.40%	6	2.48%	28
Virginia	5.75%	29	3.07%	12
Washington	n/a	n/a	n/a	n/a
West Virginia	6.50%	20	2.49%	26
Wisconsin	7.75%	13	3.06%	14
Wyoming	n/a	n/a	n/a	n/a

States Ranked by Top Marginal Personal Income Tax Rate				
	Top Marginal Tax Rate		Revenue as a % of Personal Income	
State	Rate	Rank	Percent	Rank
Oklahoma	5.50%	30	2.24%	34
Massachusetts	5.30%	31	3.53%	4
Alabama	5.00%	32	2.01%	37
Connecticut	5.00%	32	3.26%	10
Mississippi	5.00%	32	1.62%	41
New Hampshire	0.05	32	0.19%	43
Utah	5.00%	32	3.02%	15
New Mexico	**4.90%**	**37**	**1.86%**	**38**
North Dakota	4.86%	38	1.35%	42
Colorado	4.63%	39	2.33%	32
Arizona	4.54%	40	1.71%	40
Michigan	4.35%	41	2.01%	36
Indiana	3.40%	42	2.44%	30
Pennsylvania	3.07%	43	2.74%	19
Illinois	3.00%	44	1.76%	39
Alaska	n/a	n/a	n/a	n/a
Florida	n/a	n/a	n/a	n/a
Nevada	n/a	n/a	n/a	n/a
South Dakota	n/a	n/a	n/a	n/a
Texas	n/a	n/a	n/a	n/a
Washington	n/a	n/a	n/a	n/a
Wyoming	n/a	n/a	n/a	n/a

States Ranked by PIT Revenue as a Percent of Total Statewide Personal Income				
	Top Marginal Tax Rate		Revenue as a % of Personal Income	
State	Rate	Rank	Percent	Rank
Indiana	3.40%	42	2.44%	30
Arkansas	7.00%	15	2.42%	31
Colorado	4.63%	39	2.33%	32
South Carolina	7.00%	15	2.29%	33
Oklahoma	5.50%	30	2.24%	34
Louisiana	6.00%	23	2.08%	35
Michigan	4.35%	41	2.01%	36
Alabama	5.00%	32	2.01%	37
New Mexico	**4.90%**	**37**	**1.86%**	**38**
Illinois	3.00%	44	1.76%	39
Arizona	4.54%	40	1.71%	40
Mississippi	5.00%	32	1.62%	41
North Dakota	4.86%	38	1.35%	42
New Hampshire	5.00%	32	0.19%	43
Tennessee	6.00%	23	0.12%	44
Alaska	n/a	n/a	n/a	n/a
Florida	n/a	n/a	n/a	n/a
Nevada	n/a	n/a	n/a	n/a
South Dakota	n/a	n/a	n/a	n/a
Texas	n/a	n/a	n/a	n/a
Washington	n/a	n/a	n/a	n/a
Wyoming	n/a	n/a	n/a	n/a

Source: Tax Foundation; www.TaxFoundation.org.

OPTION 15

INCREASE PIT RATES

Description

Under current law, the top income tax rate is 4.9% for taxable income over $24,000 for heads of household, surviving spouses, and married individuals filing joint returns; over $12,000 for married individuals filing separate returns; and over $16,000 for single individuals, estates, and trusts.

Option 15a would add a new tax bracket with a tax rate of 5.9% for taxable income over $100,000 for heads of household, surviving spouses, and married individuals filing joint returns; over $50,000 for married individuals filing separate returns; and over $67,000 for single individuals, estates, and trusts. Effective date: Taxable years beginning on or after January 1, 2010.

Option 15b would add a new tax bracket with a tax rate of 5.9% for taxable income over $150,000 for heads of household, surviving spouses, and married individuals filing joint returns; over $75,000 for married individuals filing separate returns; and over $100,000 for single individuals, estates, and trusts. Effective date: Taxable years beginning on or after January 1, 2010.

Option 15c would add a new tax bracket with a tax rate of 5.9% for taxable income over $250,000 for heads of household, surviving spouses, and married individuals filing joint returns; over $125,000 married individuals filing separate returns; and over $167,000 for single individuals, estates, and trusts. Effective date: Taxable years beginning on or after January 1, 2010.

Option 15d would add a new tax bracket with a tax rate of 5.9% for taxable income over $500,000 for heads of household, surviving spouses, and married individuals filing joint returns; over $250,000 married individuals filing separate returns; and over $333,000 for single individuals, estates, and trusts. Effective date: Taxable years beginning on or after January 1, 2010.

Option 15e is identical to Option 15a, except that it would be effective for taxable years beginning on or after January 1, 2011.

Option 15f is identical to Option 15b, except that it would be effective for taxable years beginning on or after January 1, 2011.

Option 15g is identical to Option 15c, except that it would be effective for taxable years beginning on or after January 1, 2011.

Option 15h is identical to Option 15d, except that it would be effective for taxable years beginning on or after January 1, 2011.

Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	FY11	FY12	FY13	FY14	FY10-14	
15a.	7,836	74,960	85,127	77,588	82,460	327,971	General Fund
15b.	5,123	56,291	64,622	59,008	62,977	248,021	General Fund
15c.	3,161	41,457	48,067	43,918	47,065	183,668	General Fund
15d.	1,704	28,235	32,929	30,038	32,340	125,246	General Fund
15e.	0	34,227	70,754	77,588	82,460	265,029	General Fund
15f.	0	25,839	53,556	59,008	62,977	201,380	General Fund
15g.	0	19,093	39,676	43,918	47,066	149,753	General Fund
15h.	0	12,951	26,996	30,038	32,340	102,325	General Fund

A simulation model was used to estimate each calendar year's tax liability at 2007 income levels (the most recent year for which complete tax return data is available). Personal income growth factors were used to increase the liability estimates to the relevant income levels. Calendar year liabilities were converted to fiscal years by applying historical payment patterns.

For options 15a, 15b, 15c, and 15d (for which the new tax bracket applies to tax years that begin on or after January 1, 2010) it is assumed that withholding tables are not revised until July 1, 2010. As a result, FY 2010 revenues are assumed to increase only due to estimated payments; withholding is unaffected until FY 2011 and the majority of the calendar year 2010 revenue impact is delayed until FY 2011 and FY 2012, thereby inflating the revenue impact for FY 2011 and FY 2012. As a result, the estimated revenue impact decreases between FY 2012 and FY 2013, whereas in all other cases the revenue impact consistently increases each fiscal year. To approximate the value of tax year 2010 estimated payments, the anticipated value of 2010 estimated payments is multiplied by the portion of 2007 estimated payments paid by taxpayers who make estimated payments and would be in the new tax bracket. Based upon payment due dates stipulated in current statute, 50% of tax year 2010 estimated payments are assumed to be made in FY 2010; the remaining 50% are assumed to be made in FY 2011.

Effects of Option

Each option increases the highest marginal personal income tax rate from 4.9% to 5.9%. Due to the deduction of state and local taxes that is allowed on federal tax returns, the overall income tax effect would be offset by up to 35% in 2010 (39.6% starting in 2011). Thus a 1% surtax could cost the taxpayers as little as .65% (.604% starting in 2011).

Top tax rates and applicable taxable income for single filers in surrounding states are provided in the table below.

Top Tax Rates for Single Filers in Surrounding States

State	Top Tax Rate	Taxable Income
Arizona	4.54%	in excess of $150,000
Colorado	4.63%	all federal taxable income
New Mexico	4.90%	in excess of $16,000
Oklahoma	5.50%	in excess of $8,700
Texas	n/a	n/a
Utah	5.00%	all income

Of the 43 states with a personal income tax, New Mexico's top tax rate ranks 36th highest. States with a lower top tax rate are: Arizona, Colorado, Illinois, Indiana, Michigan, North Dakota, and Pennsylvania.

The table on the next page shows the distributional impact of each option by income class.

Pros

- The options would impose a greater portion of the personal income tax burden on taxpayers with greater ability to pay, making the income tax more progressive.
- The options would have very low compliance and administrative costs.

- Because of federal deductibility, a 1% surtax could cost taxpayers as little as .65% (.604% starting in 2011)

Cons

- Raising income tax rates would reduce the competitiveness of New Mexico's economy by discouraging business location and investment as well as employment and work effort.
  - Most small business income is taxed under the personal income tax, and higher rates could particularly impact small business activity.

- Because withholding tables have already been developed for tax year 2010, implementation of options 15a, 15b, 15c, and 15d would require withholding tables be revised mid-year.

Distribution of Change in Tax Year 2011 Tax Liability
(2007 income levels)

Adjusted Gross Income	Options 15a and 15e				Options 15b and 15f			
		Change in Tax Liability				Change in Tax Liability		
	Number of Affected Returns	Total (000)	Average	Percent Distribution	Number of Affected Returns	Total (000)	Average	Percent Distribution
Under 200,000	37,347	8,120	217	13.0%	6,397	1,116	174	2.4%
200,000-500,000	19,517	17,817	913	28.4%	17,031	11,282	662	23.8%
500,000 or more	10,075	36,738	3,646	58.6%	9,945	34,919	3,511	73.8%
Total	66,939	62,676	936	100.0%	33,373	47,316	1,418	100.0%

Adjusted Gross Income	Options 15c and 15g				Options 15d and 15h			
		Change in Tax Liability				Change in Tax Liability		
	Number of Affected Returns	Total (000)	Average	Percent Distribution	Number of Affected Returns	Total (000)	Average	Percent Distribution
Under 200,000	283	48	168	0.1%	14	6	431	0.0%
200,000-500,000	6,763	3,567	527	10.2%	344	116	336	0.5%
500,000 or more	9,552	31,348	3,282	89.7%	7,386	23,594	3,194	99.5%
Total	16,598	34,962	2,106	100.0%	7,744	23,716	3,062	100.0%

OPTION 16

REDUCE CAPITAL GAINS DEDUCTION

Description

Under current law, individuals may deduct the larger of their capital gains up to $1,000 or 50% of their capital gains.

Option 16a would reduce the percentage capital gains deduction from 50% to 25%. Effective Date: Taxable years beginning on or after January 1, 2010.

Option 16b would phase down the percentage capital gains deduction from 50% to 25% by 5% for each:

- $50,000 (or portion thereof) of income in excess of $250,000 for heads of household, surviving spouses, and joint filers;
- $25,000 (or portion thereof) of income in excess of $125,000 for married individuals filing separate returns; or
- $34,000 (or portion thereof) of income in excess of $167,000 for single filers.

Effective date: Taxable years beginning on or after January 1, 2010.

Option 16c is identical to Option 16a, but with an effective date of taxable years beginning on or after January 1, 2011.

Option 16d is identical to Option 16b, but with an effective date of taxable years beginning on or after January 1, 2011.

Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	
16a.	12,077	28,453	37,378	45,304	52,178	175,120	General Fund
16b.	8,020	19,109	25,506	31,177	36,548	120,360	General Fund
16c.	0	16,400	36,609	45,304	52,178	150,221	General Fund
16d.	0	11,105	24,996	31,177	36,548	103,826	General Fund

A simulation model was used to estimate each calendar year's tax liability at 2007 income levels (the most recent year for which complete tax return data is available), but with capital gains adjusted to reflect levels forecast for future years. Personal income growth factors were used to increase the liability estimates to the relevant income levels. Calendar year liabilities were then converted to fiscal years by applying historical payment patterns.

Effects of Option

Due to the deduction of state and local taxes that is allowed on federal tax returns, the overall income tax effect would be offset by up to 35% in 2010 (39.6% starting in 2011). The overall income tax effect of reducing the capital gains deduction from 50% to 25% would therefore potentially be equivalent to reducing the deduction to 33.75% (34.9% starting in 2011).

Most states tax capital gains in the same manner that income from other sources is taxed. However, as of early 2009, New Mexico and eight other states (Arkansas, Hawaii, Montana, North Dakota, Rhode Island,

South Carolina, Vermont, and Wisconsin) with an income tax allow significant tax reductions for capital gains income, as detailed in the table below. States without an income tax impose no tax on capital gains (or other forms of income).

Tax Treatment of Capital Gains

State	Capital Gains Tax Treatment	Year Enacted/ Implemented
Alaska	No income tax, and therefore not tax on capital gains	n/a
Arkansas	Income tax exclusion equal to 30% of net long-term capital gains income	1999
Florida	No income tax, and therefore not tax on capital gains	n/a
Hawaii	Preferential income tax rates for income from capital gains for upper-income taxpayers	1987
Montana	Non-refundable income tax credit equal to 2% of capital gains income	2003/2007
Nevada	No income tax, and therefore not tax on capital gains	n/a
New Mexico	Income tax exclusion equal to the greater of $1,000 or 50% of net capital gains income	2003/2007
North Dakota	Income tax exclusion equal to 30% of net long-term capital gains income for most taxpayers	2001
Rhode Island	Preferential income tax rates for income from both short- and long-term capital gains income	2002/2007
South Carolina	Income tax deduction equal to 44% of net long-term capital gains income	1991
South Dakota	No income tax, and therefore not tax on capital gains	n/a
Texas	No income tax, and therefore not tax on capital gains	n/a
Vermont	Income tax deduction equal to 40% of net long-term capital gains income	2002
Washington	No income tax, and therefore not tax on capital gains	n/a
Wisconsin	Income tax deduction equal to 60% of net long-term capital gains income	1987
Wyoming	No income tax, and therefore not tax on capital gains	n/a

Source: Institute on Taxation and Economic Policy

The table on the next page shows the distributional impact of each option.

Pros

- Capital gains are primarily reported by higher income taxpayers, so reducing the capital gains deduction increases the portion of personal income tax paid by higher-income taxpayers, making the income tax more progressive.
- New Mexico's tax rate on capital gains is among the lowest of any state that imposes an income tax.
- Most capital gains are realized on intangibles and other non-New Mexico assets.
- Compliance and administrative costs should be minimal.

Cons

- Capital gains realizations can be very volatile, so the option would increase the volatility of personal income tax revenues.
- Some current residents with substantial gains on New Mexico assets could leave the State, and some high-income non-residents with substantial gains on stocks and other intangible assets could be discouraged from establishing residency in the State.
- If the deduction was reduced and income tax rates increased under any of the option 15 sub-options, there would be a double effect on the capital gains tax rate.

Distribution of Change in Tax Year 2011 Tax Year Liability
(2007 income levels)

Adjusted Gross Income	Options 16a and 16c				Options 16b and 16d			
	Number of Affected Returns	Change in Tax Liability			Number of Affected Returns	Change in Tax Liability		
		Total (000)	Average	Percent Distribution		Total (000)	Average	Percent Distribution
Under 30,000	2,102	153	73	0.5%	744	12	15	0.1%
30,000-40,000	1,736	111	64	0.4%	538	12	22	0.1%
40,000-50,000	2,638	206	78	0.7%	721	16	23	0.1%
50,000-60,000	2,918	284	97	0.9%	711	17	24	0.1%
60,000-75,000	4,660	556	119	1.9%	1,093	28	25	0.1%
75,000-100,000	7,109	1,041	146	3.5%	1,400	35	25	0.2%
100,000-200,000	15,747	3,716	236	12.4%	2,486	69	28	0.3%
200,000-500,000	9,240	5,164	559	17.2%	5,552	1,607	289	7.9%
500,000 or more	6,658	18,799	2,824	62.6%	6,649	18,539	2,788	91.2%
Total	**52,808**	**30,031**	**569**	**100.0%**	**19,894**	**20,335**	**1,022**	**100.0%**

OPTION 17

REPEAL ITEMIZED DEDUCTION FOR STATE AND LOCAL TAXES

Description

New Mexico currently allows the same itemized deductions as allowed for federal income tax purposes, including the deduction for state and local taxes.

The option would repeal the itemized deduction for state and local taxes. The limitation on itemized deductions, which is restored under current federal law in 2011, would be applied pro rata to state and local taxes in determining the amount of the deduction disallowed for New Mexico income tax purposes.

Option 17a. Effective for taxable years beginning on or after January 1, 2010.

Option 17b. Effective for taxable years beginning on or after January 1, 2011.

Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	FY11	FY12	FY13	FY14	FY10-14	
17a.	3,600	65,400	47,300	50,900	53,500	220,700	General Fund
17b.	0	23,200	47,300	50,900	53,500	174,900	General Fund

The revenue estimate was derived using 2007 federal tax return data published by the IRS Statistics of Income (SOI) Division. Taxpayers' itemized deductions were reduced by state and local taxes, and the revised limited itemized deduction amount was calculated. To convert the change in itemized deductions to a change in tax liability, an average marginal tax rate of 2.0 percent was used for taxpayers with an AGI of less than $50,000 and an average marginal tax rate of 4.9 percent was used for taxpayers with an AGI of $50,000 or more. Personal income growth factors were used to increase the liability estimate to the relevant year's income level. In general, tax year liability changes were converted to fiscal year revenue estimates by applying historical payment patterns to tax year liabilities. For option 17a, however, it was assumed that in tax year 2010 the only adjustment made by taxpayers would be a partial adjustment to estimated payments.

Effect of Option

Utah also disallows state and local taxes as an itemized deduction, but treats the deduction as a nonrefundable credit equal to 6 percent of itemized deductions. Most states that impose a personal income tax either wholly or partially limit the deduction for state and local taxes; the exceptions are: Arizona, Connecticut, Hawaii, North Dakota, New Mexico, Oklahoma, and Vermont.

The table on the next page shows the distributional impact of the options.

Pros

- The option would broaden the income tax base, raising revenue without raising tax rates and possibly discouraging work effort and investment.

- The option would also increase the progressivity of the income tax.

Cons

- The option would add complexity, since the itemized deduction amount claimed on a taxpayer's federal income tax return would no longer be the relevant deduction amount for the taxpayer's New Mexico income tax return.

Distribution of Change in Tax Year 2011 Tax Liability
(2007 income levels)

Adjusted Gross Income	Number of Affected Returns	Change in Tax Liability		
		Total (000)	Average	Percent Distribution
Under 50,000	58,649	1,353	23	3.2%
50,000 - 75,000	53,575	4,697	88	11.2%
75,000 - 100,000	40,623	6,705	165	16.1%
100,000 - 200,000	54,228	16,179	298	38.7%
200,000 or more	17,199	12,841	747	30.7%
Total	224,274	41,775	186	100.0%

OPTION 18

SIMPLIFY THE PERSONAL INCOME TAX

Description

The personal income tax (PIT) would be simplified to reduce the cost to taxpayers of record keeping and preparing returns.

Under the option, new authority would allow TRD to develop tax look-up tables that take into account the standard deduction, personal exemptions and the low- and middle-income exemption (for taxpayers and dependents), so that taxpayers would not have to calculate these amounts.

The definition of "modified gross income" (MGI), which is used to determine eligibility for refundable rebates and credits, would be simplified by defining MGI as simply federal adjusted gross income plus social security and railroad retirement benefits excluded from adjusted gross income (AGI). So that very low- income taxpayers would not be adversely affected by the change in the definition of MGI, the Low Income Comprehensive Tax Rebate (LICTR) would be revised so that the credit amount is constant below the income level at which it begins to phase out under current law.

The low- and middle-income exemption would be modified to make it phase out with "tax table income" rather than AGI. Tax table income would be defined as: AGI plus NM additions to AGI less: (a) the excess of itemized deductions over the standard deduction, (b) NM subtractions (e.g., interest on NM state & local bonds, capital gains) and (c) NM uncompensated medical care deduction.

Taxable income would be determined in the same manner as "net income" under current law, except that the amount of the regular standard deduction and personal exemption, which are now coupled to the federal amounts would be "decoupled" at their 2010 levels. The personal exemption phase out would also be "decoupled" from federal law.

Personal income tax rates, the low- and middle-income exemption and LICTR would be indexed for future inflation, removing the unfair taxation of increases in income that are due only to inflation. The standard deduction and personal exemption amounts would continue to be indexed for inflation. Indexing would be determined by the change in the Consumer Price Index (CPI), but not for the full change in the CPI.

Obsolete language would be removed and clarifying definitions and rules added.

Effective Date: Taxable years beginning on or after January 1, 2010.

Estimated Revenue Impact (000)						**Fund(s) Affected**
FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	
0	1,551	1,698	1,516	1,689	6,454	General Fund

Effect of Option

This option would:

- Simplify the personal income tax, helping New Mexico's taxpayers save time and money filing their State income tax returns;

- Make the income tax fairer by insuring that taxpayers are not unfairly taxed by inflation;
- Update the Income Tax Act, removing obsolete language and clarifying definitions and rules; and
- Maintain fiscal responsibility through a design that is revenue neutral over the 2011-2014 forecast period and thereafter.

Pros

- Simplification would reduce compliance burdens on taxpayers and administrative costs for the Department.
- Inflation taxes income of reduced purchasing power, imposing higher real income tax burdens that unfairly rise with the rate of inflation.
- The option would not change tax revenues over the 5-year budget period or thereafter, maintaining the yield of the personal income tax.

Cons

- A small number of taxpayers would have tax increases under the option.

CORPORATE INCOME and FRANCHISE TAX OVERVIEW

DESCRIPTION: The corporate income tax is imposed on every domestic and foreign corporation employed or engaged in the transaction of business in this state or deriving any income from property within this state. Insurance corporations, certain employee benefit trusts, S corporations and certain nonprofit corporations are exempt from the tax, as are partnerships and limited liability corporations not taxed as corporations under the Internal Revenue Code.

A corporate franchise tax of $50.00 per year is imposed on every domestic and foreign corporation doing business in the state and upon every corporation, whether engaged in active business or not, that has or exercises a corporate franchise in the state.

BASE: Taxable income is computed under current law as follows:

Federal taxable income
+ Federal net operating loss deduction
- Interest on federally tax-exempt state and local bonds
- NM net operating loss carryover
- Interest from U.S. government obligations and NM bonds
- Foreign dividends deduction
= NM taxable income.

REPORTING METHODS: Corporations can report using one of three methods:
(1) Separate Corporate Entity (SCE), which is the default reporting method, unless the taxpayer elects combined or consolidated.
(2) Combined, which can be elected by "unitary" corporations. "Unitary" requires common owner holding more than 50% interest in each corporation and also requires at least one of the following conditions: (i) unity of operations (central purchasing, advertising, accounting or other services); (ii) centralized management or executive force and centralized system of operation; or (iii) interdependent operations or intra-group contributions of property or services. Once elected, the taxpayer cannot file as SCE without permission from the Secretary of TRD.
(3) Consolidated, which follows federal rules, including the requirement of 80% ownership by a common parent. Once elected, the taxpayer cannot file as SCE or combined without permission from the Secretary of TRD.

ALLOCATION AND APPORTIONMENT: Corporations with income from sources outside New Mexico must allocate and apportion their income to New Mexico and non-New Mexico sources. New Mexico's rules follow the Uniform Division of Income for Tax Purposes Act (UDITPA). "Allocation" is used to assign the source of "non-business" income, as follows: non-business dividends and interest are allocated to the state of domicile; and non-business rents, royalties, and gain or loss on the sale of assets that are not from the regular course of the taxpayer's trade or business are allocated to where the property is used, or to the state of domicile if the income is not taxed where the property is used.

"Apportionment" is used to assign the source of business income. Apportionment is generally by a 3-factor formula based on property, payroll, and sales. Each factor is the ratio of the New Mexico amount to the total amount for the taxpayer, and the three ratios are then added and divided by 3 to get the apportionment percentage. (Until 2020, manufacturers can elect to use a 4-factor formula that double weights the sales factor, but must meet certain criteria each year to use the double-weighted sales formula.) Property is the original cost of real and tangible personal property owned or rented, sited where used. Payroll is total compensation paid to employees, sited generally to where the employee works.

Sales are the total receipts from transactions and activities in the regular course of a taxpayer's trade or business. Sales of tangible personal property are sited to where it is delivered or shipped, except sales not taxable where the personal property is delivered or shipped and all sales to the U.S. government are considered sited in New Mexico. Sales of other property are sited where the income-producing activity, or the preponderance of such activity, occurs. The Secretary of TRD has the authority to permit or require changes in the allocation and apportionment rules if they do not fairly represent the taxpayer's business activity in New Mexico. By regulation special rules are provided for construction contractors, railroads, airlines, trucking companies, financial institutions, television and radio stations, and publishing.

RATE: Tax liability is established under a graduated rate table. There are three tax brackets with marginal tax rates of 4.8%, 6.4%, and 7.6%. The top marginal tax rate of 7.6% is imposed at net incomes in excess of $1 million.

CREDITS AND REBATES: Tax credits are subtracted from tax liability. Most credits are nonrefundable.

PAYMENT DUE DATE: Corporate income tax returns are due 75 days after the close of corporation's fiscal year, with up to 6 months of federal extensions automatically accepted. Corporations with estimated tax liability of $5,000 or more must make quarterly estimated tax payments equal to 80% of final liability.

DISPOSITION: Deposited in the Tax Administration Suspense Fund in the state treasury; unencumbered balances after necessary refunds, credits, and interest are transferred monthly to the General Fund.

COMPARISON OF NEW MEXICO AND OTHER STATES: Of the 46 states (including D.C.) with a corporate income tax, New Mexico's top tax rate of 7.6% ranks 21st highest. Among surrounding states, New Mexico's top marginal rate ranks highest:

Arizona	6.968%
Colorado	4.63%
Oklahoma	6.0%
Texas	none
Utah	5.0%

CORPORATE INCOME TAX HISTORY:

1999	A "pass-through entity" is defined as any business other than a sole proprietorship, an estate, a trust, or an entity treated as a corporation for federal income tax purposes. Pass-through entities are required to file informational tax returns annually. Pass-through entities must also collect a withholding tax from their nonresident owners and remit the tax with the return. The withholding requirement does not apply to any nonresident owner who agrees to report and pay tax, if required, on the owner's return.
2003	Remitters are required to withhold from most types of income that flow to nonresidents from New Mexico oil and gas leases. Proceeds are credited against personal income tax liability, just like regular withholding tax.
2005	Publicly traded partnerships are exempted from the requirement of withholding tax from each nonresident partner's income.

State Corporate Income Tax Rates
(as of July 1, 2009)

State	Top Marginal Tax Rate	Rank of Top Tax Rate
Alabama	6.5000	30
Alaska	9.4000	7
Arizona	6.9680	27
Arkansas	6.5000	30
California	8.8400	11
Colorado	4.6300	45
Connecticut	7.5000	23
Delaware	9.7000	5
Florida	5.5000	40
Georgia	6.0000	36
Hawaii	6.4000	34
Idaho	7.6000	21
Illinois	7.3000	24
Indiana	8.5000	12
Iowa	12.0000	1
Kansas	7.0500	26
Kentucky	6.0000	36
Louisiana	8.0000	17
Maine	8.9300	10
Maryland	8.2500	16
Massachusetts	9.5000	6
Michigan	4.9500	44
Minnesota	9.8000	4
Mississippi	5.0000	41
Missouri	6.2500	35
Montana	6.7500	29
Nebraska	7.8100	20
Nevada	n/a	n/a
New Hampshire	8.5000	12
New Jersey	9.0000	8
New Mexico	7.6000	21
New York	7.1000	25
North Carolina	6.9000	28
North Dakota	6.5000	30
Ohio	0.2600	46
Oklahoma	6.0000	36
Oregon	7.9000	18
Pennsylvania	9.9900	2
Rhode Island	9.0000	8
South Carolina	5.0000	41
South Dakota	n/a	n/a
Tennessee	6.5000	30
Texas	n/a	n/a
Utah	5.0000	41
Vermont	8.5000	12
Virginia	6.0000	36
Washington	n/a	n/a
West Virginia	8.5000	12
Wisconsin	7.9000	18
Wyoming	n/a	n/a
District of Columbia	9.9750	3

Option 19

MANDATORY COMBINED REPORTING

Description

Under current law corporations may elect, but are not required, to report on a combined basis with other corporations that have a unitary relationship with the corporation.

This option would require all corporations that are members of a unitary group to file their New Mexico income tax return on a combined basis. The ownership and indicia of shared valued for defining a "unitary" relationship and the criteria for establishing nexus would be the same as under current law. The required (and permissible) members of a unitary group would be specified, as would the "taxpayer(s)" for making elections, filing returns, enforcement actions, etc. Net operating losses (NOLs) established by a member of the group that filed as a separate entity prior to the effective date of mandatory combined reporting could not be used to reduce the income of other members of the group. Apportionment factors of pass-through entities that are owned by a member of the group would be used to apportion the income of the entities. A single combined return would be allowed, but backup detail for each member of the group and inter-group transactions would be required. Consolidated filing would continue to be allowed for an electing federal consolidated group.

Effective Date: Taxable years beginning on or after January 1, 2011.

Estimated Revenue Impact (000)						**Fund(s) Affected**
FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	
0	5,700	32,200	18,900	7,600	64,500	General Fund

The estimate assumes that mandatory combined reporting would initially increase corporate income tax revenues before credits by 10% and that the effect would decline fairly rapidly over time, to zero after four years, as corporations adjusted their operations to avoid the impact of the change. The assumed decline in revenues over time to zero is consistent with recent econometric research using multiple years of data across states, which indicates that mandatory combined reporting has no effect on state corporate income tax revenue. Revenues in FY 2012 reflect collection of most revenue from 2011 liabilities, as well as two estimated payments on 2012 liabilities.

This estimate is highly uncertain, both because of the uncertainty of the underlying forecast of corporate income tax revenues and because of the varying experiences of other states with mandatory combined reporting.

Effect of Option

The option would remove some of the avenues available to large, multi-state corporations to shift income from New Mexico to lower- and non-income tax states.

Pros

- The option would help “level the playing field” between large, multi-state corporations that may use aggressive tax planning and smaller, in-state corporations that operate only in New Mexico.

- All western states with a corporate income tax (except New Mexico) and a number of eastern states have adopted mandatory combined reporting, so the business community is generally familiar with the concept.

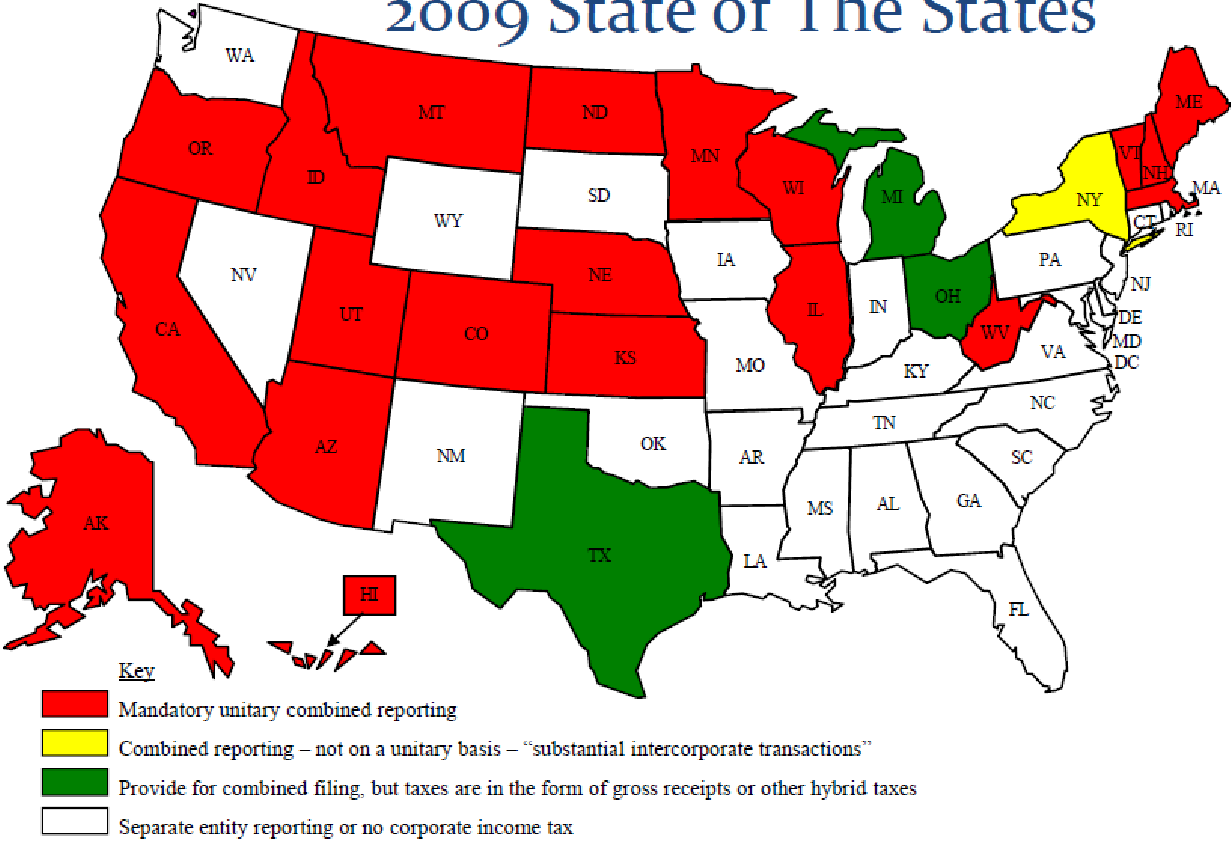
Cons

- The option would (temporarily) increase the State’s reliance on the corporate income tax, which is a highly volatile and economically inefficient revenue source.

- The option would impose additional compliance costs on corporations and make the corporate income tax more difficult for the Taxation and Revenue Department to administer.

- Mandatory combined reporting may discourage corporations with profitable operations in other states from locating in New Mexico, since profits from existing operations would be partially taxable in New Mexico even though their New Mexico start-up operation was not profitable.

Combined Reporting: 2009 State of The States



OPTION 19A

DECOUPLE FROM CERTAIN FEDERAL INCOME TAX PROVISIONS

Description

New Mexico's personal and corporate income taxes generally following the federal (Internal Revenue Code) rules for determining taxable ("net") income. A number of states also generally base their income taxes on federal taxable income, but do not follow (decouple from) certain rules.

The option would decouple the New Mexico income taxes from two current and one potential federal rule: (1) any "bonus depreciation" rule similar to the rule allowed under the American Recovery and Reinvestment Act of 2009 (ARRA), which accelerates cost recover for capital expenditures; (2) the cancellation of indebtedness (CODI) provision of ARRA, which allows taxpayers an election to include income from the discharge of debt from reacquisition of debt in 2009 and 2010 at a discount to be included in income ratably over five years; and (3) the domestic production activities deduction, which allows taxpayers a deduction for the lesser of 9 percent of their qualified production activities income or their taxable income, where domestic production covers products manufactured, produced, grown or extracted in the United States, production of films, electricity, natural gas or potable water in the United States, and construction, engineering and architectural activities conducted in the United States.

Effective Date: Taxable years beginning on or after January 1, 2010.

Decoupling Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	FY11	FY12	FY13	FY14	FY10-14	
Bonus Depreciation	0	*	*	*	*	*	General Fund
CODI	0	**	**	**	**	**	General Fund
Domestic Production Activities Deduction	2,500	8,300	11,300	11,800	12,000	45,900	General Fund
Total	2,500	8,300	11,300	11,800	12,000	45,900	General Fund

***** Only if the federal government adopted a new bonus depreciation provision would there be a revenue effect from this provision.
****** CODI is expected to particularly affect financial institutions in financial centers, and therefore to have a modest effect in New Mexico.

The estimate for the domestic production activity deductions is based on the national industry pattern of use of the deduction in 2006, adjusted to the mix of industry tax payments in New Mexico in 2006 and the increase in the percentage deduction for 2007-2009 and again beginning in 2010, and then adjusted to the current forecast for corporate income tax payments.

Effect of Option

The option would decouple the New Mexico personal and corporate income taxes from special provision in the Internal Revenue Code which reduce State revenues.

The following states with corporate income taxes do not conform to the ARRA bonus depreciation rule: Arkansas, Arizona, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Iowa, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, North Carolina, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Vermont, Wisconsin.

The following states with corporate income taxes do not conform to the ARRA CODI rule: Arkansas, Arizona, California, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Iowa, Indiana, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, North Carolina, New Hampshire, New Jersey, Oregon, Rhode Island, South Carolina, Virginia, Vermont, Wisconsin.

The following states with corporate income taxes do not conform to the domestic production activities deduction: Arkansas, California, Connecticut, District of Columbia, Georgia, Hawaii, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, North Carolina, North Dakota, New Hampshire, New Jersey, New York, Oregon, South Carolina, Tennessee, Wisconsin, West Virginia.

Pros

- The option would raise revenue by broadening the base of the personal and corporate income taxes rather than by raising rates.
- It is not clear that any of these provisions provide cost-effective incentives for investment or economic activity in New Mexico.

Cons

- The option would add complexity to the individual and corporate income taxes, and make these taxes more difficult for the Taxation and Revenue Department to administer.

OPTION 20

ENACT NEW CORPORATE FRANCHISE TAX

Description

New Mexico's current corporate income tax base is federal taxable income with few adjustments. The rates are 4.8% on the first $500,000 of net (taxable) income, 6.4% on the next $500,000 of net income and 7.6% on net income over $1 million. In addition, all corporations pay an annual franchise tax of $50.

All options would enact a new corporate franchise tax based on a corporation's property, payroll and sales in New Mexico in excess of these thresholds: Property: $5 million; Payroll: $1.2 million; and Sales: $9.3 million. Property, payroll and sales in New Mexico would be the same amounts currently used for apportionment of corporate income tax. The property, payroll and sales of related business entities would be included, with related business entities defined as corporations and partnerships and LLCs not taxed as corporations in which the corporation holds (directly or indirectly) more than a 20 percent ownership interest. Business entities with a common owner (of more than 20 percent) would be deemed related, and ownership of 80 percent or more would be treated as 100 percent ownership.

Corporations would pay the higher of this new franchise tax or the corporate income tax.

Options 20a and 20c would raise $100 million each (taxable) year from the new franchise tax while reducing corporate income tax rates over four years and then repealing the corporate income tax. The reduction in corporate income tax rates under Option 20a would be:

- In 2010, the rate on the first $250,000 of net income is reduced to zero;
- In 2011, the zero rate extends to $500,000 and the top rate is reduced to 6.9%;
- In 2012, the rate for net income in excess of $500,000 is reduced to 5.9%;
- In 2013, the rate for net income in excess of $500,000 is reduced to 4.9%;
- In 2014, the corporate income tax is repealed.

Option 20c would follow the same pattern with all changes delayed one year.

The franchise tax rates by taxable year under Option 20a would be: In 2010: 0.16%; in 2011: 0.18%; in 2012: 0.22%; in 2013: 0.23%; and in 2014 and beyond: 0.28%.

Options 20b and 20d would raise $50 million each (taxable) year from the new franchise tax. There would be no change to the corporate income tax. The franchise tax rate under both options would be 0.09% in every year.

Effective Dates: Options 20a and 20b: Taxable years beginning on or after January 1, 2010; Options 20c and 20d: Taxable years beginning on or after January 1, 2011.

	Estimated Revenue Impact (000)						Fund(s)
Option	**FY10**	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Affected**
20a	40,000	100,000	100,000	100,000	100,000	440,000	General Fund
20b	20,000	50,000	50,000	50,000	50,000	220,000	General Fund
20c		40,000	100,000	100,000	100,000	340,000	General Fund
20d		20,000	50,000	50,000	50,000	170,000	General Fund

All estimates are based on a microsimulation model that uses all corporate income tax returns filed in New Mexico for 2006.

Effect of Options

All options would increase corporate tax revenues from the largest corporations operating in New Mexico, while reducing corporate income taxes for most corporations under Options 20a and 20c. The table on the following three pages shows the effect of Option 20a in 2014. (The first page covers all corporations, the second corporations with a tax reduction, and the third corporations with a tax increase). Of the 19,300 corporations operating in New Mexico, 7,776 (40%) would pay income tax under current law while under Option 20a 7,042 (over 90%) of these corporations would have a tax reduction. Only 1,654 corporations (less than 9% of all corporations) would pay tax under Option 20a in 2014, and of these 478 would have a tax reduction and 1,176 would have a tax increase. Of the corporations with a tax increase, only 471 (40%) would pay corporate income tax under current law. The industries with overall tax reductions under Option 20a are other (non-oil and gas) mining and information. The industries with the largest tax increases are retail trade, oil and gas, and utilities.

Option 20b would increase taxes on 895 corporations, only 190 of which pay corporate income tax under current law. The industries with the largest franchise tax payments would be retail trade and oil and gas.

Pros

- All options would provide a stable source of revenue to the State, reducing uncertainty from budget forecasting and decision making, while the cost to corporations with a tax increase would be offset by up to 35% due to federal deductibility.
- All options would better match corporate tax liabilities to benefits corporations receive from State and local government spending.
- Option 20a and 20c would remove the large economic distortions in the current corporate income tax, including the highly uneven effective rates on apportionment factors
- Options 20a and 20b would also substantially reduce the compliance cost of corporate taxes

Cons

- Increasing taxes on corporations would reduce the competitiveness of New Mexico's economy by discouraging business location and investment.
- The options would introduce a new franchise tax that is not currently in effect in any state.

Option 20a in 2014-- All Companies Operating In New Mexico

Industry	Number of Companies	Under Current Law[4] Number of Returns	Under Current Law[4] Amount ($ millions)	Change in Corporate Tax Liability Income Tax	Change in Corporate Tax Liability Franchise Tax	Change in Corporate Tax Liability Total
Oil and Gas	185	110	81.5	(81.5)	117.3	35.8
Other Mining	694	410	55.7	(55.7)	30.5	(25.2)
Utilities[1]	101	38	10.5	(10.5)	30.9	20.4
Manufacturing	1,605	699	2.9	(73.9)	88.6	14.6
Retail Trade	1,536	715	18.4	(18.4)	58.5	40.1
Information[2]	614	207	46.6	(46.6)	23.8	(22.8)
Finance and Insurance	1,819	505	15.8	(15.8)	20.7	4.9
Professional, Scientific & Technical Services3	2,319	878	6.4	(6.4)	17.1	10.7
All Other Industries	10,507	4,214	156.8	(85.8)	107.2	21.5
Total	**19,380**	**7,776**	**394.6**	**(394.6)**	**494.6**	**100.0**

Industry	Corporate Tax Liability Under Proposal: Corporate Income Tax Number of Returns	Corporate Income Tax Amount ($ millions)	Franchise Tax[5] Number of Returns	Franchise Tax[5] Amount ($ millions)	Total Number of Returns	Total Amount ($ millions)
Oil and Gas	0	0.0	42	117.3	42	117.3
Other Mining	0	0.0	93	30.5	93	30.5
Utilities[1]	0	0.0	14	30.9	14	30.9
Manufacturing	0	0.0	275	88.6	275	17.5
Retail Trade	0	0.0	140	58.5	140	58.5
Information[2]	0	0.0	67	23.8	67	23.8
Finance and Insurance	0	0.0	106	20.7	106	20.7
Professional, Scientific & Technical Services3	0	0.0	137	17.1	137	17.1
All Other Industries	0	0.0	780	107.2	780	178.3
Total	**0**	**0.0**	**1,654**	**494.6**	**1,654**	**494.6**

Option 20a in 2014 --Companies with a Tax Reduction

Industry	Number of Companies	Under Current Law[4]		Change in Corporate Tax Liability		
		Number of Returns	Amount ($ millions)	Income Tax	Franchise Tax	Total
Oil and Gas	93	93	53.3	(53.3)	42.9	(10.4)
Other Mining	376	376	54.1	(54.1)	19.7	(34.4)
Utilities[1]	30	30	4.2	(4.2)	0.7	(3.5)
Manufacturing	602	602	29.2	(29.2)	8.1	(21.1)
Retail Trade	644	644	5.6	(5.6)	1.5	(4.1)
Information[2]	183	183	42.3	(42.3)	1.3	(41.1)
Finance and Insurance	456	456	11.7	(11.7)	1.5	(10.2)
Professional, Scientific & Technical Services3	806	806	4.3	(4.3)	1.4	(2.9)
All Other Industries	3,852	3,852	53.6	(53.6)	13.2	(40.4)
Total	**7,042**	**7,042**	**258.3**	**(258.3)**	**90.3**	**(168.1)**

Industry	Corporate Tax Liability Under Proposal					
	Corporate Income Tax		Franchise Tax[5]		Total	
	Number of Returns	Amount ($ millions)	Number of Returns	Amount ($ millions)	Number of Returns	Amount ($ millions)
Oil and Gas	0	0.0	11	42.9	11	42.9
Other Mining	0	0.0	53	19.7	53	19.7
Utilities[1]	0	0.0	3	0.7	3	0.7
Manufacturing	0	0.0	81	8.1	81	8.1
Retail Trade	0	0.0	28	1.5	28	1.5
Information[2]	0	0.0	16	1.3	16	1.3
Finance and Insurance	0	0.0	32	1.5	32	1.5
Professional, Scientific & Technical Services3	0	0.0	52	1.4	52	1.4
All Other Industries	0	0.0	202	13.2	202	13.2
Total	**0**	**0.0**	**478**	**90.3**	**478**	**90.3**

Option 20a in 2014 --Companies with a Tax Increase

Industry	Number of Companies	Under Current Law[4] Number of Returns	Under Current Law[4] Amount ($ millions)	Change in Corporate Tax Liability Income Tax	Change in Corporate Tax Liability Franchise Tax	Change in Corporate Tax Liability Total
Oil and Gas	31	15	28.2	(28.2)	74.4	46.2
Other Mining	40	18	1.6	(1.6)	10.8	9.2
Utilities[1]	12	8	6.3	(6.3)	30.2	23.9
Manufacturing	194	77	44.7	(44.7)	80.4	35.7
Retail Trade	112	62	12.9	(12.9)	57.1	44.2
Information[2]	51	13	4.2	(4.2)	22.5	18.3
Finance and Insurance	74	20	4.2	(4.2)	19.2	15.1
Professional, Scientific & Technical Services3	85	28	2.1	(2.1)	15.7	13.5
All Other Industries	578	230	32.1	(32.1)	94.0	61.9
Total	**1,177**	**471**	**136.3**	**(136.3)**	**404.3**	**268.1**

Industry	Corporate Tax Liability Under Proposal: Corporate Income Tax Number of Returns	Corporate Income Tax Amount ($ millions)	Franchise Tax[5] Number of Returns	Franchise Tax[5] Amount ($ millions)	Total Number of Returns	Total Amount ($ millions)
Oil and Gas	0	0.0	31	74.4	31	74.4
Other Mining	0	0.0	40	10.8	40	10.8
Utilities[1]	0	0.0	11	30.2	11	30.2
Manufacturing	0	0.0	194	80.4	194	80.4
Retail Trade	0	0.0	112	57.1	112	57.1
Information[2]	0	0.0	51	22.5	51	22.5
Finance and Insurance	0	0.0	74	19.2	74	19.2
Professional, Scientific & Technical Services3	0	0.0	85	15.7	85	15.7
All Other Industries	0	0.0	578	94.0	578	94.0
Total	**0**	**0.0**	**1,176**	**404.3**	**1,176**	**404.3**

Option 20b in 2014-- All Companies Operating In New Mexico

Industry	Number of Companies	Under Current Law[4]		Change in Corporate Tax Liability		
		Number of Returns	Amount ($ millions)	Income Tax	Franchise Tax	Total
Oil and Gas	185	110	81.5	0.0	8.3	8.3
Other Mining	694	410	55.7	0.0	1.9	1.9
Utilities[1]	101	38	10.5	0.0	3.4	3.4
Manufacturing	1,605	699	2.9	0.0	4.4	4.4
Retail Trade	1,536	715	18.4	0.0	8.4	8.4
Information[2]	614	207	46.6	0.0	5.1	5.1
Finance and Insurance	1,819	505	15.8	0.0	2.9	2.9
Professional, Scientific & Technical Services3	2,319	878	6.4	0.0	3.1	3.1
All Other Industries	10,507	4,214	156.8	0.0	12.5	12.5
Total	**19,380**	**7,776**	**394.6**	**0.0**	**50.0**	**50.0**

Industry	Corporate Tax Liability Under Proposal					
	Corporate Income Tax		Franchise Tax[5]		Total	
	Number of Returns	Amount ($ millions)	Number of Returns	Amount ($ millions)	Number of Returns	Amount ($ millions)
Oil and Gas	126	81.5	21	8.3	126	89.7
Other Mining	432	55.7	31	1.9	432	57.6
Utilities[1]	42	10.5	9	3.4	42	13.9
Manufacturing	816	2.9	139	4.4	816	7.2
Retail Trade	765	18.4	80	8.4	765	26.8
Information[2]	245	46.6	42	5.1	245	51.6
Finance and Insurance	559	15.8	62	2.9	559	18.7
Professional, Scientific & Technical Services3	936	6.4	71	3.1	936	9.6
All Other Industries	4,562	156.8	440	12.5	4,562	169.3
Total	**8,483**	**394.6**	**895**	**50.0**	**8,483**	**444.6**

Option 20b in 2014 --Companies with a Tax Increase

Industry	Number of Companies	Under Current Law[4]		Change in Corporate Tax Liability		
		Number of Returns	Amount ($ millions)	Income Tax	Franchise Tax	Total
Oil and Gas	21	5	0.5	0.0	8.3	8.3
Other Mining	31	9	0.3	0.0	1.9	1.9
Utilities[1]	9	5	5.0	0.0	3.4	3.4
Manufacturing	139	22	0.9	0.0	4.4	4.4
Retail Trade	80	31	5.0	0.0	8.4	8.4
Information[2]	42	4	0.1	0.0	5.1	5.1
Finance and Insurance	62	8	1.8	0.0	2.9	2.9
Professional, Scientific & Technical Services3	71	14	1.3	0.0	3.1	3.1
All Other Industries	440	92	1.4	0.0	12.5	12.5
Total	**895**	**190**	**16.1**	**0.0**	**50.0**	**50.0**

Industry	Corporate Tax Liability Under Proposal					
	Corporate Income Tax		Franchise Tax[5]		Total	
	Number of Returns	Amount ($ millions)	Number of Returns	Amount ($ millions)	Number of Returns	Amount ($ millions)
Oil and Gas	5	0.5	21	8.3	21	8.7
Other Mining	9	0.3	31	1.9	31	2.2
Utilities[1]	5	5.0	9	3.4	9	8.4
Manufacturing	22	0.9	139	4.4	139	5.3
Retail Trade	31	5.0	80	8.4	80	13.4
Information[2]	4	0.1	42	5.1	42	5.1
Finance and Insurance	8	1.8	62	2.9	62	4.6
Professional, Scientific & Technical Services3	14	1.3	71	3.1	71	4.4
All Other Industries	92	1.4	440	12.5	440	13.9
Total	**190**	**16.1**	**895**	**50.0**	**895**	**66.1**

Notes to Tables

[1] Utilities include electrical generation, electrical transmission, natural gas distribution and water supply.

[2] Information includes telecommunications (telephone, mobile phone, internet providers, cable and satellite), radio and television broadcasting and newspaper and magazine publishing.

[3] Professional services include legal services, architectural services, accounting and business consulting; scientific and technical services include research, computer hardware and software services, and repair services for appliances and technical equipment.

[4] Corporate income tax liability before credits. Excludes current $50 franchise tax.

[5] Franchise Tax Thresholds: $5 Million for Property, $1.2 Million for Payroll and $9.3 Million for Sales.

INCOME TAX WITHHOLDING OVERVIEW

DESCRIPTION: New Mexico requires withholding of income tax on wages and gambling winnings whenever such withholding is required for federal income tax purposes, and recipients can request that New Mexico income tax is withheld from pensions and annuities. In addition, New Mexico requires income tax withholding on the income of non-resident owners of pass-through entities (PTEs) and on payments of oil and gas proceeds taxes to nonresidents.

BASE: Wages are defined as remuneration for services performed by an employee for an employer. Gambling winnings subject to withholding are as defined under the Internal Revenue Code. PTEs withhold on the net income of non-resident owners. Oil and gas proceeds are defined as amounts derived from oil and gas production from wells located in New Mexico.

RATE: The withholding rate on wages is a function of the level of wages and the number of exemptions, but is never higher than the highest personal income tax rate. The withholding rate on gambling winnings is six percent. The rate for PTE and oil and gas proceeds withholding is set through regulation by the Taxation and Revenue Department (TRD), but may not exceed the highest corporate or personal income tax rate. The rate is currently equivalent to the highest personal income tax rate.

PAYMENT DUE DATE: Amounts withheld by PTEs pursuant to the Withholding Tax Act must be submitted to TRD by the due date of the annual return. Other amounts withheld pursuant to the Withholding Tax Act must be paid by the 25th day of the month following the month in which the taxes were required to be withheld. Amounts withheld pursuant to the Oil and Gas Proceeds Withholding Tax Act are due by the 25th day of the month following the end of the calendar quarter in which the taxes were required to be withheld.

DISPOSITION: Revenues are deposited in the tax administration suspense fund and subsequently distributed to the general fund.

RECEIPTS: Receipts for recent fiscal years are detailed in the table below.

	FY07	FY08	FY09
Withholding Tax[1]	972.4	1,044.0	956.9
PTE Withholding	24.7	23.2	20.5
Oil & Gas Proceeds Withholding	42.4	47.7	25.9

[1] Withholding Tax does not include withholding taxes paid by PTEs.

COMPARISON OF NEW MEXICO AND SURROUNDING STATES: All of the 42 states (including DC) with a general income tax have withholding on wages, usually with rates determined by rate brackets, wages, and number of exemptions. Thirty eight of these 42 states require withholding on at least some forms of PTE income paid to non-residents, which may include oil and gas proceeds.

Withholding Tax History

1961	Withholding Tax Act adopted.
1999	A “pass-through entity” is defined as any business other than a sole proprietorship, an estate, a trust or an entity treated as a corporation for federal income tax purposes. Pass-through entities must file informational tax returns annually on the date the entity’s federal return is due. Pass-through entities must also collect a withholding tax from their nonresident owners and remit the tax with the return; the rate will be set by TRD regulation. The withholding requirement does not apply to any nonresident owner who agrees in writing to report and pay tax, if required, on the owner’s return.
2002	Investment partnerships (which are excluded from the definition of pass-through entity) are no longer required to file a Form PTE income and information return, pay withholding tax for out-of-state owners receiving this type of income, or solicit promises to pay from their out-of-state owners.
2003	The Oil and Gas Proceeds Withholding Tax Act was enacted, requiring remitters to withhold from most types of income that flow to nonresidents from New Mexico oil and gas leases. Proceeds are credited against personal income tax liability just like regular withholding tax. The initial rate is 6.75% through December 2004, when the Taxation and Revenue Department can adjust the rate. The new rate may not exceed the maximum rates for either corporate or personal income tax.
2005	The Withholding Tax Act is amended such that publicly traded partnerships are exempted from the requirement of withholding tax from each nonresident partner's income.

OPTION 21

INCOME TAX WITHHOLDING ON NONRESIDENTS' OIL AND GAS PROCEEDS AND PASS-THROUGH ENTITY INCOME

Description

Income tax withholding applies to payments of oil and gas proceeds and income of pass-through entities (PTEs) earned by nonresidents. However, "residency" for oil and gas proceeds withholding is based on mailing addresses, and nonresidents can opt out of PTE withholding by declaring they will meet their New Mexico income tax obligations by filing a return. Oil and gas proceeds withholding is paid quarterly, but PTE withholding is paid annually. In addition, a number of important definitions and rules are not specified for this withholding.

Under the option, nonresidents could not avoid withholding through maintaining a New Mexico address or a declaration. Withholding on nonresident owners of PTEs would be required on a quarterly, rather than the current annual, basis. Important definitions and rules would be added.

Effective date: January 1, 2011.

Estimated Revenue Impact							Fund(s) Affected
Provision	**FY10**	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	
PTE WH Quarterly	0	11,100	600	500	600	12,800	General Fund
Compliance	0	4,500	9,200	9,600	9,900	33,200	General Fund
Total	**0**	**15,600**	**9,800**	**10,100**	**10,500**	**46,000**	General Fund

The revenue estimate is based on acceleration of PTE withholding (from annual to quarterly) and a compliance effect of 15% of forecast oil and gas proceeds and PTE withholding.

Effect of Option

The option would improve compliance by non-residents, and clarify current law.

Pros

- The option would improve compliance, which is a fair way to raise revenue.

Cons

- Requiring quarterly withholding by PTEs would increase their compliance burden.

ESTATE TAX OVERVIEW

DESCRIPTION: The estate tax is imposed on New Mexico residents and is equal to the maximum federal credit allowed for state death taxes, which is in turn based on the value of the federal adjusted taxable estate. However, the federal credit was phased out for decedents dying between 2002 and 2004 and is now a deduction. As a result, New Mexico imposes no estate tax on decedents who died after 2004. Current federal estate tax law will revert to pre-2001 rules in 2011, so that the state death tax credit, and therefore the New Mexico estate tax, will be in place for decedents dying after December 31, 2010.

BASE: The estate tax is imposed on the net estate of New Mexico residents and the net estate located in New Mexico of nonresidents.

RATE: The tax is set equal to the maximum federal credit allowed for state death taxes, shown in the table below.

Maximum Federal Credit for State Death Taxes (pre-2001 law)[1]

Value of Adjusted Taxable Estate	Estate Tax = Maximum Federal Tax Credit		
$90,000 or less		0.8%	of excess over $40,000
$90,000 - $140,000	$400	+ 1.6%	of excess over $90,000
$140,000 - $240,000	$1,200	+ 2.4%	of excess over $140,000
$240,000 - $440,000	$3,600	+ 3.2%	of excess over $240,000
$440,000 - $640,000	$10,000	+ 4.0%	of excess over $440,000
$640,000 - $840,000	$18,000	+ 4.8%	of excess over $640,000
$840,000 - $1,040,000	$27,600	+ 5.6%	of excess over $840,000
$1,040,000 - $1,540,000	$38,800	+ 6.4%	of excess over $1,040,000
$1,540,000 - $2,040,000	$70,800	+ 7.2%	of excess over $1,540,000
$2,040,000 - $2,540,000	$106,800	+ 8.0%	of excess over $2,040,000
$2,540,000 - $3,040,000	$146,800	+ 8.8%	of excess over $2,540,000
$3,040,000 - $3,540,000	$190,800	+ 9.6%	of excess over $3,040,000
$3,540,000 - $4,040,000	$238,800	+ 10.4%	of excess over $3,540,000
$4,040,000 - $5,040,000	$290,800	+ 11.2%	of excess over $4,040,000
$5,040,000 - $6,040,000	$402,800	+ 12.0%	of excess over $5,040,000
$6,040,000 - $7,040,000	$522,800	+ 12.8%	of excess over $6,040,000
$7,040,000 - $8,040,000	$650,800	+ 13.6%	of excess over $7,040,000
$8,040,000 - $9,040,000	$786,800	+ 14.4%	of excess over $8,040,000
$9,040,000 - $10,040,000	$930,800	+ 15.2%	of excess over $9,040,000
over $10,040,000	$1,082,800	+ 16.0%	of excess over $10,040,000

[1] The credit was phased out between 2002 and 2004, and completely repealed in 2005.

PAYMENT DUE DATE: The estate tax is due nine months after the date of death, with up to twelve months of federal and state extensions possible.

DISPOSITION: Revenues are deposited in the tax administration suspense fund and subsequently distributed to the general fund.

RECEIPTS: Due to the phase out of the federal credit, significant estate tax receipts have not been collected since fiscal year 2003, when $28.4 million was collected.

COMPARISON OF NEW MEXICO AND OTHER STATES: Of the five surrounding states, only Oklahoma has an estate tax. However, Oklahoma's estate tax will be fully repealed as of January 1, 2010. Sixteen states (Connecticut, Illinois, Kansas, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia currently have estate taxes. Eleven states (Connecticut, Indiana, Iowa, Kansas, Kentucky, Maryland, Nebraska, New Jersey, Oregon, Pennsylvania, and Tennessee) currently have an inheritance tax.

OPTION 22

DECOUPLE ESTATE TAX FROM FEDERAL CREDIT

Description

New Mexico's estate tax is currently a "pick-up" tax equal to the federal estate tax credit allowed for state death taxes. However, this federal credit was phased out for decedents dying between 2002 and 2004, and in its place a deduction for state death taxes is allowed. As a result, New Mexico imposes no estate tax on decedents who died after 2004. Current federal estate tax law will revert to pre-2001 rules in 2011, so that the state death tax credit, and therefore the New Mexico estate tax, will be in place for decedents dying after December 31, 2010. It is likely, though, that federal estate tax law will be amended before it reverts to pre-2001 rules.

If federal law reverts to pre-2001 law and thus a federal income tax credit is allowed for state estate taxes, the option would maintain the current "pickup" tax structure. However, if federal law does not revert to pre-2001 law, the option would restructure New Mexico's estate tax to decouple it from the allowance of a federal state death tax credit. Although decoupled from the federal state death tax credit, the restructured estate tax would be imposed at pre-2001 federal credit rates, would use federal exemption levels, and would define the tax base as "adjusted taxable estate" as defined by federal law.

Option 22a. Effective for decedents dying on or after January 1, 2010.

Option 22b. Effective for decedents dying on or after January 1, 2011.

Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	FY11	FY12	FY13	FY14	FY10-14	
22a.	0	31,600	44,000	45,800	47,800	169,200	General Fund
22b.	0	0	33,000	45,800	47,800	126,600	General Fund

The revenue estimate was derived by applying personal income growth factors to the level of estate tax revenues collected in FY2002 (the last fiscal year for which a full year of estate tax revenues was collected). Personal income growth factors were used to grow FY2002 revenues to the relevant fiscal years. The revenue estimate provided assumes federal law does not reinstate the estate tax credit. If the estate tax credit is reinstated under federal law, option 22a will have the listed revenue impact for FY2011 only and option 22b will have no revenue impact.

Effects of Option

If federal law reverts to the federal credit for state estate taxes, there is no change in the New Mexico estate tax. However, if federal law does not revert to allowing a credit for state estate taxes, and thus the New Mexico estate tax is restructured to decouple from the federal credit, there is a federal deduction offset. The deduction offset, which reduces the overall income tax effect of the New Mexico estate tax, is currently as high as 45% but could be as high as the pre-2001 top credit rate of 54%.

Of the five surrounding states, only Oklahoma has an estate tax. However, Oklahoma's estate tax will be fully repealed as of January 1, 2010. Sixteen states (Connecticut, Illinois, Kansas, Maine, Maryland,

Massachusetts, Minnesota, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia currently have estate taxes. Eleven states (Connecticut, Indiana, Iowa, Kansas, Kentucky, Maryland, Nebraska, New Jersey, Oregon, Pennsylvania, and Tennessee) currently have an inheritance tax.

Pros

- The option would restore a quite progressive element to the State and local tax system.

Cons

- Reinstating the estate tax could influence individuals' decisions to locate in New Mexico.

- Even with the high exemption level that is likely to be adopted at the federal level, if the State estate tax is not creditable against the federal tax it could adversely affect some small businesses and farms.

Oil and Natural Gas Taxes Overview

DESCRIPTION: Taxes are imposed on oil and other liquid hydrocarbons, carbon dioxide (CO_2), helium, non-hydrocarbon gases and natural gas that are severed and sold. The applicable taxes are the Oil and Gas Emergency School Tax, the Oil and Gas Severance Tax, the Oil and Gas Conservation Tax, the Production Ad Valorem Tax and the Production Equipment Ad Valorem Tax.

BASE: Taxable value is determined by deducting from the value of products the state, federal and Indian royalties and the reasonable expense of trucking any product from the production unit to the first place of market.

RATE: The following tables show the tax rates that apply under current law to oil and natural gas. The total current rate on CO_2, helium and non-hydrocarbon gases (not shown in tables) is 8.12%. The Intergovernmental Tax Credit applies to all five taxes imposed on products severed from Indian land. The Jicarilla Capital Improvement Tax Credit applies only to the Oil and Gas Emergency School Tax.

Taxes on Oil	**Net Price of Oil ($/bbl)**		
	Under $15	**$15 to $18**	**Over $18**
Oil and Gas Emergency School Tax	1.58%[b]	2.36%[b]	3.15%
Oil and Gas Severance Tax[a]	1.875%[b]	2.8125%[b]	3.75%
Oil and Gas Conservation Tax	0.19%	0.19%	0.19%
Production Ad Valorem Tax	1.04%	1.04%	1.04%
Production Equipment Ad Valorem Tax	0.14%	0.14%	0.14%
Total	**4.825%**	**6.5425%**	**8.27%**

[a] Special rates not shown here apply when the average price for West Texas Intermediate (WTI) for the year ending on May 31 prior to the current fiscal year is less than $24 (well workover projects; rate is 2.45%), or less than $28 (enhanced oil recovery project; rate is 1.875%).
[b] These rates apply to stripper wells, with prices based on the average taxable value in the calendar year preceding July 1 of the current fiscal year.

Taxes on Natural Gas	Net Price of Natural Gas ($/mcf)		
	Under $1.15	**$1.15 to $1.35**	**Over $1.35**
Oil and Gas Emergency School Tax	2.00%[b]	3.00%[b]	4.00%
Oil and Gas Severance Tax[a]	1.875%[b]	2.8125%[b]	3.75%
Oil and Gas Conservation Tax	0.19%	0.19%	0.19%
Production Ad Valorem Tax	0.88%	0.88%	0.88%
Production Equipment Ad Valorem Tax	0.15%	0.15%	0.15%
Total	**5.095%**	**7.0325%**	**8.97%**

[a] A special rate not shown here applies when the average price for West Texas Intermediate (WTI) for the year ending on May 31 prior to the current fiscal year is less than $24 (well workover projects; rate is 2.45%).
[b] These rates apply to stripper wells, with prices based on the average taxable value in the calendar year preceding July 1 of the current fiscal year.

PAYMENT DUE: On or before the 55th day of the month following the month in which the taxable event occurs.

COLLECTED BY: The Taxation and Revenue Department.

DISPOSITION: Proceeds from these taxes are initially deposited into the Extraction Taxes Suspense Fund and after refunds and other adjustments are deposited as follows: the Oil and Gas Emergency School Tax into the General Fund; the Oil and Gas Severance Tax into the Severance Tax Bonding Fund; the Oil and Gas Conservation Tax into the Oil and Gas Reclamation Fund and the General Fund; and both the Production Ad Valorem Tax and the Production Equipment Ad Valorem Tax to county treasurers for further distribution to property tax recipients.

RECEIPTS

(millions of dollars)

	Fiscal Year 2004	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009
Receipts	765	939	1,189	1,060	1,375	922

Tax Rates on Oil and Natural Gas in New Mexico and Other Major Producing States

The following table ranks the nine largest oil and natural gas producing states by total production and property tax rates on oil and natural gas under current law. Four of the nine largest oil producers have tax rates on oil that are higher than New Mexico's rate. Five of the nine largest natural gas producing states have tax rates on natural gas that are higher than New Mexico's rate.

The table also shows the nine states' rank in terms of production in Calendar Year 2007. New Mexico was the sixth largest producer of oil and the fourth largest producer of natural gas.

State Tax and Royalty Rates and Production of Oil and Natural Gas in Top Producing States, Ranked by Tax Rate under Current Law [1]

States	Oil					
			Combined Tax &	Production		
(Ranked by Tax Rate)	Tax Rate	Royalty Rate	Royalty Rate[2]	bbls (millions)	% U.S.	State Rank
Alaska	19.98%	20.00%	37.76%	22,517	14.1%	2
Louisiana	17.65%	23.75%	38.70%	6,345	4.0%	4
Wyoming	12.70%	16.67%	28.43%	4,615	2.9%	7
Kansas	8.92%	12.50%	21.17%	3,380	2.1%	8
New Mexico -- Current Law	**8.27%**	**12.94%**	**20.94%**	**5,023**	**3.2%**	**6**
Oklahoma	8.11%	20.00%	27.21%	5,288	3.3%	5
Texas	6.76%	25.00%	30.63%	32,821	20.6%	1
Colorado	5.50%	12.50%	17.85%	2,015	1.3%	9
California	1.06%	36.00%	36.75%	18,090	11.4%	3
	Natural Gas					
			Combined Tax &	Production		
	Tax Rate	Royalty Rate	Royalty Rate[2]	mcf (millions)	% U.S.	State Rank
Alaska	19.87%	20.00%	39.65%	445	2.3%	7
Wyoming	12.70%	16.67%	29.75%	1,816	9.4%	2
Kansas	11.86%	12.50%	25.33%	371	1.9%	8
Texas	11.03%	25.00%	35.23%	5,514	28.4%	1
Oklahoma	10.76%	20.00%	30.64%	1,689	8.7%	3
New Mexico -- Current Law	**8.97%**	**13.07%**	**22.71%**	**1,609**	**8.3%**	**4**
Colorado	5.50%	12.50%	18.45%	1,203	6.2%	6
Louisiana	4.45%	24.68%	28.82%	1,361	7.0%	5
California	1.75%	40.00%	41.30%	315	1.6%	9

[1] Tax rates for each state are on a taxable base equivalent to New Mexico's. They are either the rates that applied in FY07 if the information was available or that were expected to apply in FY08 to the majority of oil or natural gas produced in the state and include property tax rates where applicable; some states have alternative rates that apply in certain circumstances. Royalty rates apply to production on state lands, and are averages reported for all production or for the most recently negotiated properties. New Mexico's rates are the weighted average rates in effect during FY08; Alaska's, Oklahoma's, and Wyoming's are the most recently negotiated rates; Louisiana's is the average bid in FY07; Kansas', Texas', and Colorado's rates are fixed rates in effect during FY07 and presently; California's are the weighted average rates for all leases presently in effect.

[2] Combined tax and royalty rates apply only to production on state lands and are calculated using the New Mexico tax base (assuming the royalty is the only deduction).

An alternative ranking is by the combined tax and royalty rates for production on state lands. As shown in the following table, seven of the nine largest producing states have combined tax and royalty rates on both oil and natural gas that are higher than New Mexico's combined rates.

State Tax and Royalty Rates and Production of Oil and Natural Gas in Top Producing States, Ranked by Combined Tax and Royalty Rate under Current Law[1]

States (Ranked by Combined Tax and Royalty Rate)	Oil					
	Tax Rate	Royalty Rate	Combined Tax & Royalty Rate[2]	Production bbls (millions)	Production % U.S.	Production State Rank
Louisiana	17.65%	23.75%	38.70%	6,345	4.0%	4
Alaska	19.98%	20.00%	37.76%	22,517	14.1%	2
California	1.06%	36.00%	36.75%	18,090	11.4%	3
Texas	6.76%	25.00%	30.63%	32,821	20.6%	1
Wyoming	12.70%	16.67%	28.43%	4,615	2.9%	7
Oklahoma	8.11%	20.00%	27.21%	5,288	3.3%	5
Kansas	8.92%	12.50%	21.17%	3,380	2.1%	8
New Mexico -- Current Law	**8.27%**	**12.94%**	**20.94%**	**5,288**	**3.2%**	**5**
Colorado	5.50%	12.50%	17.85%	2,015	1.3%	9
	Natural Gas					
	Tax Rate	**Royalty Rate**	**Combined Tax & Royalty Rate[2]**	**Production mcf (millions)**	**Production % U.S.**	**Production State Rank**
California	1.75%	40.00%	41.30%	315	1.6%	9
Alaska	19.87%	20.00%	39.65%	445	2.3%	7
Texas	11.03%	25.00%	35.23%	5,514	28.4%	1
Oklahoma	10.76%	20.00%	30.64%	1,689	8.7%	3
Wyoming	12.70%	16.67%	29.75%	1,816	9.4%	2
Louisiana	4.45%	24.68%	28.82%	1,361	7.0%	5
Kansas	11.86%	12.50%	25.33%	371	1.9%	8
New Mexico -- Current Law	**8.97%**	**13.07%**	**22.71%**	**1,609**	**8.3%**	**4**
Colorado	5.50%	12.50%	18.45%	1,203	6.2%	6

[1] See footnote to previous table

[2] See footnote to previous table

OPTION 23

INCREASE EMERGENCY SCHOOL TAX RATE ON OIL

Description

Under current law the emergency school tax basic rate on oil and other liquid hydrocarbons, carbon dioxide (CO_2), helium and non-hydrocarbon gases is 3.15% of taxable value. The basic emergency school tax rate on natural gas is 4%.

This option would increase the basic emergency school tax rate on oil and other liquid hydrocarbons, CO_2, helium and non-hydrocarbon gases to 4%.

Option 23a would be effective January 1, 2010 and Option 23b July 1, 2010.

Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	FY11	FY12	FY13	FY14	FY10-14	
23a.	16,767	35,091	36,326	37,467	38,609	164,261	General Fund
23b.	0	35,091	36,326	37,467	38,609	147,494	General Fund

Effects of Option

The options would make the emergency school tax rate on oil and related products equivalent to the rate on natural gas. As shown in the following table, four of the nine largest oil producing states have tax rates on oil that are currently higher than New Mexico's. The option would raise New Mexico's rank one position, to fourth highest, but New Mexico's rate on oil would remain far below the rates in Alaska and Louisiana and significantly below the rate in Wyoming.

State Tax and Royalty Rates and Production of Oil in Top Producing States, Ranked by Tax Rate[1]

States (Ranked by Tax Rate)	Oil					
	Tax Rate	Royalty Rate	Combined Tax & Royalty Rate[2]	Production		
				bbls (millions)	% U.S.	State Rank
Alaska	19.98%	20.00%	37.76%	22,517	14.1%	2
Louisiana	17.65%	23.75%	38.70%	6,345	4.0%	4
Wyoming	12.70%	16.67%	28.43%	4,615	2.9%	7
New Mexico -- Option	**9.12%**	**12.94%**	**21.76%**	**5,023**	**3.2%**	**6**
Kansas	8.92%	12.50%	21.17%	3,380	2.1%	8
New Mexico -- Current Law	**8.27%**	**12.94%**	**20.94%**	**5,023**	**3.2%**	**6**
Oklahoma	8.11%	20.00%	27.21%	5,288	3.3%	5
Texas	6.76%	25.00%	30.63%	32,821	20.6%	1
Colorado	5.50%	12.50%	17.85%	2,015	1.3%	9
California	1.06%	36.00%	36.75%	18,090	11.4%	3

Footnotes appear following next table.

An alternative ranking is by the combined tax and royalty rates for production on state lands. As shown in the following table, seven of the nine largest producing states have combined tax and royalty rates on oil that are higher than New Mexico's combined rate. By this ranking, the option would also raise New Mexico's rank one position, to seventh highest, but New Mexico's combined rate would remain far below the combined rates in Louisiana, Alaska, California, Texas, Wyoming and Oklahoma.

State Tax and Royalty Rates and Production of Oil in Top Producing States, Ranked by Combined Tax and Royalty Rate[1]

States	Oil					
				Production		
(Ranked by Combined Tax and Royalty Rate)	Tax Rate	Royalty Rate	Combined Tax & Royalty Rate[2]	bbls (millions)	% U.S.	State Rank
Louisiana	17.65%	23.75%	38.70%	6,345	4.0%	4
Alaska	19.98%	20.00%	37.76%	22,517	14.1%	2
California	1.06%	36.00%	36.75%	18,090	11.4%	3
Texas	6.76%	25.00%	30.63%	32,821	20.6%	1
Wyoming	12.70%	16.67%	28.43%	4,615	2.9%	7
Oklahoma	8.11%	20.00%	27.21%	5,288	3.3%	5
New Mexico --Option	**9.12%**	**12.94%**	**21.76%**	**5,023**	**3.2%**	**6**
Kansas	8.92%	12.50%	21.17%	3,380	2.1%	8
New Mexico -- Current Law	**8.27%**	**12.94%**	**20.94%**	**5,023**	**3.2%**	**6**
Colorado	5.50%	12.50%	17.85%	2,015	1.3%	9

[1] Tax rates for each state are on a taxable base equivalent to New Mexico's. They are either the rates that applied in FY07 if the information was available or that were expected to apply in FY08 to the majority of oil produced in the state and include property tax rates where applicable; some states have alternative rates that apply in certain circumstances. Royalty rates apply to production on state lands, and are averages reported for all production or for the most recently negotiated properties. New Mexico's rates are the weighted average rates in effect during FY08; Alaska's, Oklahoma's, and Wyoming's are the most recently negotiated rates; Louisiana's is the average bid in FY07; Kansas', Texas', and Colorado's rates are fixed rates in effect during FY07 and presently; California's are the weighted average rates for all leases presently in effect.

[2] Combined tax and royalty rates apply only to production on state lands and are calculated using the New Mexico tax base (assuming the royalty is the only deduction).

Pros

- The production of oil and other fossil fuels, including related the activities of exploration, transportation for refining/processing, and refining/processing, create significant environmental damages that should be reflected in taxes on production.
  - One of these environmental damages is the production of CO_2, which is greater for oil than for natural gas.

- The option would raise revenue with very low compliance or administrative cost.

Cons

- Oil producers might view any tax increase as a disincentive to exploration and production in New Mexico.

OPTION 23A

TRANSFER .25 PERCENT OF OIL AND GAS SEVERANCE TAX RATE TO OIL AND GAS EMERGENCY SCHOOL TAX RATE

Description

Under current law, the basic oil and gas emergency school tax rate for oil is 3.15% and for natural gas 4%; revenues are deposited in the General Fund. Under current law, the basic oil and gas severance tax rate is 3.75% for both oil and natural gas; revenues are deposited in the Severance Tax Bonding Fund (STBF). Any funds in the STBF not needed to pay bonds are transferred semiannually to the Severance Tax Permanent Fund.

This option would reduce the basic oil and gas severance tax rate by .25%, to 3.5%, and increase the basic oil and gas school tax rate by .25%, to 3.4% on oil and 4.25% on natural gas.

The effective date for Option 23Aa is January 1, 2010, and for Option 23Ab July 1, 2010.

	Estimated Revenue Impact (000)						
Option	**FY10**	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Fund(s) Affected**
23Aa.	10,550	23,300	23,884	24,460	24,893	107,085	General Fund
23Aa.	(10,550)	(23,300)	(23,884)	(24,460)	(24,893)	(107,085)	STBF
23Ab.	0	23,300	23,884	24,460	24,893	96,536	General Fund
23Ab.	0	(23,300)	(23,884)	(24,460)	(24,893)	(96,536)	STBF

Effects of Proposal

The option has no effect on total revenues; it simply transfers revenue between the Severance Tax Bonding Fund and the General Fund.

Pros

- The proposal would transfer revenues to the General Fund to help cover a large projected shortfall in revenues.

Cons

- The proposal would negatively impact the Severance Tax Bonding Fund, which would reduce the State's ability to fund capital outlay projects.
- Investor and rating agency confidence in the severance bond program could be negatively affected, lowering ratings and increasing interest rates on future bonds.

OPTION 24

ADD GRADUATED OIL AND GAS EMERGENCY SCHOOL TAX RATES

Description

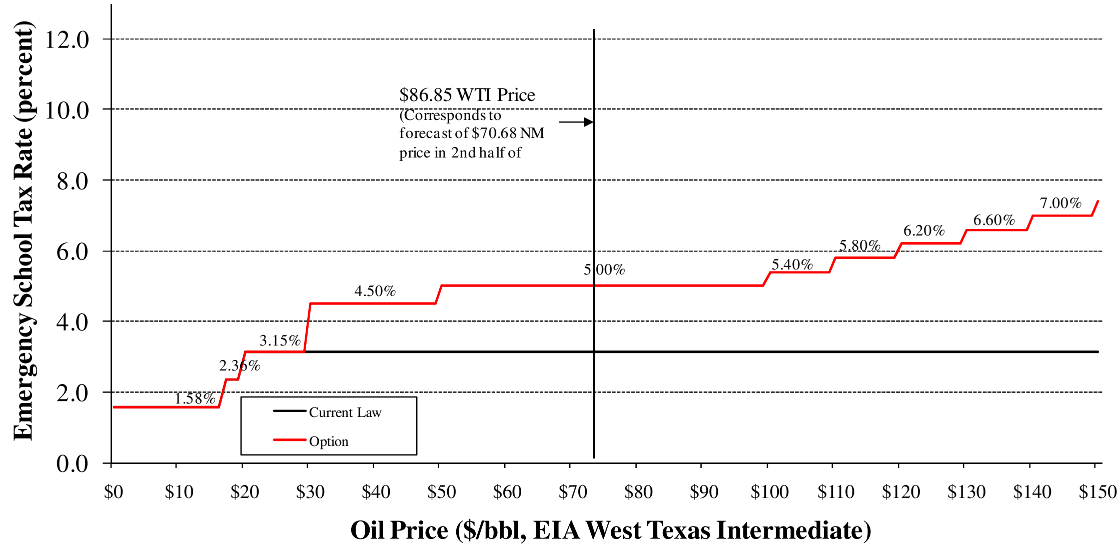
Under current law, resources subject to the oil and gas emergency school tax are taxed at different rates and with varying provisions. Oil and other liquid hydrocarbons removed from natural gas at or near the wellhead are taxed at 3.15% of taxable value, but if they are removed from a stripper well property they are taxed at 1.58% of taxable value if the average annual taxable value of oil was no greater than $15.00 per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed and 2.36% if the price was no greater than $18.00 per barrel. Natural gas is taxed at 4.00% of taxable value, but if it is removed from a stripper well property it is taxed at 2.00% of taxable value if the average annual taxable value of natural gas was not greater than $1.15 per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed and 3.00% if the price was not greater than $1.35. Carbon dioxide ($CO_2$), helium and non-hydrocarbon gases are taxed at 3.15% of taxable value.

This option would base the graduation of rates under the oil and gas emergency school tax on benchmark prices of oil and natural gas, and would add a set of higher rates when prices are high to the lower rates that currently apply when prices are low.

The rate on oil and CO_2 each calendar quarter would be based on the price of West Texas Intermediate (WTI) crude oil in the three-month period preceding the quarter, as follows:

Proposed Oil and Gas Emergency School Tax Rate Schedule for Oil and CO_2		
If the Monthly Average WTI Price per barrel in the Three-Month Period Ending One Month Prior to the Beginning of the Calendar Quarter was:		
At Least	**But Less Than**	**Then the Tax Rate is:**
--	$16.00	1.58%
$16.00	$20.00	2.36%
$20.00	$30.00	3.15%
$30.00	$50.00	4.50%
$50.00	$100.00	5.00%
$100.00	--	5.00% + 0.4% for each $10 (or fraction thereof) that the monthly WTI price per barrel exceeds $100.00

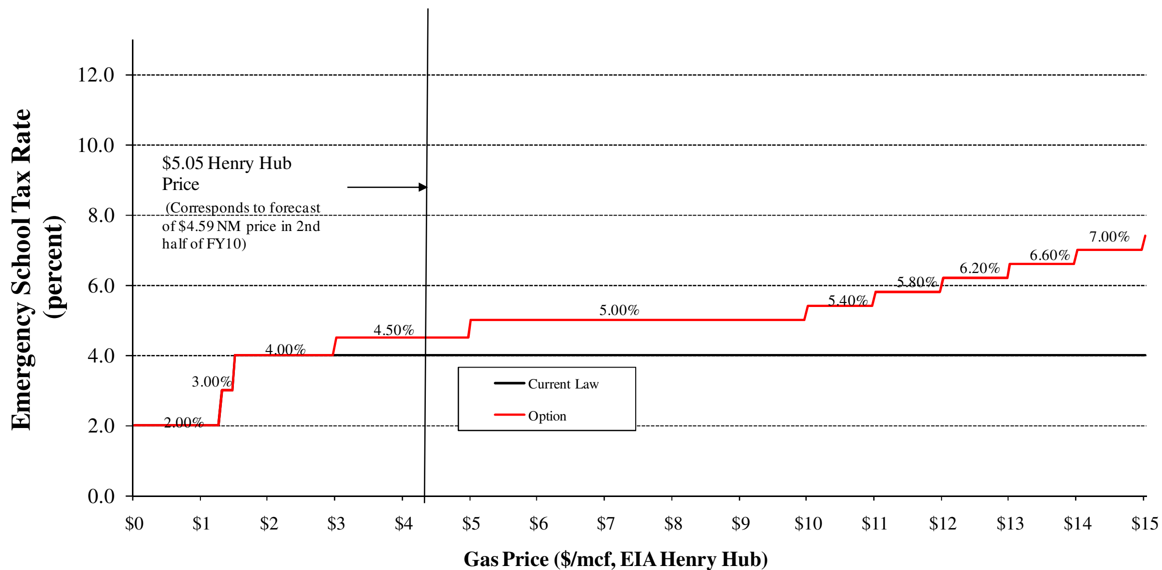
The following graph shows the rate structure for oil and CO_2 under current law and the option:



The rate on natural gas each calendar quarter would be based on the Henry Hub price of natural gas in the three-month period preceding the quarter, as follows:

Proposed Oil and Gas Emergency School Tax Rate Schedule for Natural Gas		
If the Monthly Average Henry Hub Price per mcf in the Three-Month Period Ending One Month Prior to the Beginning of the Calendar Quarter was:		
At Least	But Less Than	Then the Tax Rate is:
--	$1.30	2.00%
$1.30	$1.50	3.00%
$1.50	$3.00	4.00%
$3.00	$5.00	4.50%
$5.00	$10.00	5.00%
$10.00	--	5.00% + 0.4% for each $1 (or fraction thereof) that the monthly Henry Hub price per mcf exceeds $10.00

The graph on the following page shows the rate structure for natural gas under current law and the option.



The effective date for Option 24a would be January 1, 2010 and for Option 24b July 1, 2010.

ESTIMATED REVENUE IMPACT (000)

Option 24a	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 10-FY 14**	**Fund(s) Affected**
O&G Emergency School Tax	$53,700	$129,117	$132,765	$136,252	$139,119	$590,953	General Fund
Less: NM Income Tax Offsets	-$4,009	-$9,639	-$9,911	-$10,171	-$10,385	-$44,115	
Total Change in Revenue	**$49,691**	**$119,478**	**$122,854**	**$126,081**	**$128,734**	**$546,838**	

Option 24b	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 10-FY 14**	**Fund(s) Affected**
O&G Emergency School Tax	-	$129,117	$132,765	$136,252	$139,119	$537,253	General Fund
Less: NM Income Tax Offsets	-	-$9,639	-$9,911	-$10,171	-$10,385	-$40,106	
Total Change in Revenue	**-**	**$119,478**	**$122,854**	**$126,081**	**$128,734**	**$497,147**	

Effect of Options

The options would add graduated rates to the Emergency School Tax for oil and related products when the WTI price exceeded $30 per barrel and for natural gas when the Henry Hub price exceeded $3.00 per mcf. As shown in the following table, four of the nine largest oil producing states have tax rates on oil that are currently higher than New Mexico’s. The option would raise New Mexico’s rank one position, to fourth highest, but New Mexico’s rate would remain far below the rates in Alaska and Louisiana and

significantly below the rate in Wyoming. Five of the nine largest natural gas producers have tax rates on natural gas that are currently higher than New Mexico's; New Mexico's rank would not change under the option.

State Tax and Royalty Rates and Production of Oil and Natural Gas in Top Producing States, Ranked by Tax Rate [1]

States (Ranked by Tax Rate)	Oil					
			Combined Tax &	Production		
	Tax Rate	Royalty Rate	Royalty Rate[2]	bbls (millions)	% U.S.	State Rank
Alaska	19.98%	20.00%	37.76%	22,517	14.1%	2
Louisiana	17.65%	23.75%	38.70%	6,345	4.0%	4
Wyoming	12.70%	16.67%	28.43%	4,615	2.9%	7
New Mexico -- Option	**10.12%**	**12.94%**	**22.73%**	**5,023**	**3.2%**	**6**
Kansas	8.92%	12.50%	21.17%	3,380	2.1%	8
New Mexico -- Current Law	**8.27%**	**12.94%**	**20.94%**	**5,023**	**3.2%**	**6**
Oklahoma	8.11%	20.00%	27.21%	5,288	3.3%	5
Texas	6.76%	25.00%	30.63%	32,821	20.6%	1
Colorado	5.50%	12.50%	17.85%	2,015	1.3%	9
California	1.06%	36.00%	36.75%	18,090	11.4%	3

	Natural Gas					
			Combined Tax &	Production		
	Tax Rate	Royalty Rate	Royalty Rate[2]	mcf (millions)	% U.S.	State Rank
Alaska	19.87%	20.00%	39.65%	445	2.3%	7
Wyoming	12.70%	16.67%	29.75%	1,816	9.4%	2
Kansas	11.86%	12.50%	25.33%	371	1.9%	8
Texas	11.03%	25.00%	35.23%	5,514	28.4%	1
Oklahoma	10.76%	20.00%	30.64%	1,689	8.7%	3
New Mexico -- Option	**9.97%**	**13.07%**	**23.78%**	**1,609**	**8.3%**	**4**
New Mexico -- Current Law	**8.97%**	**13.07%**	**22.71%**	**1,609**	**8.3%**	**4**
Colorado	5.50%	12.50%	18.45%	1,203	6.2%	6
Louisiana	4.45%	24.68%	28.82%	1,361	7.0%	5
California	1.75%	40.00%	41.30%	315	1.6%	9

Footnotes appear following next table.

An alternative ranking is by the combined tax and royalty rates for production on state lands. A shown in the table on the following page, seven of the nine largest producing states have combined tax and royalty rates on oil that are higher than New Mexico's combined rate. By this ranking, the option would also raise New Mexico's rank one position, to seventh highest, but New Mexico's combined rate would remain far below the combined rates in Louisiana, Alaska, California, Texas, Wyoming and Oklahoma. Seven of the nine largest natural gas producers have combined tax and royalty rates higher than New Mexico's, and that ranking would not change under the option.

State Tax and Royalty Rates and Production of Oil and Natural Gas in Top Producing States, Ranked by Combined Tax and Royalty Rate[1]

States (Ranked by Combined Tax and Royalty Rate)	Oil					
				Production		
	Tax Rate	Royalty Rate	Combined Tax & Royalty Rate[2]	bbls (millions)	% U.S.	State Rank
Louisiana	17.65%	23.75%	38.70%	6,345	4.0%	4
Alaska	19.98%	20.00%	37.76%	22,517	14.1%	2
California	1.06%	36.00%	36.75%	18,090	11.4%	3
Texas	6.76%	25.00%	30.63%	32,821	20.6%	1
Wyoming	12.70%	16.67%	28.43%	4,615	2.9%	7
Oklahoma	8.11%	20.00%	27.21%	5,288	3.3%	5
New Mexico --Option	**10.12%**	**12.94%**	**22.73%**	**5,023**	**3.2%**	**6**
Kansas	8.92%	12.50%	21.17%	3,380	2.1%	8
New Mexico -- Current Law	**8.27%**	**12.94%**	**20.94%**	**5,023**	**3.2%**	**6**
Colorado	5.50%	12.50%	17.85%	2,015	1.3%	9
	Natural Gas					
				Production		
	Tax Rate	Royalty Rate	Combined Tax & Royalty Rate[2]	mcf (millions)	% U.S.	State Rank
California	1.75%	40.00%	41.30%	315	1.6%	9
Alaska	19.87%	20.00%	39.65%	445	2.3%	7
Texas	11.03%	25.00%	35.23%	5,514	28.4%	1
Oklahoma	10.76%	20.00%	30.64%	1,689	8.7%	3
Wyoming	12.70%	16.67%	29.75%	1,816	9.4%	2
Louisiana	4.45%	24.68%	28.82%	1,361	7.0%	5
Kansas	11.86%	12.50%	25.33%	371	1.9%	8
New Mexico -- Option	**9.97%**	**13.07%**	**23.78%**	**1,609**	**8.3%**	**4**
New Mexico -- Current Law	**8.97%**	**13.07%**	**22.71%**	**1,609**	**8.3%**	**4**
Colorado	5.50%	12.50%	18.45%	1,203	6.2%	6

[1] Tax rates for each state are on a taxable base equivalent to New Mexico's. They are either the rates that applied in FY07 if the information was available or that were expected to apply in FY08 to the majority of oil or natural gas produced in the state and include property tax rates where applicable; some states have alternative rates that apply in certain circumstances. Royalty rates apply to production on state lands, and are averages reported for all production or for the most recently negotiated properties. New Mexico's rates are the weighted average rates in effect during FY08; Alaska's, Oklahoma's, and Wyoming's are the most recently negotiated rates; Louisiana's is the average bid in FY07; Kansas', Texas', and Colorado's rates are fixed rates in effect during FY07 and presently; California's are the weighted average rates for all leases presently in effect.

[2] Combined tax and royalty rates apply only to production on state lands and are calculated using the New Mexico tax base (assuming the royalty is the only deduction).

Pros

- The production of oil and natural gas in New Mexico generates very large profits for producers; the option would provide the State a small share of the large additional profits generated when oil and natural gas prices rise. (See table and charts on following page.)
- The production of oil and other fossil fuels, including related the activities of exploration, transportation for refining/processing, and refining/processing, create significant environmental damages that should be reflected in taxes on production.
- The option would raise revenue with very low compliance or administrative cost.
- New Mexico’s tax rank among major producing states would be unaffected for natural gas and change only one position for oil.

Cons

- Oil producers might view any tax increase as a disincentive to exploration and production in New Mexico.

Estimates of Profits Earned on Oil and Natural Gas Production in New Mexico, 2003 - 2008

Oil	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**
Price of oil received by New Mexico Producers ($/bbl)	$29.56	$38.97	$52.62	$61.61	$68.36	$95.88
Less: Actual average lifting costs[1] (per bbl)) for domestic production[2] of eight major NM producers	$5.12	$6.07	$7.68	$7.93	$9.29	$10.94
Less: Actual weighted average royalties (per bbl) for production on all types of land in NM	$2.69	$3.53	$4.77	$6.11	$6.93	$9.74
Less: Extraction and property-type taxes[3] under current law (per bbl)	$2.22	$2.93	$3.95	$4.59	$5.08	$7.12
Equals: Profit before income taxes (per bbl)	$19.52	$26.45	$36.22	$42.98	$47.07	$68.08
Less: state income tax (per bbl) [95% CIT @7.6% & 5% PIT @ 4.9%]	$1.46	$1.97	$2.70	$3.21	$3.51	$5.08
Less federal income tax (per bbl) [35% of profit less NM income tax]	$6.32	$8.57	$11.73	$13.92	$15.25	$22.05
Equals: Profit after income tax (per bbl)	$11.74	$15.91	$21.78	$25.85	$28.31	$40.95
Production (bbls millions)	67.5	65.1	61.3	60.4	60.1	60.8
Total profit after income tax ($millions)	$792	$1,036	$1,336	$1,562	$1,703	$2,490
Natural Gas						
Price of natural gas received by New Mexico Producers ($/mcf)	$4.65	$5.44	$7.21	$6.31	$7.10	$8.51
Less: Actual average lifting costs[1] (per mcf)) for domestic production[2] of eight major NM producers	$0.69	$0.76	$0.91	$1.00	$1.23	$1.47
Less: Actual weighted average royalties (per mcf) for production on all types of land in NM	$0.46	$0.95	$0.72	$0.62	$0.68	$0.81
Less: Extraction and property-type taxes[3] under current law (per mcf)	$0.34	$0.40	$0.54	$0.47	$0.51	$0.62
Equals: Profit before income taxes (per mcf)	$3.16	$3.33	$5.05	$4.22	$4.68	$5.61
Less: state income tax (per mcf) [95% CIT @7.6% & 5% PIT @ 4.9%]	$0.24	$0.25	$0.38	$0.32	$0.35	$0.42
Less federal income tax (per mcf) [35% of profit less NM income tax]	$1.02	$1.08	$1.64	$1.37	$1.52	$1.82
Equals: Profit after income tax (per mcf)	$1.90	$2.00	$3.04	$2.54	$2.82	$3.38
Production (mcf millions)	1,552.7	1,550.4	1,529.7	1,541.5	1,463.3	1,399.5
Total profit after income tax ($millions)	$2,949	$3,105	$4,646	$3,917	$4,121	$4,724
Total profits earned on oil and natural gas production after income tax ($ millions)	$3,742	$4,141	$5,982	$5,479	$5,824	$7,214

[1] Actual total production, lifting, or lease operating costs for the US or Lower 48 from Company Annual Reports or annual filings with the Securities and Exchange Commission of eight major NM oil and natural gas producers were isolated to the extent possible. These production costs were divided by total oil, natural gas and natural gas liquids on a barrel of oil equivalent (BOE) or thousand cubic feet equivalent (MCFE) basis to arrive at cost per unit. The result was converted to the other unit at a ratio of 6 MCF to one barrel of oil. The production costs were then weighted by their percentage of total production by the eight producers in NM in CY2008. The lifting costs above include:

Chevron/Texaco: Total US, excluding taxes of any kind; depreciation, delpetion and amortization; exploration expenses; impairments; and foreign currency transactions but seem to include selling, general and admin expenses

Occidental Petroleum: Total US, excluding taxes of any kind; depreciation, delpetion and amortization; exploration expenses; impairments; foreign currency transactions; and selling, general and admin expenses

ConocoPhillips: Lower 48, excluding taxes of any kind; depreciation, delpetion and amortization; exploration expenses; impairments; foreign currency transactions; and selling, general and admin expenses

Apache: Total US, excluding taxes of any kind; depreciation, delpetion and amortization; exploration expenses; impairments; foreign currency transactions; and selling, general and admin expenses

Cabot: Total Production Costs include lifting costs and selling, general and admin expenses, insurance and property and severance taxes

Devon: Total US, excluding taxes of any kind; depreciation, delpetion and amortization; exploration expenses; impairments; foreign currency transactions; and selling, general and admin expenses

Energen: Total US, excluding taxes of any kind; depreciation, delpetion and amortization; exploration expenses; impairments; and foreign currency transactions but seem to include selling, general and admin expenses

BP: Total US, excluding taxes of any kind; depreciation, delpetion and amortization; exploration expenses; impairments; and foreign currency transactions but seem to include selling, general and admin expenses

[2] Cabot has a very small percentage of production in Canada, which could not be separated for purposes of these calculations. Canada's inclusion does not make a significant difference.

[3] Actual NM extraction and property-type tax rates were applied to actual gross sales values less processing, transportation and royalty deductions. The taxes include:

Oil and Gas Severance Tax

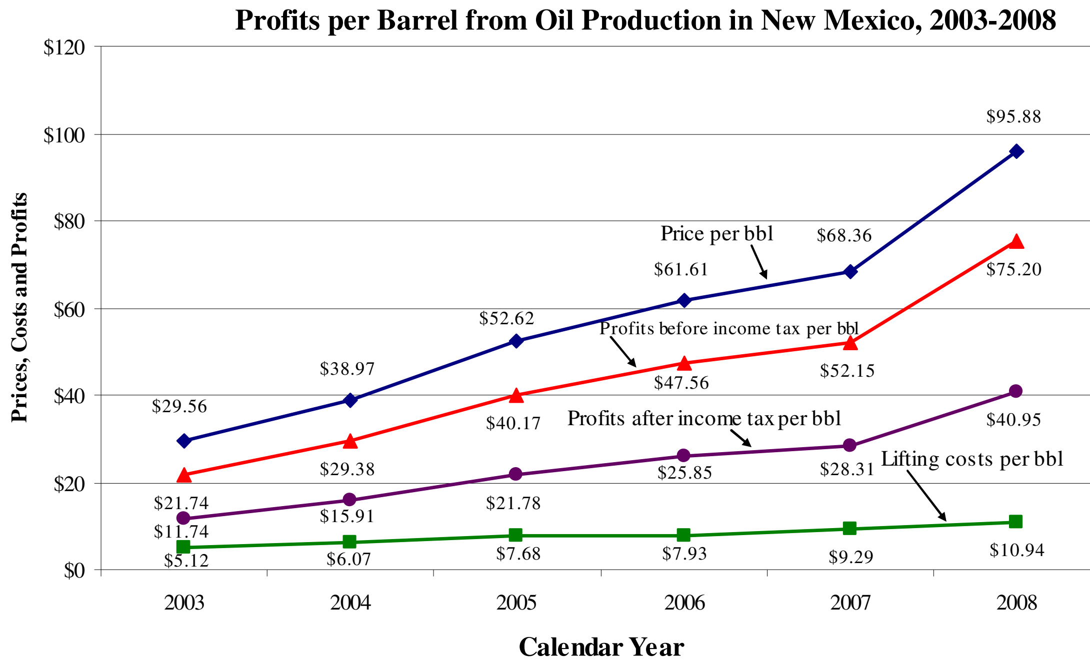
Oil and Gas Emergency School Tax

Oil and Gas Conservation Tax

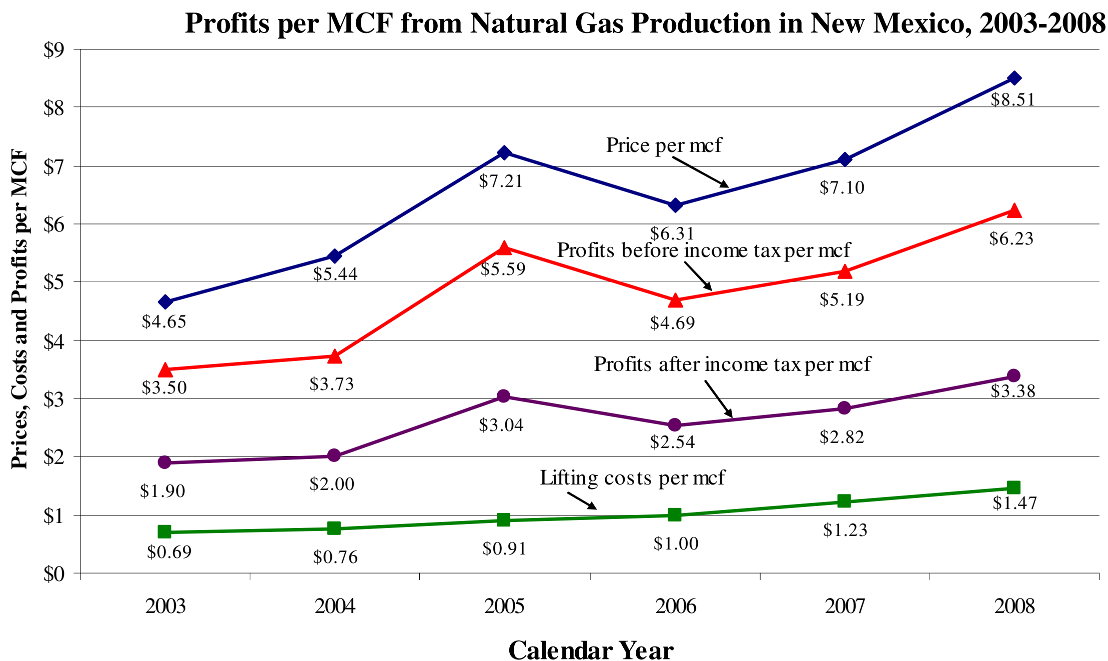
Production Ad Valorem Tax

Production Equipment Ad Valorem Tax

- The following graph shows some of the per barrel data contained in the preceding table for oil, including price, lifting costs per barrel and profits before and after income taxes.



- The following graph shows some of the per mcf data contained in the preceding table for natural gas, including price, lifting costs and profits before and after income taxes.



- The graphs demonstrate that profits per barrel and per mcf before and after income taxes are very closely related to prices, and that profits have risen steadily with prices.

Uranium and Coal Taxes Overview

DESCRIPTION: Taxes are imposed on uranium and coal that is severed, sold, processed, consumed or shipped out of New Mexico. The applicable taxes are the Severance Tax, the Severance Surtax, the Resources Excise Tax (which is comprised of the Resources Tax, the Processors Tax and the Service Tax), and the Conservation Tax.

BASE: For uranium, the tax base is the value of U_30_8 contained in and recoverable from the ore less applicable deductions. For coal, taxable value is gross value less applicable deductions. For the Severance Tax and Severance Surtax, the allowable deduction for uranium is a flat 50% of value; there are no deductions for coal. For the Resources Excise Tax, taxable value for both uranium and coal is gross value less sales to the federal, State and local governments and to 501(c)(3) organizations, and royalties paid to the federal, State, and local governments or to tribal governments. For the Conservation Tax, the base is the same for coal as for the Resources Excise Tax; for uranium, it is 25% of the Resources Excise Tax base. The Intergovernmental Tax Credit applies to the Severance Tax imposed on coal severed from Indian land.

RATE: The following table shows the tax rates that apply under current law.

Tax	Uranium	Coal	
		Surface	Underground
Severance Tax	3.50%	$0.57/short ton	$0.55/short ton
Severance Tax Surtax (non-exempt)	N/A	$1.99/short ton[b]	$1.92/short ton[b]
Resources Excise Tax[a]	0.75%	0.75%	0.75%
Conservation Tax	0.19%	0.19%	0.19%
Total	**4.44%**	**$0.57/short ton or $2.56/short ton + 0.94%**	**$0.55/short ton or $2.47/short ton + 0.94%**

[a] The rate shown applies to the Resources, Processors and Service components, but only one of these component taxes applies.

[b] These are the correct rates. The rates have been incorrectly computed by TRD through FY2010, when they were set at $1.02 for surface coal and $0.99 for underground coal.

PAYMENT DUE: On or before the 25th day of the month following the month in which the taxable event occurs.

COLLECTED BY: The Taxation and Revenue Department.

DISPOSITION: Proceeds from these taxes are initially deposited into the Extraction Taxes Suspense Fund and after refunds and other adjustments are deposited as follows: the Severance Tax and the Severance Tax Surtax into the Severance Tax Bonding Fund; the Resources Excise Tax into the General Fund; and the Conservation Tax into the Oil and Gas Reclamation Fund and the General Fund.

RECEIPTS

(thousands of dollars)

	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009
Receipts – Coal	14,401	15,342	18,727	23,615	26,256
Receipts – Uranium	0	0	0	0	0

OPTION 25

INCREASE TAX RATES ON URANIUM TO MATCH RATES ON OTHER ENERGY RESOURCES

Description

The effective tax rate on uranium in FY2008 (had there been any production) would have been 2.55%, whereas the effective tax rate on oil was 6.36%, on natural gas 6.38%, and on coal 5.39%.

The options would increase tax rates on uranium to be equivalent to the effective rates on other energy resources.

Option 25a increases the rate on uranium to the effective rate on oil.

Option 25b increases the rate on uranium to the effective rate on natural gas.

Option 25c increases the rate on uranium to the effective rate on coal.

Because there is no current uranium production in New Mexico, the revenue estimates in the table are based on a hypothetical scenario of 1 million pounds of U_3O_8 production at the current market price of $49.50 per pound.

Hypothetical Increase in Revenues Assuming 1 Million Pounds of U_3O_8 Production at Current Market Price of $49.50 per Pound	Revenue Impact (000)	Fund Affected
Increase in Revenues under Alternative Tax Rates		
Option 25a: Same rates as on Oil (6.36%)	$1,886	General Fund
Option 25b: Same rates as on Natural Gas (6.38%)	$1,896	General Fund
Option 25c: Same rates as on Coal (5.39%)	$1,406	General Fund

Effect of Options

The options would make the total effective tax rate on uranium equivalent to the effective rates on other energy resources produced in New Mexico. However, the options would increase the differentials between the effective tax rate on uranium in New Mexico and the effective tax rates in other producing states. The table on the next page shows current effective tax rates on uranium in New Mexico and five other producing states. New Mexico's current effective tax rate is the highest, and the footnotes indicate that tax regulations in other states have been written such that uranium producers are able to avoid virtually all taxes. The following table shows uranium reserves by state ranked by quantity. New Mexico ranks second behind Wyoming in terms of quantity, and first in terms of quality (defined as the weighted average percent of U_3O_8 per ton of ore).

Effective Tax Rates on Uranium in New Mexico and Five Producing Other States

State	Production/ Severance Tax	Resource Excise Tax	Conservation/ Restoration Fee	Total Effective Production Tax Rates	Rank by Total Effective Production Tax Rates
Colorado[1]	0.00%	0.00%	0.00%	0.00%	4
Nebraska[2]	1.51%	0.00%	0.00%	1.51%	3
New Mexico[3]	1.75%	0.75%	0.05%	2.55%	1
Texas[4]	0.00%	0.00%	0.00%	0.00%	4
Utah[5]	0.00%	0.00%	0.00%	0.00%	4
Wyoming[6]	2.00%	0.00%	0.00%	2.00%	2

[1] Colorado's regulatory severance tax rate is 2.25% of gross value. However, the first $19 million in gross value is exempt from the tax and all ad valorem tax is allowed as a credit against the severance tax. Colorado's four mines are all owned by Denison Mines, which also owns the White Mesa Mill in Utah and most of the small mines in Utah. There have never been any severance tax collections on uranium production in Colorado. Colorado assesses properties and imposes property taxes, which Colorado relies upon more heavily than severance taxes. Colorado's property tax information could not be obtained.

[2] Nebraska has a $5 million exemption. Taxable value is gross value less transportation and processing costs and the $5 million exemption. The statutory severance tax rate is 2% of taxable value. Nebraska assesses properties and imposes property taxes. Its effective property tax rate in fiscal year 2008 was 2.03%.

[3] Taxable value for New Mexico's severance tax is 50% of gross value, so the effective tax rate is 1.75%. Deductions for resource excise tax purposes include federal, state and Indian royalties. The Navajo Nation contains most of the known deposits in New Mexico, so the effective tax rate would be less than the statutory 0.75%. Taxable value for New Mexico's conservation tax is 25% of gross value, so the effective tax rate is 0.05%. Because of the royalty deduction allowed under the resources excise tax, if any production is on federal, state or Indian land the total effective tax rate in New Mexico would be less than the 2.55% shown in the table.

[4] Texas does not tax uranium production. Texas assesses properties and imposes property taxes. Although the EIA reported production in Texas in 2008, the state's contracted assessor was not aware of any production.

[5] Utah has a $50,000 exemption. Taxable value is 30% of (gross value of yellowcake - $50,000). Information on the six mines reported in Utah is from the EIA. However, according to the Utah State Tax Commission, there are "many" small mines in Utah, some of which are "mom and pop operations," which presumably are not required to report to the EIA. Denison Mines owns most of these small mines, as well as the White Mesa Mill. As these small mines never hit the $50,000 exemption limit, there have been no severance tax collections in Utah in years. Also, no sales and use taxes are collected because the U_3O_8 is either sold out of state or to tax-exempt entities, such as the University of Utah or government agencies. The counties assess properties and impose property taxes, but information on the amount or an effective tax rate is not available.

[6] Wyoming allows deductions for royalties and for processing costs. Wyoming assesses properties and imposes property taxes. Its effective property tax rate in calendar year 2008 was 3.50%.

U.S. Forward-Cost Uranium Reserves by State, December 31, 2003[1]

State(s)	$30 per pound			$50 per pound		
	Ore (million tons)	Grade[a] (percent U_3O_8)	U_3O_8 (million pounds)	Ore (million tons)	Grade[a] (percent U_3O_8)	U_3O_8 (million pounds)
Wyoming	41	0.129	106	238	0.076	363
New Mexico	15	0.280	84	102	0.167	341
Arizona, Colorado, Utah	8	0.281	45	45	0.138	123
Texas	4	0.077	6	18	0.063	23
Other[b]	6	0.199	24	21	0.094	40
Total	**74**	**0.178**	**265**	**424**	**0.105**	**890**

[a]Weighted average percent U_3O_8 per ton of ore.
[b]Includes California, Idaho, Nebraska, Nevada, North Dakota, Oregon, South Dakota, and Washington.
Notes: Uranium reserves that could be recovered as a byproduct of phosphate and copper mining are not included in this table. Reserves values in forward-cost categories are cumulative: that is, the quantity at each level of forward-cost includes all reserves at the lower costs. Totals may not equal sum of components because of independent rounding.
Sources: Estimated by Energy Information Administration, Office of Coal, Nuclear, Electric and Alternate Fuels, based on industry conferences; U.S. Department of Energy, Grand Junction Office, files; and Energy Information Administration, Form EIA-858, "Uranium Industry Annual Survey," Schedule A, Uranium Raw Material Activities (1984-2002) and Form EIA-851A, "Domestic Uranium Production Report" (2003).

[1]This is the latest data available from the Energy Information Administration.
Source: http://www.eia.doe.gov/cneaf/nuclear/page/reserves/uresst.html.

Pros

- Uranium mining and milling activities create significant environmental damages that require significant public expenditures that should be reflected in taxes on production.
  - These damages arise from exposing people to toxic substances, contamination of water, and changes to the physical environment from ore removal and mill tailings.
- The environmental and health impacts from uranium mining far surpass those associated with oil, natural gas and coal production, so the effective tax rate on uranium should be at least as high as those on oil, natural gas and coal.
- The option would raise revenue that could help fund the cleanup of abandoned uranium mining and milling sites in New Mexico.

Cons

- Higher taxes on uranium would increase the differential between effective tax rates imposed in other producing states and the New Mexico effective tax rate, which may discourage production in New Mexico.
- Currently there is no uranium production in New Mexico, and higher taxes might prevent the industry from restarting production.

OPTION 26

REPEAL COAL SURTAX EXEMPTION

Description

Currently, a severance tax of $.57 per short ton is imposed on surface coal and $.55 on underground coal. Also imposed is a surtax with a base rate of $.60 per short ton for surface coal and $.58 for underground coal. Surtax rates are determined annually by multiplying the severance tax per short ton by the percentage increase in the Producer Price Index from 1992 to the calendar year just prior to the fiscal year for which the surtax rates are computed.

Currently, the following exemptions to the surtax are in effect: (1) coal sold and delivered pursuant to genuinely new contracts entered into on or after July 1, 1990; (2) coal sold and delivered pursuant to contracts already in effect on July 1, 1990, that exceeds the annualized average calendar year deliveries under the contract during production years 1987, 1988 and 1989, unless the deliveries are reduced due to causes beyond the reasonable control of either party to the contract; and (3) if a contract existing on July 1, 1990, and renegotiated after May 20, 1992, requires the purchaser to take annual coal deliveries in excess of the greater of the average of calendar year deliveries from 1987-1989 or the highest annual contract minimum from 1987-1989, the surtax does not apply to such excess deliveries for the remaining term of the renegotiated contract.

This option repeals all exemptions from the surtax.

Option 26a assumes an effective date of January 1, 2010 and Option 26b an effective date of July 1, 2010.

Option	Estimated Revenue Impact (000)						Fund(s) Affected
	FY10	FY11	FY12	FY13	FY14	FY10-14	
26a.	$6,280	$23,219	$22,058	$20,955	$19,908	$92,420	Severance Tax Bonding Fund
26b.	$0	$23,219	$22,058	$20,955	$19,908	$86,140	Severance Tax Bonding Fund

Note: The severance surtax rate has historically been calculated incorrectly by TRD. The revenue estimates assume that the rate will be calculated correctly effective July 1, 2010, that production will decrease by 5% annually and that prices for coal will not increase.

Effects of Proposal

The option would apply the surtax to coal that is currently exempt. The following table shows effective production tax rates on coal in New Mexico and other western coal producing states during Fiscal Year 2008 under current law and under the option. Montana's effective tax rate is the highest at 11.00%, followed by New Mexico at 5.39%, then Wyoming at 5.25% and Colorado at 1.03%. The effective tax rate in Arizona and Utah is 0.00%. Under the proposal, New Mexico's rate would move to second position at 8.08% but would remain significantly below Montana's 11.00%.

Production Taxes on Coal in New Mexico and Other Western Producing States, FY 2008

State	Severance Tax	Severance Surtax	Resource Excise Tax	Conservation Tax	Total Effective Production Tax Rate
Montana	11.00%				11.00%
New Mexico (Proposal)*	**1.94%**	**5.29%**	**0.68%**	**0.17%**	**8.08%**
New Mexico (Current Law)*	**1.94%**	**2.60%**	**0.68%**	**0.17%**	**5.39%**
Wyoming**	5.25%				5.25%
Colorado***	1.03%				1.03%
Arizona					0.00%
Utah					0.00%

*The severance surtax rate has historically been calculated incorrectly by TRD. The rates in the table assume the rates had been calculated correctly in FY08.
**Wyoming has one underground mine that produces a small percentage of total coal. The state will release no information regarding the mine.
***Up until December 2007, Colorado's severance tax rate had been frozen at $0.54 per ton as a result of the Tabor Amendment. However, Colorado's Attorney General ruled that the Tabor Amendment did not apply to the severance tax. Effective January 2008, the rate increased to $0.76 per ton. The data for FY2008 reflects actual prices from January – June 2008.

Pros

- The option would raise the effective tax rate on coal, which currently is significantly below the effective rates on oil (6.36%) and on natural gas (6.38%), and much lower on the basis of energy content, carbon content, or CO_2 emissions (see table on following page).

- The option would also remove the large differentials between exempt and non-exempt coal (see table on following page).

- The option would raise revenue with very low compliance or administrative cost.

Cons

- Coal producers might view any tax increase as a disincentive to production in New Mexico.

- Coal is used to produce much of the electricity generated in New Mexico, so any increase in the taxes on coal production would likely result in higher prices for electricity.

Total Production and Non-Production Taxes per MMBTU, per Short Ton of Carbon Content and per Short Ton of CO_2 Emissions by Product, FY 2008

Energy Resource	All Coal	Oil	Natural Gas
Tax per MMBTU	$0.17	$1.24	$0.56
Tax per Short Ton of Carbon Content	$6.29	$64.35	$35.23
Tax per Short Ton of CO2 Emissions	$1.71	$17.55	$9.61

Effective Production Taxes and Prices by Type of Coal and Exemption Status, FY 2008

Type of Coal	Total Effective Rate	Price Received for Coal
Exempt Surface	3.13%	$25.06
Exempt Underground	2.22%	$40.47
Non-Exempt Surface	9.24%	$25.40
All Coal	5.39%	$29.18

Note: The rates in this table were actual effective tax rates prior to deduction of Intergovernmental Tax Credits.

BUSINESS TAX CREDIT OVERVIEW

New Mexico's business tax credits have grown significantly in both number and cost over the past decade (see Tables 1, 2 and 3). All credits currently in effect have been enacted since 1979, reflecting the fact that until about 30 years ago business tax credits were rarely available in New Mexico or in other states. Twenty one of 27 current business tax credits have been created since 2000.

Claims have grown from less than $4 million in FY 2003 to more than $111 million in FY 2009 (with personal and corporate income tax business credit claims for tax year 2008 still to be added to the FY 2009 total).

Rather than being explicit and well defined, the purposes of most current business tax credits are only implied by what is subsidized by the credit. Only five credits have explicitly stated purposes: Investment, Job Mentorship, Laboratory Partnership with Small Business, Qualified Business Facility Rehabilitation, and Technology Jobs. Even for these credits, purposes are not defined in measurable terms.

Most of the recently enacted credits are narrowly focused, reflecting perceived needs to redirect use of resources (labor and capital) within the New Mexico economy.

- Encourage employment: High-Wage Jobs, Job Mentorship, Rural Job, Technology Jobs (Additional), Investment.

- Encourage manufacturing: Investment, Alternative Energy Products Manufacturers.

- Encourage particular technologies: Advanced Energy, Alternative Energy Products Manufacturers, Biodiesel Blending Facility, Blended Biodiesel Fuel, Geothermal Ground-Coupled Heat Pump, Renewable Energy Production, Solar Market Development, Sustainable Building.

- Encourage high technology: Angel Investment, Lab Partnership with Small Business, Research and Development Small Business, Technology Jobs (Basic and Additional).

- Encourage particular activities: Film Production, Rural Health Care Practitioner.

- Encourage conservation: Cultural Property Preservation, Land Conservation.

New Mexico has followed a nationwide trend in creating its business tax credits and other business incentives. All mountain-west states now have a wide array of tax credits, similar in many respects to New Mexico's credits. Utah's credits differ in an important respect: they are awarded on a post-performance basis that requires businesses to meet specific milestones, including generation of new state tax revenue, before incentives are disbursed.

Business tax credits presume that existing market forces do not channel resources to their most valuable uses; their intent is to alter businesses' decisions about what, where, and how to produce. This redirection of economic activity may be appropriate, but the need for change should be established before credits are enacted, and post-enactment evaluations should try to determine whether credits are having their intended effects. Even though the stated or implied objective of a credit may not be to increase the value of total production and income in New Mexico, that should be the end result. Cost-effectiveness requires that the activities being subsidized by a credit be more valuable than activities in the private and public sectors

that will be diminished by higher taxes and/or lower government spending required to offset the revenue loss from the credit.

Legislators, business leaders, and tax administrators have recognized the need to assess the cost-effectiveness of business tax credits. The *New Mexico Economic Development Tax Incentive and Accountability Task Force Report* (2006, p.5) recommends that "the Legislature mandate participation in and compliance with the evaluation program as a component of any future economic development incentive program it chooses to enact." But credits have been evaluated only infrequently if at all, in part for lack of a framework to guide evaluation. Also, administering agencies have not been provided the resources required to gather and analyze data on use of credits, and they often do not have explicit mandates to do so. There have been few systematic requirements for reports from taxpayers that claim credits. Evaluations have relied on limited data, largely provided by businesses that receive credits. And they have typically not allowed for the effects of financing credits – offsetting credits with increases in taxes and/or decreases in government spending.

The upward trend in number and cost of business credits, and the lack of evidence on their cost-effectiveness, underscore the need for guidelines to aid decisions about modifying existing credits and creating new ones. Options 27 and 28 are intended to provide such guidelines; Option 27 for what should be included in legislation that defines credits and Option 28 for evaluating and administering credits.

The statutes that define existing business credits vary in what they include. In many instances, they fail to specify fully the purpose(s) of credits and the rules and procedures to be followed by agencies administering the credits and businesses claiming the credits. Option 27 would develop guidelines for what should be included in any legislation that creates a credit, the intent being to remedy shortcomings of current practice. The guidelines should be useful in designing new credits and in modifying existing credits. Having guidelines for legislation to follow in enacting business credits will help to assure that credits achieve a well-defined purpose, and curtail the creation of complicated and overlapping credits.

Option 28 would develop guidelines for evaluating and administering credits, which currently vary substantially across credits. The guidelines should simplify administration of taxes and reduce taxpayers' compliance costs. Following the guidelines should increase available information on the use of credits and facilitate evaluation of their cost-effectiveness. Over time, it should inform legislative review of existing credits and adoption of new credits. Making existing credits more cost-effective would reduce their cost or increase the benefits they produce.

Table 1: Descriptions of New Mexico Business Incentive Tax Credits

Credit	Statute(s)	Year Enacted	Date Repealed	Credit Applies Against[1]	Description	Pre-Certifying Agency	Overall Cap	Carry Forward	Transferable	Refundable	Recapture	Overlap with Other Credits?	Report Required
Advanced Energy	7-2-18.25, 7-2A-25, 7-9G-2	2007 2009 (PIT and CIT)		PIT, CIT, State GRT, Comp., Withholding	6% of costs for development and construction of a solar thermal or photovoltaic electric, geothermal electric, recycled energy, or new or repowered coal electric generating facility; construction must begin by 12/31/2015; credit limited to $60 million per facility	NMED		5 years	No	No	Yes	Partial	Annual report by NMED to interim Legislative committee
Affordable Housing	7-9I	2005		PIT, CIT, all CRS except local GRTs and GGRT	50% of the value of cash or land, buildings, or services donated	MFA	Population x $1.85 (inflation adjusted)	5 years	Yes	No	No	Yes	
Agricultural Water Conservation Expenses	7-2-18.20, 7-2A-22	2007	1/1/2013	PIT, CIT	50% (35% for expenses before 1/1/09) for improvements in irrigation systems or water management, credit limited to $10,000/year			5 years	No	No	No	Yes	
Alternative Energy Product Manufacturers	7-9J	2007		All CRS except local GRTs	5% of expenditures for manufacturing equipment used to make certain alternative energy products, subject to employment requirements			5 years	No	No	Yes	Partial	
Angel Investment	7-2-18.17	2007	1/1/2013	PIT	25% of up to $100,000 of equity investment in a New Mexico business engaged in high-technology research or	EDD	$750,000 per year	3 years	No	No	No	Yes	Annual report by EDD to LFC
Biodiesel Blending Facility	7-9-79.2	2007		GRT, Comp.	30% of cost of biodiesel blending equipment and the cost of installation; credit limited to $50,000 per facility	EMNRD	$1,000,000	4 years	No	No	No	Yes	
Blended Biodiesel Fuel	7-2-18.21, 7-2A-23	2007		PIT, CIT	2011, $0.01/gal. in 2012 of blended biodiesel fuel			5 years	No	No	No	Yes	
Business Facility Rehabilitation	7-2-18.4	1994		PIT	50% of qualified costs up to $50,000 per facility			4 years	No	No	No	Partial	
Capital Equipment	7-9D	1999	7/1/2004	GRT, Comp., Withholding	GRT rate or Compensating tax rate times the value of capital equipment for call center			Unlimited	No	No	Yes	Yes	
Corporate-Supported Child Care	7-2A-14	1983		CIT	30% of eligible expenses up to $30,000 per year			3 years	No	No	No	Yes	
Cultural Property Preservation	7-2-18.2 7-2A-8.6	1984		PIT, CIT	50% of eligible expenses up to $25,000 ($50,000 in arts and cultural districts) maximum per property	Cultural Properties Review Committee		4 years	No	No	No	Yes	
Electronic ID Card Reader	7-2-18.8, 7-2A-18	2001		PIT, CIT	$300 per business location with eligible equipment			No	No	No	No	Yes	
Film Production	7-2F	2002		PIT, CIT	25% of direct production expenditures and certain post-production expenditures; 20% if the tax payer receives a federal new markets tax credit	Film Division of EDD		No	No	Yes	No	Yes	
Geothermal Ground-Coupled Heat Pump	7-2-18.24, 7-2A-24	2009		PIT, CIT	30% of cost of geothermal ground-coupled heat pump and the cost of installation; credit limited to $9,000	EMNRD certifies pumps	$2,000,000 per year	10 years	No	No	No	Yes	
High-Wage Jobs	7-9G-1	2004		All CRS except local GRTs	10% of eligible wages up to $12,000 per employee for up to 4 years; jobs must pay at least $40,000 (city of 40,000 or more) or $28,000 (all other areas)			No	No	Yes	No	Yes	

Credit	Statute(s)	Year Enacted	Date Repealed	Credit Applies Against[1]	Description	Pre-Certifying Agency	Overall Cap	Carry Forward	Transferable	Refundable	Recapture	Overlap with Other Credits?	Report Required
Investment	7-9A	1979		State GRT, Comp., Withholding	Compensating tax rate (5%) times the value of qualified equipment subject to employment requirements (which change 1/1/2020); limited to 85% of total liability			Unlimited	No	In certain instances	No	Yes	
Job Mentorship	7-2-18.11, 7-2A-17.1	2003		PIT, CIT	50% of wages of qualified students for up to 10 students; maximum of $12,000	school principal		3 years	No	No	No	Yes	
Laboratory Partnership with Small Business	7-9E	2000		State GRT	Qualified expenditures of national laboratory up to $10,000 per small business ($20,000 per small rural business)		$2,400,000 per year per lab	No	No	No	No	Yes	Annual report by national labs to TRD, EDD, interim Legislative committee
Land Conservation	7-2-18.10, 7-2A-8.9	2003		PIT, CIT	50% of fair market value of donated land; maximum $250,000 for land conveyed	EMNRD		20 years	Yes	No	No	Yes	
Produced Water	7-2A-20	2002	1/1/2006	CIT	$1,000 per acre foot up to $400,000			3 years	No	No	No	Yes	
Qualified Business Facility Rehabilitation	7-2A-15	1994		CIT	50% of eligible expenses up to $50,000 per project			4 years	No	No	No	Partial	
Renewable Energy Production	7-2-18.18 7-2A-19	2007 (PIT), 2002 (CIT)		PIT, CIT	Credit is 1 cent/KwH for wind and biomass and from 1.5 cent/KHz to 4 cents/KwH for solar	EMNRD	Based on KwH capacity	5 years	Partial	Yes, after 10/1/2007	No	Yes	
Research and Development Small Business	7-9H	2005		GRT, Comp., Withholding	100% of CRS liability of qualified firms for 3 years			No	No	No	No	No	
Rural Health Care Practitioner	7-2-18.22	2007		PIT	Up to $5,000 for physicians, etc. and up to $3,000 for nurses, etc. practicing in a rural health care underserved area	DoH		3 years	No	No	No	Yes	
Rural Job	7-2E	1999		PIT, CIT, all CRS except local GRTs	6.25% of first $16,000 of wages for up to four periods in a tier 1 area or two periods in a tier 2 area; employers must be approved for in-plant training	EDD		3 years	Yes	No	No	Partial	Annual report by EDD, TRD and DWS to
Solar Market Development	7-2-18.14	2006	1/31/2016	PIT	10% (30% prior to 2009) of solar system costs (less, prior to 2009, applicable federal credits); credit limit of $9,000	EMNRD certifies systems	$2,000,000 thermal $3,000,000 photo-voltaic per year	10 years	No	No	No	Yes	
Sustainable Building	7-2-18.19, 7-2A-21	2007		PIT, CIT	Rate varies with size, type, and efficiency of building from $0.30 to $9.00 per sq. ft.	EMNRD	$5,000,000 commercial $5,000,000 residential per year	7 years	Yes	No	No	Yes	
Technology Jobs - Basic	7-9F	2000		State GRT, Comp.,	4% (8% in rural areas) of qualified expenditures			Unlimited	No	No	Yes	Yes	Annual report by TRD to LFC and RSTP
Technology Jobs - Additional	7-9F	2000		PIT, CIT	4% (8% in rural areas) of qualified research expenditures if in-State payroll raised $75,000 per $1 million in qualified expenditures claimed			Unlimited	No	No	Yes	Yes	
Welfare-to-Work	7-2-18.5, 7-2A-8.8	1998	1/1/2006[2]	PIT, CIT	50% of Federal Welfare-To-Work credit amount	DWS		3 years	No	No	No	Yes	

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[1] CIT is corporate income tax; CRS includes gross receipts tax (GRT), compensating tax (Comp), withholding, interstate telecommunications GRT, leased vehicle GRT, Leased Vehicle Surcharge and Governmental GRT (GGRT); PIT is personal income tax.

[2] This is the date the federal Welfare-to-Work credit expired.

Table 2: Number of New Mexico Business Incentive Tax Credits by Key Features

Feature	Number
1. Total Number of Credits	30
Currently in Effect	27
Expired (since FY2003)	3
2. Period Credit Enacted*	
Before 1990	3
1990 to 1999	5
2000 to 2004	10
2005 to 2009	12
3. Repeal Date?	
Yes	6
No	24
4. Credit Applies Against:	
PIT only	4
CIT only	3
PIT and CIT	12
CRS only	8
PIT, CIT and CRS	3
5. Pre-Certifying Agency?	
Yes	15
No	15
6. Overall Cap?	
Yes	8
No	22
7. Carryforward?	
Yes - 5 years or less	17
Yes - 6 years or more (includes unlimited)	8
No	5
8. Transferable?	
Yes**	5
No	25
9. Refundable?	
Yes**	4
No	26
10. Recapture?	
Yes**	5
No	25
11. Potentially Overlaps with Other Credits?	
Yes	29
No	1
12. Report Required?	
Yes	5
No	25

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* Credits with multiple enactment dates are classified by the earliest date.
** Includes credits with partial transferability, refundability or recapture.

Table 3: New Mexico Business Incentive Tax Credits Claimed, FY2003 to FY2009[1]

Credit		Fiscal Year[2] 2003	2004	2005	2006	2007	2008	2009[3]
Affordable Housing	Number of Claims	*Enacted in 2005*				13	37	
	Amount					*$26,782*	*$88,135*	
Angel Investment	Number of Claims	*Enacted in 2007*					14	
	Amount						*$117,854*	
Blended Biodiesel Fuel	Number of Claims	*Enacted in 2007*					*	
	Amount						*	
Business Facility Rehabilitation	Number of Claims		6	3				
	Amount		*$4,860*	*$12,995*				
Corporate-Supported Child Care	Number of Claims						*	
	Amount						*	
Cultural Property Preservation	Number of Claims	76	114	66	51	75	87	
	Amount	*$247,106*	*$330,134*	*$196,665*	*$183,701*	*$228,177*	*$228,390*	
Electronic ID Card Reader	Number of Claims	8	3	3		*	*	
	Amount	*$3,569*	*$900*	*$900*		*	*	
Film Production[4]	Number of Claims	4	8	13	35	34	52	78
	Amount	*$1,219,508*	*$3,404,963*	*$2,072,633*	*$10,742,480*	*$17,578,139*	*$46,029,904*	*$76,706,379*
High-Wage Jobs	Number of Claims	*Enacted in 2004*			18	29	37	45
	Amount				*$743,452*	*$1,657,879*	*$4,724,655*	*$14,440,779*
Investment	Number of Claims	N/A	N/A	25	21	24	18	19
	Amount	*$715,747*	*$2,150,947*	*$5,039,864*	*$14,789,417*	*$6,095,168*	*$1,828,916*	*$11,602,742*
Job Mentorship	Number of Claims		*	3	6	5	5	
	Amount		*	*$12,864*	*$14,329*	*$15,156*	*$12,691*	
Laboratory Partnership with Small Business	Number of Claims	1	1	1	1	1	2	2
	Amount	*$764,585*	*$1,897,764*	*$1,467,779*	*$1,454,338*	*$1,694,415*	*$2,589,428*	*$2,525,333*
Land Conservation	Number of Claims	*Enacted in 2003*		21	15	22	24	
	Amount			*$378,890*	*$250,308*	*$441,781*	*$288,431*	
Renewable Energy Production	Number of Claims					4	5	
	Amount					*$3,699,673*	*$2,675,313*	
Research and Development Small Business	Number of Claims	*Enacted in 2005*				5	7	6
	Amount					*$303,129*	*$249,599*	*$107,106*
Rural Health Care Practitioner	Number of Claims	*Enacted in 2007*					1,193	
	Amount						*$4,845,412*	
Rural Job	Number of Claims	N/A	N/A	6	6	4	15	8
	Amount	*$177,751*	*$345,124*	*$186,121*	*$189,043*	*$86,630*	*$589,753*	*$382,458*
Solar Market Development	Number of Claims	*Enacted in 2006*				84	179	
	Amount					*$338,304*	*$566,542*	
Sustainable Building	Number of Claims	*Enacted in 2007*					4	
	Amount						*$10,702*	
Technology Jobs	Number of Claims	N/A	N/A	50	54	59	63	34
	Amount	*$479,071*	*$3,229,546*	*$4,429,843*	*$4,136,145*	*$5,430,557*	*$5,679,615*	*$5,956,356*
Welfare-to-Work	Number of Claims	32	48	6	*	*	7	
	Amount	*$72,095*	*$96,355*	*$10,549*	*	*	*$41,479*	
Totals	Number of Claims	**121**	**180**	**197**	**207**	**359**	**1,749**	**192**
	Amount	***$3,679,432***	***$11,460,594***	***$13,809,102***	***$32,503,212***	***$37,595,789***	***$70,566,818***	***$111,721,153***

Taxation and Revenue Department
Office of Tax Policy

November 17, 2009

* Number of claims and amount of credit claimed suppressed to protect taxpayer confidentiality. N/A Not available.

[1] No credit claims have been reported on CRS returns filed in FY2003 - FY2009 or PIT or CIT returns filed for tax years 2002 - 2007 (see footnote 2) for the following credits: Advance Energy, Agricultural Water Conservation Expenses, Biodiesel Blending Facility, Capital Equipment (expired 7/1/2004), Geothermal Ground-Coupled Heat Pump (enacted in 2009), Produced Water (expired 1/1/2006), or Qualified Business Facility Rehabilitation.

[2] Credits claimed on personal income tax (PIT) returns and corporate income tax (CIT) returns are shown in the fiscal year the return was due. Returns for 2008, due in FY2009, have not been filed and processed for taxpayers with automatic extensions, so no credit information is included for 2008 PIT and CIT returns.

[3] The number of credit claims and amounts claimed for FY2009 exclude PIT and CIT credits claimed on 2008 returns (see footnote 2).

[4] Film production tax credit claims and amounts are for approved credits.

OPTION 27

GUIDELINES FOR BUSINESS INCENTIVE TAX CREDIT LEGISLATION

Description

The statutes defining current business incentive tax credits vary in what they include, and they often fail to specify fully the purpose(s) of the credits and the rules and procedures to be followed by agencies administering the credits and businesses claiming the credits. This option would create guidelines for what should be included in any legislation that creates a business incentive tax credit. These guidelines should be useful in revising existing credits and creating new ones.

Purpose of credits

In the broadest terms, the purpose of business incentive tax credits should be to improve living standards of New Mexicans. More specific purposes are to increase the total value of final goods and services produced in New Mexico and the incomes New Mexicans derive from that production. In pursuing these purposes, credits substitute for direct government spending. They should therefore be evaluated by principles applied in evaluating spending policies; that is, they should be cost-effective, generating benefits that exceed their costs.

This definition of purpose does not rule out credits aimed at reducing environmental damage, such as air pollution from using fossil fuels to generate electricity. The reason is that, correctly calculated, the value of final production increases when the cost of producing any product decreases – for example, when air pollution costs of generating electricity are reduced by switching from coal-fired to solar plants.

Purpose can be defined more narrowly, e.g. as increasing employment or investment in manufacturing. But defining purpose as increasing a specific sector of the economy runs the risk of increasing that sector *while curtailing other sectors and perhaps even diminishing the total value of production in the State*. For example, a tax credit for investment expenditures by manufacturers could be financed by higher taxes on other sectors of the economy, which might expand manufacturing but contract other sectors and have an uncertain (and possibly negative) effect on the economy as whole. Therefore, any narrowly defined purpose should be accompanied by a requirement that the credit does not reduce total income and production in the State.

A common view is that New Mexico must enact a tax credit (or other incentive) if it is available in other states, the purpose being to assure that New Mexico has a "competitive" tax structure. This rationale for business incentive tax credits presumes that they should be used to attract businesses that would otherwise not locate in New Mexico. But paying businesses with tax credits to locate or remain in New Mexico when their profits would be higher elsewhere is poor policy. The revenue lost because of the credit must be offset by higher taxes or lower government spending, both of which make New Mexico less attractive for other businesses and the workers they employ. A tax credit given to attract or retain one category of business may make New Mexico less attractive for other businesses.

Since credits provide incentives for businesses to change where or how they operate, to invest more, to hire more workers, to operate in rural areas, or to produce electricity from renewable sources, they presume that use of economic resources can be improved by inducing businesses to operate differently than they would in the absence of the credits. Business incentive tax credits should therefore be based on identified needs for changes in resource allocation and evidence that a credit can in fact direct resources

to more valuable uses. Applying resources to more valuable uses should in turn increase the total value of production and income generated by New Mexico's economy.

The definition of a credit's purpose should not be open to a range of interpretations about how businesses qualify for the credit. For example, use "increasing value of production in New Mexico, measured by its gross state product," instead of "economic development" and "decreasing taxes on manufacturing businesses" instead of "provide a favorable tax climate for technology-based businesses engaging in research, development and experimentation" (the stated purpose the Technology Jobs Tax Credit).

Rather than being explicit and well defined, the purposes of most existing credits are only implied by what is subsidized. Only five credits have explicitly stated purposes: Investment Credit, Job Mentorship Credit, Laboratory Partnership with Small Business Credit, Qualified Business Facility Rehabilitation Credit, and Technology Jobs Credit. Even then, purposes are not defined in measurable terms.

How the credit is calculated

The base of the credit – the magnitude on which the credit is calculated – should accurately reflect the activity that is to be encouraged. For example, the amount of new equipment purchases by manufacturing businesses if the intent is to encourage manufacturing in New Mexico. Rate(s) to be applied to the base should be specified, as well as any ceiling or floor on the base or rate. Also to be specified are the tax liabilities against which the credit applies and eligible taxpayers – who can claim credit. Credits that can be claimed against income tax should not be claimed by pass-through entities but rather by their owners as individual or corporate income taxpayers.

Certification requirements

Legislation should state whether eligibility for the credit requires approval by an agency or department. For example, to qualify for either the Solar Market Development or Biodiesel Blending Facility tax credits, expenditures must be approved by the Energy, Minerals and Natural Resources Department. Certification may be needed for credits that are aimed at subsidizing purchase or production of products that are technologically complicated. Certification of compliance after a credit is claimed may also be required (see "Recapture rules" below).

Carry forward rules

Allowing carry forward of credits that are limited to current tax liability (i.e., are not transferrable or refundable) provides some incentive to businesses without sufficient current tax liability to absorb the credit. Businesses that can absorb all of a credit with current tax liability receive a greater incentive than businesses that cannot absorb the credit and must carry some or all of it forward, because a $1 future credit claim is worth less (has a lower present value) than a $1 current credit claim.

Transferability

Some current business incentive tax credits allow transfer (sale) of credits to other taxpayers. If allowed, transfers are made when taxpayers qualify for credits that exceed their tax liabilities. In that case, credits are worth less to qualifying taxpayers than to taxpayers that have tax liabilities sufficient to fully absorb the credits. Since qualifying taxpayers that sell their credits usually receive less (and sometimes substantially less) than the full value of the credits, the State's revenue loss from the credits exceeds the amount of the incentive provided for the qualified activity. Transferable tax credits are therefore not cost-effective in providing funds to businesses that engage in activities that are to be encouraged. A more cost-effective approach is to allow credits to be refundable.

Refundability rules

A fully refundable credit is equivalent to a direct cash subsidy since it does not depend on tax liabilities. Making a credit refundable insures that all businesses that qualify for and claim the credit receive the same incentive from the credit.

Recapture rules

The possibility of recapture may cause taxpayers to consider future prospects more carefully when applying for a credit; taxpayers may be reluctant to apply when uncertain about meeting job maintenance or other requirements.

Recapture rules should not be the same for all credits. Recapture is appropriate only if actions or events subsequent to payment of the credit prevent it from having its intended effect. For example, the Technology Jobs Tax Credit and the Alternative Energy Product Manufacturers Credit require recapture if the business ceases operations for more than 180 days within two years after claiming credit. In such cases, a business' failure to continue operations is counter to the purpose of the credit, which is to encourage the growth of these sectors.

The need for recapture may be reduced by following Utah's example and paying credits on a post-performance basis – after promised results have been realized. In this case, the conditions that must be met to qualify for a credit are treated as a contract, with payment (the credit) being made only after the terms of the contract have been fulfilled.

Limits on use and duration

Legislation should specify whether overlap with other incentives is allowed – whether more than one credit can be taken for the same action and whether credits can be taken for expenditures that qualify for other tax incentives or for non-tax incentives such as loans and industrial revenue bonds (which carry with them tax benefits).

Use of some credits is limited by a cap on total outlays or by a statutory termination date (sunset). Such restrictions may be appropriate when there is uncertainty about the cost or effectiveness of a credit. Both limit revenue losses from credits and both require legislative action – presumably accompanied by some reevaluation of credits – to extend credits beyond specified dollar or time limits. But sunsets also create uncertainty for businesses, particularly when the credit would apply to future investment or other future activities, and may therefore reduce the effectiveness of a credit.

Resources for administration and evaluation

Legislation should set out evaluation and reporting requirements (see Option 28), and provide funding needed to meet those requirements.

Effects of Option

Specifying guidelines for legislation that enacts business credits will help to assure that credits are cost-effective – that they increase the value of production and income generated by the New Mexico economy.

Pros

- Credits would be enacted only upon evidence that they can be effective in achieving a clearly defined purpose. Requiring clear definitions of purpose would reduce overlap of credits.
- Data to evaluate the effectiveness of credits would be collected and credits would be systematically evaluated.
- The option would focus credits on increasing the total value of production in New Mexico's economy and the total income derived from that production.
- Over time, the option would reduce the revenue loss from credits that are not cost-effective.
- Business representatives and economic developers support these changes.

Cons

- The suggested definition of purpose is very broad, and it will be difficult to determine whether a credit would (or does) have a positive effect on the value of production in New Mexico or the income derived from that production.
- If credits are restricted, New Mexico may be not "meet the competition" from other states for mobile businesses.
- The option might create a presumption against targeted assistance to businesses that New Mexico should try to attract – businesses in a growing industry or that promise high wage jobs.

OPTION 28

GUIDELINES FOR BUSINESS INCENTIVE TAX CREDIT EVALUATION AND ADMINISTRATION

Description

Procedures and responsibilities for evaluating and administering existing business incentive tax credits vary substantially. But there are common requirements that should be met for all credits, both existing credits and credits enacted in the future. This option would define such requirements.

Evaluation defined

Legislation that creates a business incentive tax credit should require periodic evaluation of the credit and specify analyses and data to be used in appraising its effectiveness. The need for evaluation is recognized in the *New Mexico Economic Development Tax Incentive and Accountability Task Force Report* (2006, p. 4) , which recommends that the Legislature mandate participation in and compliance with an evaluation program as a component of any future economic development incentive program it enacts.

Ideally, a credit would be evaluated by estimating how it changes 1) the total value of final goods and services produced by the New Mexico economy including the value of government-provided goods and services and 2) the total income accruing to New Mexico's residents from production in New Mexico, which includes the value of benefits that New Mexico's residents derive from government-supplied goods and services. Correctly calculated, the value of final production is *net* of all costs of production, including "external" costs that are omitted from standard business accounting of costs. An example of external cost is air pollution resulting from energy generation.

To evaluate a credit it is necessary first to determine whether the actions being subsidized by the credit – purchase of equipment, hiring of workers etc. – would have occurred without the credit. If businesses would have taken the same actions without the credit, it is not effective in encouraging the subsidized actions.

However, regardless of whether the credit has its intended effects, it does set off changes in disposable (after tax) income and spending that can affect the value of production and income generated by New Mexico's economy. A tax credit reduces tax payments by qualifying taxpayers and increases their disposable income and spending, while the revenue loss from the credit has opposite (negative) effects on private and public sector spending. More specifically, offsetting the revenue loss from a credit reduces government spending and/or increases tax payments and reduces spending by other businesses and households. A credit therefore redirects spending 1) between the public and private sectors when the revenue loss from the credit is offset by a decrease in government spending, 2) within the private sector when the revenue loss is offset by a tax increase, and 3) between current and future periods when the revenue loss is offset by borrowed funds.

Evaluations of business incentive tax credits, as well as other business incentives, sometimes ask whether the increased economic activity due to the credit also increases tax collections enough to offset the cost of the credit. This may be an interesting question to try to answer, but the answer does not determine whether a credit is cost-effective. The relevant question is not what happens to tax collections but, as

explained above, what happens to the total value of production and the total income generated by the New Mexico economy.
Although what is required to evaluate a credit is clear, carrying out the evaluation is difficult and complicated for number of reasons.

Evaluation: complications

Increases in employment and production by businesses receiving a credit will overstate its statewide effects because offsetting the revenue loss from the credit will force decreases elsewhere in the State's economy. If the revenue loss is offset by decreased government spending, production and employment based on that spending will decrease. If the revenue loss is offset by higher taxes on persons and businesses, their after-tax income will fall, their purchases of goods and services will fall, and production and employment based on those purchases will fall. Possible gains are further reduced by costs government incurs in administering the credit and that businesses incur in filing claims and meeting reporting requirements. The net effect of a credit and the resulting revenue loss on New Mexico's economy can therefore be negative, zero or positive.

Evaluation cannot rely only on information from businesses that receive credits. They may overstate the favorable effects of credits because they want the credits continued and fail to account for the effects of offsetting the revenue loss from the credit.

The dollar amount of wages and benefits paid to workers employed by businesses that receive a credit overstates workers' gains from the credit. Workers' gain is what they receive with the credit in place *minus* what they would have received absent the credit. Since a credit may affect wages and benefits of other workers than those employed by businesses that receive the credit, its effect on wages and benefits of workers in *all* sectors should be estimated.

Individual credits cannot be evaluated by looking for their effects in aggregate measures of production and income. Changes attributable to credits, whether positive or negative, will likely be small. These small changes are difficult to separate from changes due to other factors, and consequently difficult to observe in measures such as the total value of final goods and services produced in New Mexico and the flow of income accruing to New Mexico's residents.

The fact that New Mexico's economy is small and open further complicates evaluation of credits. Since New Mexico's businesses and consumers often buy products from out-of-state suppliers, any increase in demand for products generated by a credit may be met in part by out-of-state purchases, which weakens the expansionary effect of a credit. The tax savings from a credit may accrue in part to out-of -state owners of New Mexico businesses. Credit-induced increases in demand for workers may be met in part by workers who migrate into New Mexico. These cross-border effects of a credit weaken its expansionary effects. Working in the opposite direction, any increased taxes used to finance the cost of credits may be paid in part by nonresidents.

Computable general equilibrium (CGE) models can in theory take account of cross-border effects and estimate the net effect of the many small changes generated by a credit. But the resulting estimates are sensitive to assumptions necessarily made about the structure of the New Mexico economy and its linkages with other states' economies. Econometric regression models cannot be used to evaluate single or small groups of credits because their effects will be overshadowed by economic changes from other sources.

Two recent reports on New Mexico's business tax incentives underscore the difficulties and cost of evaluating credits. The *New Mexico Economic Development Tax Incentive and Accountability Task Force Report* (2006) discusses problems met in estimating economic impact (pp. 12-14) and alternative methods

for doing so (Appendix D, pp. 37-42). It concludes that computable general equilibrium models allow for the widest range of effects and interactions, but are difficult to tailor to the unique characteristics of New Mexico's economy and tax system. The 2008 *Report on Manufacturing Incentives in New Mexico* (p. 15) notes "Quantitative analyses of incentives require data and methodological tools, and a commitment of resources, which are not currently available to either the Economic Development Department or the Tax and Revenue Department."

The cost and difficulty of fully evaluating credits has led policy evaluators in New Mexico and other states to look for evidence of their effects in other data, such as changes in employment reported by recipient businesses. But these data are inadequate and potentially misleading because they do not reflect the *net* effect of credits and the adjustments made to offset the revenue loss they generate. Another alternative followed in some states is to apply a discount factor to increases in production and employment reported by businesses that receive credits.

Given the difficulties of determining the effects of a credit once it is in place, an alternative is to create a credit only if a strong case can be made that doing so will shift resources from less valuable to more valuable uses. In other words, rely on *ex ante* instead of *ex post* appraisals of cost-effectiveness. Also, forgo enacting small credits with small budgetary costs; such credits are likely to have at best only small benefits that are insufficient to offset administrative and compliance costs.

Administration

The legislation that creates a credit should specify the agency or department responsible for administering the credit and the source and amount of resources available for administration and evaluation. It should define reporting requirements – content, frequency and dissemination of reports, and it should require study of and reports on cost-effectiveness of each credit. Analyses of cost-effectiveness should take account of the effects of offsetting the cost of a credit as well as its direct effects on the businesses that receive the credit. Evaluations cannot rely solely on employment, investment, sales and other information reported by credit recipients, although that is common practice in other states.

The *New Mexico Economic Development Tax Incentive and Accountability Task Force Report*, pp. 14-16 notes that other states are increasingly requiring effectiveness studies and compliance reports in legislation that defines credit and other incentive programs, and it recommends that New Mexico follow similar practices.

Requirements for reporting by taxpayers should also be specified – content, frequency and dissemination of reports. Reporting should track all forms of assistance that individual businesses receive from various programs. Detailed reports from taxpayers such as those recommended by the *New Mexico Economic Development Tax Incentives Accountability Task Force Report* would be costly. These compliance costs necessarily diminish the net gains from a credit. Requirements for information from taxpayers should therefore be coupled with explanation of how the information is to be used to evaluate credits.

Effects of Option

Existing business credits have been evaluated only infrequently if at all. Administering agencies have had insufficient resources to gather and analyze data on use of credits. There have been no systematic requirements for reports from taxpayers that claim credits. Evaluations have relied on limited data, largely provided by businesses that receive the credits, and they have typically not taken into account the effects of offsetting the cost of the credits.

The evaluation and administration of credits would be improved by adopting guidelines such as those described above. Following such guidelines would increase the information available on the use of credits and facilitate evaluation of their cost-effectiveness.

Pros

- This option would mandate and provide resources for periodic evaluation of credits.
- It would require both administrators and taxpayers to provide publically available information about the use and effects of credits. This information would guide decisions about whether existing credits should be modified or eliminated. Having a mandate to evaluate credits and the data to do so would increase the likelihood that credits in fact have positive effects on New Mexico's economy.
- The option would help increase the cost-effectiveness of new business incentive tax credits. Knowing that any newly enacted credit would be subject to periodic evaluation would encourage careful examination of its likely effects before enacting it.
- Over time, the option would reduce the revenue loss from credits that are not cost-effective.

Cons

- Adopting the option guidelines might restrict the use of credits aimed at promoting economic development and possibly make New Mexico appear less responsive to and concerned about the need for development.
- The option might lead to fewer incentives that can be offered to businesses in an effort to induce them to locate or expand in New Mexico.

OPTION 29

PROVIDE TRD BROAD REALLOCATION AUTHORITY

Description

This option would provide the Taxation and Revenue Department (TRD) broad authority to reallocate receipts, income, deductions, exemptions, and other items among related or unrelated entities to properly reflect tax liabilities and credits.

Effective Date: July 1, 2010.

Estimated Revenue Impact (000)						Fund(s) Affected
FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	
0	250	500	750	800	2,300	General Fund
0	50	100	150	160	460	Municipalities
0	15	30	45	45	135	Counties
0	**315**	**630**	**945**	**1,045**	**2,895**	**Total**

Effects of Option

The option would provide TRD an enforcement tool that is available currently to the Internal Revenue Service (section 482 of the Internal Revenue Code), and to a number of states (see attached table that summarizes results from a posting to the Federation of Tax Administrators "Commissioners" "Audit" and "Legal" Listservs).

Pros

- This option would increase revenues from taxpayers that are not currently meeting their full tax obligations, rather than by increasing taxes on fully compliant taxpayers.

Cons

- This option would increase compliance burdens on some taxpayers that would ultimately owe no additional tax.

Responses to Questions Posted on FTA Listservs Concerning IRC Section 482-Type Authority

Question/Response	Alabama	Arkansas	Connecticut	Florida	Indiana	Maryland	Massachusetts
1. Does your state have the authority similar to section 482 of the IRC?							
Yes	✓		✓	✓	✓	✓	✓
No		✓					
2. If you do have such authority, do you use it:		N/A					
Frequently	✓		✓		✓		
Sometimes							✓
Infrequently				✓			
Not at all						✓	
3. If you have the authority but use it infrequently or not at all, is it because you've found it is:	N/A	N/A	N/A		N/A		N/A
Not a useful tool							
Not cost effective							
Some other reason				✓		✓	
4. If your answer to #3 is that it is not a useful tool, is it because you have:	N/A	N/A	N/A	N/A	N/A		N/A
Mandatory combined reporting							
Addback statutes						✓	
Some other reason							
5. If you do have the authority and use it frequently or sometimes, how much revenue do you think it raises in a typical year, expressed as:		N/A					
Dollar amount	?		$80 million	?	$5 million	$0	$50 million
Percent of CIT revenues			(assessed)				(assessed)

Question/Response	Michigan	Missouri	Nebraska	New Jersey	North Dakota	Oregon	Utah
1. Does your state have the authority similar to section 482 of the IRC?							
Yes				✓	✓	✓	✓
No	✓	✓	✓				
2. If you do have such authority, do you use it:	N/A	N/A	N/A				
Frequently				✓			
Sometimes						✓	✓
Infrequently							
Not at all					✓		
3. If you have the authority but use it infrequently or not at all, is it because you've found it is:	N/A	N/A	N/A	N/A		N/A	N/A
Not a useful tool					✓		
Not cost effective							
Some other reason							
4. If your answer to #3 is that it is not a useful tool, is it because you have:	N/A	N/A		N/A		N/A	N/A
Mandatory combined reporting			✓		✓		
Addback statutes							
Some other reason							
5. If you do have the authority and use it frequently or sometimes, how much revenue do you think it raises in a typical year, expressed as:	N/A	N/A	N/A		N/A		
Dollar amount				$50 million		"could be sizable"	"millions"
Percent of CIT revenues							

OPTION 30

INCREASE PENALTIES FOR FAILURE TO FILE AND WILLFUL EVASION

Description

Under current law, the minimum penalty for failure to file or to pay a tax on time (without willful intent to evade the tax) is $5.00 and the minimum penalty for failure to pay with willful intent to evade a tax is $25.00.

The option would increase these minimum penalties from $5.00 to $25.00 and from $25.00 to $50.00.

Effective Date: July 1, 2010.

Estimated Revenue Impact (000)						Fund(s) Affected
FY10	FY11	FY12	FY13	FY14	FY10-14	
0	500	500	500	500	2,000	General Fund

Effects of Option

This option would encourage taxpayers to file returns and pay tax on time.

Pros

- This option would increase revenues from taxpayers who are currently paying their taxes late or failing to pay.
- Late filing delays distributions of revenues, which affects the timing of receipts by the General Fund and other recipients of tax revenues.

Cons

- This option could result in higher penalties on taxpayers who are having difficulty making tax payments due to the recession.

OPTION 31

INFORMATION REPORTING AND SPECIAL PAYMENT RULES

Description

Under current law, most employers must file a quarterly return with the Workforce Solutions Department. These returns are available to the Taxation and Revenue Department (TRD) and the Workers' Compensation Administration. Also under current law, taxpayers with average monthly liabilities for certain taxes of $25,000 or more in the prior year are required to make payment electronically or by another special method.

The option would require employers with more than 50 employees that do not have a Department of Workforce Solutions filing requirement to electronically file an information return with TRD and the Workers' Compensation Administration.

The option would also reduce the $25,000 threshold for special payment methods over three years to $10,000; the list of taxes covered by the special payment rules would be expanded to include the Alternative Fuel Tax Act, the Cigarette Tax Act, the Tobacco Products Act, the Liquor Excise Tax Act and the Local Liquor Excise Tax Act; and electronic or other special payment method would be required of third-party payers such as payroll service companies.

Effective Date: July 1, 2010.

Estimated Revenue Impact (000)						
FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Fund(s) Affected**
0	450	360	360	120	1,290	General Fund
0	225	180	180	60	645	Municipalities
0	75	60	60	20	215	Counties
0	750	600	600	200	2,150	**Total**

Effect of Option

The option would allow TRD to more quickly and accurately process tax payments, and make distributions to the General Fund, local governments and other recipients of tax revenues. The options would also improve compliance by making additional information available to the Department.

Pros

- This option would improve tax processing and compliance, increasing revenues and making distributions of revenues more timely.

Cons

- The option would impose additional payment and reporting burdens on some large businesses.

OPTION 32

REQUIRE BONDS FOR ALL CONTRACTORS

Description

Currently, out-of-state construction contractors are required to post a surety bond equal to their liability for gross receipts taxes under contracts of $50,000 or more. In-state contractors are not subject to this bonding requirement.

This option would extend the bonding requirement to in-state construction contractors.

Effective Date: July 1, 2010.

Estimated Revenue Impact (000)						
FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Fund(s) Affected**
0	10,763	11,355	11,946	12,471	46,535	General Fund
0	4,443	4,688	4,932	5,149	19,212	Municipalities
0	1,545	1,630	1,714	1,790	6,679	Counties
0	**16,751**	**17,673**	**18,592**	**19,410**	**72,426**	**Total**

This revenue impact is based on estimates by the Audit and Compliance Division of TRD of the current tax gap for in-state construction contractors. They estimate that one-third of this gap can be eliminated through implementing the requirement in this bill.

Effects of Option

The Audit and Compliance Division currently dedicates one employee up to full-time to administer the bonding requirements for out-of-state construction contractors resulting in better compliance among this subgroup. A moderate increase in administrative resources would yield the same increased compliance effects across the larger group of all construction contractors.

Pros

- Increasing compliance would allow the State to increase revenues without increasing tax rates on taxpayers who currently pay their fair share of taxes.
- This option would apply equitable treatment and a single set of procedures to both in-state and out-of-state construction contractors.
- Increasing compliance could benefit taxpayers that currently pay their fair share of taxes by eliminating the unfair competition from businesses that are not paying all their taxes.

Cons

- This option would impose costs of obtaining a bond on all affected construction contractors in New Mexico.
  - Even those contractors who currently pay their liabilities timely and completely on every project would have to incur these increased costs.

- Small contractors may have difficulty obtaining surety bonds to cover their gross receipts tax liability.

OPTION 33

REQUIRE DIRECT REMITTANCE ON GOVERNMENT CONTRACTS

Description

Currently, if the State and a contractor agree the State can withhold and remit the gross receipts tax due on contract amounts. However, there is no requirement for such arrangements. Without such an arrangement, contractors are paid amounts that include gross receipts tax and are then responsible for correctly reporting and paying all of the that tax to the State.

This option would require the State and all local governments to withhold and remit gross receipts tax due on all amounts paid under all contracts they enter into. The bond requirement for construction contractors (which would be expanded by Option 32) would be waived on State or local government contracts.

Effective Date: July 1, 2010.

Estimated Revenue Impact (000)						
FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Fund(s) Affected**
0	3,051	2,384	2,508	2,618	10,562	General Fund
0	1,573	1,229	1,293	1,350	5,446	Municipalities
0	547	427	450	469	1,893	Counties
0	**5,172**	**4,041**	**4,251**	**4,438**	**17,901**	**Total**

Effects of Option

This option would increase gross receipts tax revenues for the State and local governments. Initially, it would create a one-time speed up of gross receipts tax revenue as all money paid by the State and local governments for their contractors' tax liabilities would be collected and distributed immediately. On a recurring basis, the option would insure that the correct amount of gross receipts taxes on all State and local government contracts is paid by removing the possibility of non-payment due to taxpayer mistakes, negligence, bankruptcy, or outright fraud.

Pros

- Improved tax compliance would increase revenues without increasing tax rates on taxpayers who currently pay their taxes.

- Improved compliance could also benefit taxpayers that currently pay their taxes by eliminating unfair competition from businesses that do not.

Cons

- This option would shift some of the compliance burden of identifying, reporting, and remitting the gross receipts tax from the taxpayer to the State and local governments.

OPTION 34

BROADEN ADMINISTRATIVE FEE ON GROSS RECEIPTS TAX DISTRIBUTIONS

Description

Under current law an administrative fee of 3.0% will be charged on distributions to counties and municipalities of revenue from local option gross receipts taxes except that no administrative fee is charged to municipalities on revenue from the first 0.5% of municipal local option taxes.

This option would apply the administrative fee on all distributions to counties and municipalities from gross receipts tax revenue. The option would expand the fee to include the first 0.5% of municipal local option taxes, food and medical hold harmless distributions, the distribution to municipalities of the State's 1.225% rate, and distributions of State gross receipts taxes dedicated to Tax Increment Development Districts (TIDDs).

To offset the effect of applying the administrative fee to all gross receipts tax distributions, the rate of the fee (for all recipients) would be reduced from 3.0% to 1.472% to achieve a neutral revenue effect on the General Fund.

Note that the effect of the option on revenues of municipalities could be reduced or eliminated if other options (such as Option 4) were also enacted.

Effective Date: July 1, 2010.

Estimated Revenue Impact (000)						
FY10	**FY11**	**FY12**	**FY13**	**FY14**	**FY10-14**	**Fund(s) Affected**
0	(5,204)	(5,479)	(5,757)	(6,017)	(22,457)	Municipalities
0	5,142	5,422	5,702	5,955	22,221	Counties
0	(11)	(16)	(22)	(31)	(80)	TIDDs
0	73	77	81	85	316	Pueblos and Nations
0	**0**	**4**	**4**	**(8)**	**0**	**Total/General Fund**

Effects of Option

In FY09 municipalities received 73.9% of all gross receipts tax distributions to local governments but paid only 48.5% of all associated administrative fees. Counties received only 25.7% of all gross receipts tax distributions to local governments but paid 50.7% of all associated administrative fees. Under this option the percentages of administrative fees paid and distributions received would be equal.

When the new food and medical deductions were introduced in 2005, distributions to municipalities and counties were created to hold them harmless from the loss in gross receipts tax revenue they would have otherwise experienced. In FY 2009 municipalities and counties received over $120 million in food and medical deduction hold harmless distributions from the State but they are not charged an administrative fee on these distributions. This option would add administrative fees on those distributions as if the money had actually come from gross receipts tax revenue. This would return municipalities and counties to paying the same level of administrative fees on their distributions as they would in the absence of the food and medical deductions.

This option would add an administrative fee on distributions of State gross receipts tax revenue to TIDDs at the same rate that counties currently pay on their local option gross receipts tax distributions.

The State spends considerable resources on audit, compliance, revenue processing, and systems for distribution calculations and transfers to make distributions to local governments possible. An administrative fee on all distributions would appropriately reflect and allocate these costs.

Pros

- This option would create equal treatment for municipalities, counties, TIDDs and Indian Nations, tribes and pueblos.

Cons

- Municipalities would pay much higher administrative fees under this option.