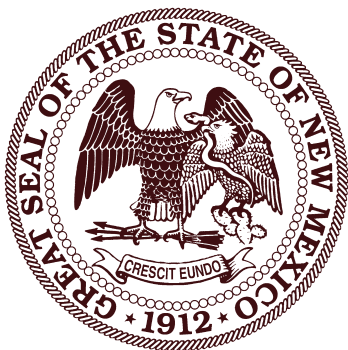
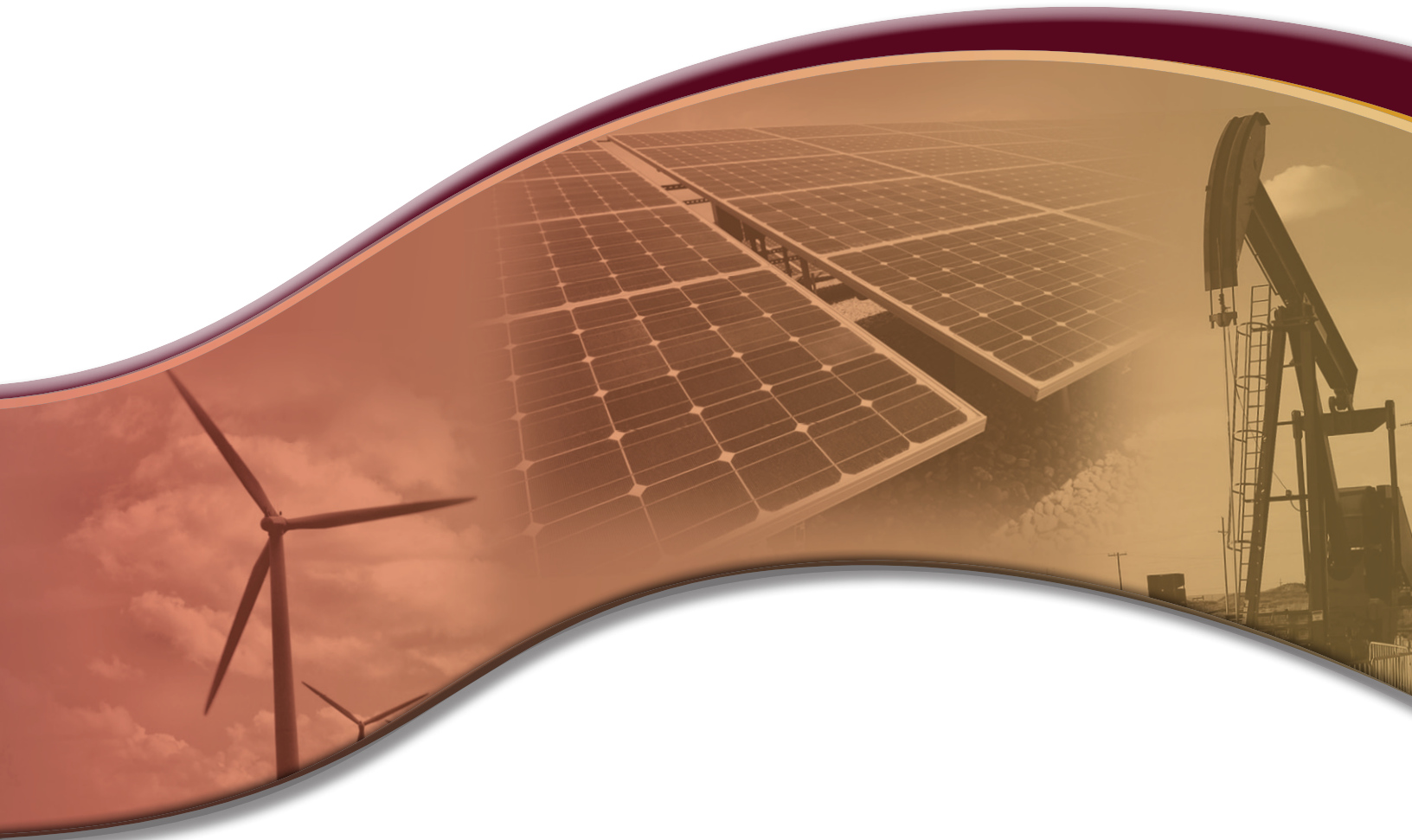




New Mexico
Taxation and Revenue Department



2012

NEW MEXICO TAX EXPENDITURE REPORT

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INTRODUCTION

Expenditure policy goals are frequently addressed through special tax provisions with the intent to accomplish a specific, but indirect, government policy objective. Rather than through direct appropriations, regulations, or other fiscal actions, some tax policy objectives may be achieved by special tax law provisions that reduce otherwise applicable tax obligations.

Tax code provisions that reduce otherwise applicable tax liabilities are generally referred to as *tax expenditures*. A *tax expenditure* reduces tax revenues by identifying *particular economic values to be retained by the taxpayer* through mechanisms defined by the tax code and its administration.

There are generally two categories of tax expenditures. One category provides incentives to encourage specific economic activities that policymakers perceive serve public purposes. A second category provides (or allow retention of) economic resources to taxpayers facing specific circumstances or demonstrating particular qualifying characteristics.

Tax expenditures are taxes *not* collected — they are special provisions of a tax system designed to achieve economic outcomes that deviate from established baseline taxation principles. Properly formulated, tax expenditures can be very efficient means to achieve a public purpose, by targeting economic resources to encourage certain activities or to benefit specific member of society.

As with any use of public funds, tax expenditures should be periodically reviewed to insure they are achieving intended consequences at a minimum cost to the public. A potential concern with any particular tax expenditure, however, is that it may achieve unintended consequences, or be debilitated by ambiguity as to whether the intended consequences are being achieved. The challenge in observing the specific benefits of many tax expenditures is the analytic motivation for periodic, objective review tax expenditure programs.

On August 9, 2011, New Mexico's Governor Susana Martinez issued Executive Order 2011-071 that directs the New Mexico Taxation and Revenue Department, in coordination with other executive agencies, to develop the first annual tax expenditure report. This *2012 New Mexico Tax Expenditure Report* seeks to provide a comprehensive review and analysis of existing tax expenditure programs in New Mexico, and provide a foundation for annual tracking of tax expenditures.

Through this *Report* we develop many insights, explore tax policy foundations, compile a tax expenditure reference resource, quantify specific tax expenditures, and address many policy objectives. Most importantly, it establishes a data and analytic resource to further develop our

understanding of the benefits achieved by New Mexico's specific tax expenditure policies in the future.

We deeply appreciate and gratefully acknowledge the cooperation and participation we have received from all levels of the executive government branches of the State of New Mexico in preparing this *2012 New Mexico Tax Expenditure Report*.

Secretary Demesia Padilla, CPA
New Mexico Taxation and Revenue Department
State of New Mexico
Santa Fe, New Mexico
June 29, 2012

SECTION I

DEFINING TAX EXPENDITURES

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

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

Tax expenditures are defined as deviations from a baseline tax system created by specific tax law provisions. Baseline taxes serve to identify not only revenue raising powers of government,¹ but also the principles of efficiency and fairness embodied by the tax system. One goal of these principles is to establish thresholds for income or consumption levels that – as a matter of social and economic policy – are deemed *not* to be subject to taxation. Provisions establishing these thresholds that define the normal tax base are not tax expenditures.

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

The key questions to ask in identifying tax expenditures are: does the provision target a special population of taxpayers, or does it target a specific type of activities? Generally speaking tax expenditures are provisions for which the answer to either of these questions is “yes.”

¹ Restrictions imposed on a state government’s taxing authority include limitations such as federal preemption. Provisions of the U.S. Constitution and federal statute preempt New Mexico from imposing tax on certain individuals and transactions. Examples include the taxation of tribal members when engaging in transactions on their tribal lands, and transactions in interstate commerce. Such provisions are not treated as tax expenditures in this *Report*.

Tax Rate Differentials

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

The most important example of this problem in New Mexico is the Gross Receipts Tax. With a statewide average rate of seven percent (7%), the GRT compares well with the average retail sales tax imposed in other states. However, the tax base of the GRT is much broader than those of almost all other states, and, in particular, includes tax on many business-to-business transactions. Since businesses in effect pay this tax more than once, the statutory rate of seven percent (7%) significantly understates the true economic burden of the tax.

The issue of tax rate differentials comes up most often in the area of excise taxes. In addition to the GRT, the state imposes various excise taxes prior to the retail sale of commodities. Examples include cigarette taxes, liquor excise taxes, motor fuels taxes, and taxes on mineral extraction. Each of these tax programs has a different policy rationale with its own goals and standards.² The analysis of what the “correct” tax rate should be for each of these tax programs has not been undertaken as part of this *Report*. Thus, tax rate differentials between and within tax programs are generally not treated as tax expenditures in this report.

IDENTIFYING TAX EXPENDITURES

Defining baseline taxes is not always a straightforward task. Establishing thresholds for income or consumption taxation, whether as bellwether standards or as sliding-scale ability-to-pay mechanisms, narrows the tax base and forms social tax policies. But these mechanisms are *not* tax expenditures.

In contrast, examples such as tax credits for working families, contributions to medical savings accounts, or exemptions to avoid economic disadvantaged markets may all be tax expenditures.

Generally tax expenditures reflect decisions to use the tax system to pursue specific social objectives, and typically are judged by their effectiveness in doing so. A tax is generally implemented with a specific purpose or intent (e.g., imposed for the privilege of doing business within a state), and in like fashion tax expenditures must be judged by specific tax policy

² The cigarette and liquor taxes are examples of “sin” taxes, i.e. they are imposed in addition to the GRT in part to discourage consumption which is known to impose significant social costs.

criterion. These policy criteria will often be a direct product of the very social objectives that the government is trying to achieve. For example, a tax credit to stimulate renewable energy investment may be judged by the actual, incremental investment that qualifies for the credit.

The *2012 New Mexico Tax Expenditure Report* was developed as a tool to understand (a portion of) New Mexico tax policy, and covers a broad landscape of issues and objectives. Because there can be legitimate differences of opinion about what is and what is not a tax expenditure, this *Report* identifies alternative policy “perspectives” in many of the tax policy issues discussed herein. This *Report* is not intended to judge whether particular tax expenditure is good or bad policy. Instead, the goals are to estimate the revenue costs of the tax expenditures identified, offer useful characterizations of tax base issues, and provide an insight into the benefits and costs of the tax policies evaluated.

EVALUATING TAX EXPENDITURES

As a starting point for evaluating tax expenditures, it is useful to review a set of principles of good tax policy. Such principles have been articulated by many groups and authors, and usually include those listed below among others.

Adequacy

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

Equity

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

³ An alternative to the ability-to-pay principle is termed the “benefits” principle which argues that tax burdens should be allocated according to taxpayers’ benefits from government services. Taxpayers who receive greater benefits from government should pay appropriately higher taxes, and those who receive the same benefits should

Efficiency

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

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

Simplicity

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

Accountability

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

Measurement Challenges

A major challenge in evaluating tax expenditures is distinguishing the effects of tax policy from the effects of other social and economic conditions. For example, when a company closes down a factory that had benefitted from tax incentives, the judgment is sometimes made that the incentives was unsuccessful. However, the tax expenditure is only one of many influences on economic behavior. Most tax policy initiatives will have only *incremental impacts*

pay the same taxes. This principle is deemed to be applied for example in the case of motor fuels taxes, under which a taxpayer’s burden reflects how much they drive and therefore the benefits they receive from the use of the taxes on the highways.

on business decisions. For instance, creating a five percent “preference” by exempting a transaction from taxation will only produce a fractional change in consumption activities.

One must be careful not to attribute the tax expenditure with *too large* of an impact, particularly when it is described in terms of the economic stimulus obtained by a tax policy’s implementation. Importantly, the direct revenue impacts of many tax expenditures are largely unknown. Many of the tax expenditures listed in this report are structured as deductions or exemptions with no reporting requirements. Consequently, it is necessary to use alternative sources of information to estimate of these tax expenditures’ costs.

Tax Expenditure vs. Direct Expenditure Policy

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

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

Yet the investment subsidy analysis raises another complexity in the evaluation of tax expenditures — namely the assessment of “social consequences” that may motivate tax policy. Objectives such as affordable housing, improved health care or a cleaner environment may be social consequences sought by tax policy. By their very nature, the long term (i.e., lifecycle) evaluation of an investment subsidy required for such assessments is contentious due to the uncertainties in achieving such objectives over extended time horizons.

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

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

Economic Development Tax Expenditures

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

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

As a proxy measure, in some cases, this report contains estimates of potential "multiplier" effects of tax policies. These estimates attempt to calculate the potential increase in total spending or income in the state that result from economic stimulus to a particular industry. They must be interpreted with caution for several reasons. One problem is that, in order to provide a particular tax expenditure, the state foregoes revenue that could otherwise be spent in the state's economy. Such spending would itself have multiplier effects.⁵ Thus, the net effect of any given tax expenditure is only the additional growth it might create over what would result from the state's spending. Multipliers can be thought of as arising from two effects on the state's economy, a "demand side" effect and a "supply side" effect. The demand side refers to increased activity in the state brought about as households and businesses spend the additional income they receive from the policy. The supply side effect refers to the increased output, investment and workforce participation in the state encouraged by the policy. When the alternative potential use of the state's revenue as direct spending is taken into account, net demand side effects of most tax policies are probably very limited, and in any case not large enough to be distinguished given the data limitations on multiplier estimates. Supply side effects of tax policies versus government spending, on the other hand, are likely to be significantly different. Unfortunately, the research and data available to establish reliable estimates of these supply side impacts is very limited. Thus, the multiplier estimates provided in this report should be viewed as only the potential gross effects of a policy, net effects are likely to be much smaller.

⁵ A comprehensive (i.e., direct, indirect and induced activities) economic multiplier for New Mexico state and local government spending activities is estimated to be 1.816692. Sector 432, Other state and local government enterprises, Final Output Multipliers (Direct, Indirect, and Induced effects), New Mexico State Table, Minnesota IMPLAN Group, Inc., © 2012.

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

Tax Expenditures: Poverty and Disability Related

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

Tax Expenditures: Non-Profit Organizations and Activities

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

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

Appropriate Use of Tax Expenditure Estimates

In addition to the measurement limitations already described in this section, there are several other reasons why estimated fiscal impacts of tax expenditures must be interpreted with caution. One is the limited amount of information with which to evaluate many provisions. Second, estimates are “static” in the sense that they reflect amounts currently reported on tax

returns, and do not attempt to incorporate changes in taxpayer behavior that could result if a provision were changed. Third, fiscal impacts of a statutory change in any provision would depend critically on how the legislation is drafted. Finally, the estimates do not take into account interactions with other provisions. For example, a non-profit hospital may benefit from the deduction for health care purchased by managed care organizations as well as from the non-profit exclusion. The fiscal impacts of changing one of these provisions depend critically on what is assumed about the other provisions. As a consequence, estimates of individual provisions should not be added to estimates of other provisions.

Tax Expenditure Reporting: Balancing Transparency and Simplicity

Because they authorize the expenditure of public monies, accounting for and evaluating tax expenditures is an important purpose of public policy. To improve such accountability, the state should evaluate requiring additional information from the taxpayers who benefit from tax expenditures. However, there are a number of reasons why in practice the state should limit the amount of information it collects on some tax expenditures. First, preparing and processing added information requires the investment of added resources by taxpayers and by the Taxation and Revenue Department (and other state agencies). This added cost escalates with the number of taxpayers eligible for a tax expenditure, and the complexity of evaluating compliance with qualification criteria. Second, if reporting requirements are made too onerous, they run the risk of discouraging the use of tax expenditures and thus thwarting the intended purpose. Finally, even when detailed information is reported, it can still be very difficult to know whether a tax expenditure is achieving its goals.

An excellent example of these issues is the film production tax credit. Detailed data on film company expenditures are reported to the Taxation and Revenue Department by every company applying for the credit. The Department reviews this information to determine how much of the expenditures are eligible for the credit. Preparing, collecting and processing this information is a costly process. However, even when equipped with this detailed information, it is still difficult to determine the cost-effectiveness of the credit. Two competent studies have analyzed the credit, and they came to very different conclusions as to whether the credit was cost-effective.⁶

Given these considerations, the state has often adopted a compromise position on tax expenditure reporting. Many of the tax expenditures that are claimed by a relatively small number of taxpayers have been structured as tax credits, and separate reporting for these credits is required by the Taxation and Revenue Department. These reports can be used to determine at

⁶ Anthony V. Popp and James Peach, "The Film Industry in New Mexico and The Provision of Tax Incentives," A Report Submitted to the Legislative Finance Committee of the State of New Mexico, Arrowhead Center, Office of Policy Analysis, New Mexico State University, August 26, 2008; and Ernst & Young, "Economic and Fiscal Impacts of the New Mexico Film Production Tax Credit," prepared for the New Mexico State Film Office and State Investment Council, January 2009 [<http://nmfilm.com/locals/downloads/nmfilmCreditImpactAnalysis.pdf>].

least some of the information needed to evaluate the credits. This process is not without costs. The Department currently commits a significant amount of staff time to process credit claims manually. Developing information systems to process credits automatically is an option, but is certainly not without its own administrative costs.

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

Data Availability for Tax Expenditure Analysis

This 2012 Report presents fiscal impact estimates for all tax expenditures on which the Department collects sufficiently detailed information. Typically this includes tax credits, but in some cases it includes exemptions or deductions that are separately stated, or which is provided by third-party data sources (e.g., U.S. Energy Information Administration, financial reports, industry reports, etc.). In future versions of this report, additional attempts will be made to provide estimates for tax expenditure costs and benefits where data are not separately reported to the Department. This can be done, for example, by drawing on alternative sources of information, although such estimates are somewhat less precise, they can still provide useful information to policymakers.

Duration of Tax Expenditure

Finally, an introduction to tax expenditures should also mention that the uncertain impact of a tax expenditure is compounded where indefinite duration is provided. A tax expenditure with an indefinite duration becomes an open-ended commitment to tax subsidies for a particular activity or practice. As opposed to a direct spending program that is subject to oversight and evaluation, the tax structure becomes an “entitlement” that is increasingly difficult to evaluate, test and manage through time.

ORGANIZATION AND DESCRIPTION OF THE **2012 NEW MEXICO TAX EXPENDITURE REPORT**

The *2012 New Mexico Tax Expenditure Report* is provided in a format that is intended to allow convenient annual updating, and is intended to serve as an ongoing reference document

useful in understanding the tax expenditures implemented under New Mexico's tax code and policies. The balance of the *Report* provides a summary of the significant findings and observations developed in the course of this investigation.

SECTION II of the *2012 New Mexico Tax Expenditure Report* begins with a more comprehensive discussion of the issues relating to the definition of the "tax base," or baseline for the analysis of each tax expenditure. This section will provide a more detailed discussion of what specific considerations are taken when defining the baseline tax revenues from which a tax expenditure is measured, as well as those circumstances where statutory or regulatory provisions explicitly identify tax policy issues that define the tax base (rather than a "tax expenditure"). It should be acknowledged that this section builds on discussions that have been previously incorporated in tax expenditure analyses performed by various state entities.⁷

This section closes with a discussion of tax policy issues that can be treated as either a "tax base definition" or a "tax expenditure" issue — illustrating the occasional difficulty in providing a "black and white" or "bright line" definition of tax policy issues that may alternatively be viewed as defining the tax base or a tax expenditure.

⁷ "New Mexico's Gross Receipts & Compensating Taxes: Exemptions & Deductions". N.M. Taxation and Revenue Department, 1991; "Gross Receipts Tax Exemption & Deductions—Descriptions, Rationale, Resources Allocation and Other Issues". N.M. Taxation and Revenue Department, 1997; "Fiscal Impact of Repealing Exemptions, Deductions, Exclusions and Credits the Gross Receipts and Compensating Tax Act". N.M. Taxation and Revenue Department, 2007; Thomas F. Pogue, "Tax Expenditure: Concept and Framework for Analysis," prepared for the N.M. Taxation and Revenue Department, 2008; Pogue, "Tax Expenditure Budget: Defining the Benchmark GRT Base," prepared for the N.M. Taxation and Revenue Department, 2008; "A Reconsideration of Tax Expenditure Analysis," New Mexico Joint Legislative Committee on Taxation, 2008; Ernst and Young, "Economic and Fiscal Impacts of the New Mexico Film Production Credit," prepared for the N.M. State Film Office and State Investment Council, 2009; "Description and Characteristics of New Mexico Credits, Exemptions, Deductions and Rate Differentials," N.M. Taxation and Revenue Department, 2010; "Estimated Revenue Impact of New Mexico Credits, Exemptions, Rate Differentials and Rebates for which Direct Data Exists: FY2004 to FY2010," N.M. Taxation and Revenue Department, 2010; "LFC Hearing: Inventory of New Mexico's Tax Expenditures," Report presented by Elisa Walker Moran, Chief Economist, 2011.

SECTION III of the *2012 New Mexico Tax Expenditure Report* gets to the substance of the tax expenditure analysis, and is organized around eight major topic areas. The topic areas include: i) industry specific tax expenditures for economic development; ii) general tax expenditures to improve business climate and stimulate economic activities; iii) tax expenditures for specific public purposes; iv) tax expenditures for specific not-for-profit enterprises; v) tax expenditures for health care facilities and programs; vi) tax expenditures (expressly) for public welfare, elderly and low income protections; vii) tax expenditures related to natural resource tax policy; and viii) tax expenditures related to Indian nations, tribes or pueblos.

2012 NEW MEXICO TAX EXPENDITURE REPORT

Commonly Used Acronyms

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

SECTION IV of the *2012 New Mexico Tax Expenditure Report* provides a summary of the findings, addressing general issues and questions raised by the analysis. It also considers recommendations that have arisen from the investigations. It will conclude with identification of a forward-looking statement as to how tax expenditures should be understood, evaluated, investigated and enacted, providing a foundation and directive for the continuing evaluation of tax expenditure issues in New Mexico.

Section II

“TAX BASE” DEFINITION:

The Foundation of A Tax Expenditure Analysis

In establishing governmental tax policy the foundations are laid by the expressed purposes of a particular tax. These purposes also establish the baseline for the tax revenues to be collected — frequently referred to as the “tax base.” From this tax base, the provisions of the tax code, or administrative policies of government agencies exercising powers under its constitutional or statutory authority, may grant economic relief from the tax burdens of individual taxpayers to accomplish specific goals and objectives that generally define specific tax policies. By deliberately implementing tax policies that reduce public revenues, *tax expenditures* become a form of government spending administered through the tax code.⁸

Personal Income Tax

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

Corporate Income Tax

New Mexico’s corporate income tax is also based on the federal tax, and therefore includes in the base many federal tax expenditures. The base for imposition of the corporate income tax is contained in the following statutory language.

A tax to be known as the "corporate income tax" *is imposed* at the rate specified in the Corporate Income and Franchise Tax Act [citation omitted] *upon the net income* of every domestic corporation and *upon the net income* of every foreign corporation *employed or engaged in the transaction of business in, into or from this state or deriving any income*

⁸ Disclaimer: Note that the descriptions of “tax base” and any discussion of taxable income, taxable receipts, taxable revenues or other elements of economic value contained herein are *expressly not to be used or relied upon as guidance to a taxpayer as to any applicable tax liability* or in any manner interpreted as providing guidance or instruction to taxpayers as to their obligations, duties, reporting requirements or in any manner considered to be “qualified tax advice.” As such, all descriptions are provided for the analytical purposes of this *2012 New Mexico Tax Expenditure Report*, and should not be interpreted, inferred or considered to have any significance to tax liabilities under New Mexico statutes and regulations. Such use is expressly prohibited.

from any property or employment within this state. [Section 7-2A-3.A. NMSA 1978; emphasis added]

This tax defines "base income" as that part of the taxpayer's taxable income upon which the federal income tax is calculated, reduced by the amount of the net operating loss carryover deduction,⁹ and includes interest received on state or local bonds.¹⁰ The statute then defines "net income" as adjusted by exclusions of income from the obligations of the federal government, other income where tax is prohibited by explicit statutory or constitutional authority, and statutory provisions for net operating loss carryover deductions.¹¹

Thus, "net income" is defined as the tax base for corporate income tax purposes in New Mexico, and by application of the income-graduated percentage tax rate a "baseline tax revenue" is defined.¹²

At this point the "tax base" is clear. The next statutory provision raises the questions of what is and is not a *tax expenditure*. Under Section 7-2A-4 [NMSA 1978] exempted from corporate income tax are:

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

The insurance company exemption is an example of an "in lieu" provision — that is, it presumes that another state tax program is applicable (i.e., the "Premium Tax"). The exclusions of tax exempt trusts and not-for-profit organizations are presumed reasonable on grounds of consistency between federal and state tax programs. It can be asserted that these are tax base definitions, but if there is a difference between the tax rate for insurance companies under the

⁹ As allowed on or after January 1, 1991, by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and claimed by the taxpayer for that year. Prior years allowed for a net operating loss "carryback" deduction.

¹⁰ Section 7-2A-2(C) NMSA 1978.

¹¹ Section 7-2A-2 (H) NMSA 1978.

¹² This simplification of the calculation of the corporate income tax base serves to illustrate the foundation for taxation, and calculation of tax expenditures from the tax base, but ignores many complexities in determining the taxable income and net income concepts in practical application. Notwithstanding those complexities, it is from this baseline that corporate income *tax expenditures* are properly analyzed.

Premium Tax, and the otherwise applicable Corporate Income Tax, is this rate differential a *tax expenditure*?

The Premium Tax is 3.003%, plus a health insurance premium surtax of 1.0% of the gross health insurance premiums and membership and policy fees, contracts (less reinsurance credits).¹³ New Mexico Corporate Income Tax ranges from 4.8% to 7.6% on a graduated scale increasing with net taxable income.¹⁴ Since net income for Corporate Income Tax purposes is a much smaller number than the gross premiums that are the tax base for the Premium Tax, the lower tax rate of the Premium Tax does not in itself raise concerns that a tax expenditure is created. No explanation is provided by the statutes as to why any such differential in the tax rates exists. Yet, this approach to the taxation of insurance companies is the one most commonly applied by states, and thus can be considered as consistent with the benchmark tax base for this industry.

Although the corporate income tax base definitions described above may not strictly meet the qualification of tax expenditures, there are a number of other provisions within the Corporate Income Tax code that do clearly meet the definition. For example, tax credits against Corporate Income Tax may be taken for expenditures “for the preservation of cultural property . . . to encourage the restoration, rehabilitation and preservation of cultural properties.”¹⁵ There are limits to the allowed credits imposed by the statute, but it is unambiguous as to the social purpose (i.e., cultural property preservation) for this tax expenditure.

Gross Receipts Tax

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

¹³ Sections 59A-6-2(B) and 59A-6-2(C) NMSA 1978.

¹⁴ Section 7-2A-5 NMSA 1978.

¹⁵ Section 7-2A-8.6 NMSA 1978.

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

Compensating Tax

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

Other Excise Taxes

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

Natural Resource Extraction Taxes

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

getting the product to market. Other provisions, aimed at stimulating particular types of production, for example, are treated as tax expenditures.

Property Tax

New Mexico's property tax law features a number of limitations and exclusions that reduce the revenue-generating potential of the tax. Some of these are broad-based, however and are not treated as tax expenditures in this Report. Examples include the exclusion from tax of personal property and the 3 percent limit on annual value growth for residential property. Other provisions that are targeted at specific populations are included.

[NOTE: Appendix A to this *2012 New Mexico Tax Expenditure Report* provides a comprehensive summary of the specific tax programs, including a description of the tax base characteristics of those programs. A reader is directed to Appendix A for further details on the individual tax programs, and use this Appendix as a reference when considering how to interpret specific issues raised in the subsequent analyses.]

SECTION III

DETAILED TAX EXPENDITURE ANALYSIS RESULTS

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

- ✓ Industry-specific tax expenditures for economic development;
- ✓ General tax expenditures to improve business climate and stimulate economic activity;
- ✓ Tax expenditures for specific public purposes;
- ✓ Tax expenditures for health care facilities and programs;
- ✓ Tax expenditures (expressly) for public welfare, elderly and low income protections;
- ✓ Tax expenditures for specific not-for-profit enterprises;
- ✓ Tax expenditures related to natural resource tax policy; and
- ✓ Tax expenditures related to Indian nations, tribes or pueblos.

The analysis of the individual tax expenditures begins with a discussion of the tax base, which is impacted by the tax expenditure. The discussion will explain how the tax base relates to the determination of whether a tax policy provision (i.e., credit, deduction, exemption, differential tax rate, etc.) should be characterized as a tax expenditure. Available information on each provision is then presented, including estimates of the fiscal impacts. In some cases several tax expenditures have been combined or information has been redacted to avoid revealing confidential taxpayer information. Having provided definition of the characteristics of the tax expenditures evaluated within that category of policy activities, we summarize the specific results obtained including estimated fiscal impacts. *In cases where discussion of the results would reveal confidential taxpayer information, the discussion summarize multiple individual tax expenditures (e.g., across multiple tax programs) or reflect redacted data.*

A. Industry Specific Tax Expenditures for Economic Development

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

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

Renewable Energy A clear example of the difficulties in quantifying the benefits from tax expenditures is demonstrated in the range of tax expenditures that are provided to the renewable energy industry in New Mexico. Statute provides for twelve different tax expenditures for renewable energy activities. These tax expenditures include: the Advanced Energy Deduction, Advanced Energy Tax Credit, Alternative Energy Product Manufacturers Tax Credit, Biomass-Related Equipment and Materials Deduction, Electric Transmission Facilities Deduction, Electricity Conversion Deduction, Electricity Exchange Deduction, Renewable Energy Production Credit, Services for Electric Transmission Facilities Deduction, Solar Energy System Deduction, Solar Market Development Credit, and the Wind and Solar Generation Equipment Deduction.¹⁶

However, only three of the specific tax expenditures — Advanced Energy Tax Credit, Renewable Energy Production Credit, and the Solar Market Development Credit — allow revenue cost evaluation as specific, reported tax credits.¹⁷ As Table 1 shows, the total of these tax expenditures claimed from 2007 through 2011 was greater than \$24.4 million (i.e., approximately \$4.9 million per year). We cannot know the specific *additional* revenue impacts of the other tax expenditure programs, as these are unreported deductions, or are credits that have not been taken to-date. Thus, the revenue costs of New Mexico's *renewable energy tax expenditures* are only partially reflected in Table 1. Moreover, short of surveying all entities that could be eligible for the un-quantified tax deductions and credits, there is no method available to fully evaluate the foregone revenue expended in support of the installation of renewable energy facilities in New Mexico.

¹⁶ Advanced Energy Deduction [Sections 7-9-114 NMSA 1978 (GRT & CMP)], Advanced Energy Tax Credit [Sections 7-2A-25 (CIT); 7-9G-2 (GRT, CMP & WTH); 7-2-18.25 (PIT) NMSA 1978]; Alternative Energy Product Manufacturers Tax Credit [Section 7-9J (GRT, CMP & WTH) NMSA 1978], Biomass-Related Equipment and Materials Deduction [Section 7-9-98 (CMP) NMSA 1978], Electric Transmission Facilities Deduction (Sections 7-9-101 (GRT) and 7-9-102 (CMP) NMSA 1978], Electricity Conversion Deduction [HB-116 (2012) (GRT)], Electricity Exchange Deduction [HB-116 (2012) (GRT)]; Renewable Energy Production Credit [Sections 7-2A-19 (CIT) and 7-2-18.18 (PIT) NMSA 1978], Services for Electric Transmission Facilities Deduction [Section 7-9-103 (GRT) NMSA 1978], Solar Energy System Deduction [Sections 7-9-112 (GRT) NMSA 1978], Solar Market Development Credit [Section 7-2-18.14 (PIT)], and the Wind and Solar Generation Equipment Deduction. [Section 7-9-54.3(GRT) NMSA 1978]. Note improper citation format inserts abbreviation for tax program impacted for reader's convenience, including Gross Receipts Tax (GRT), Compensating Tax (CMP), Corporate Income Tax (CIT), Withholding Tax (WTH), and Personal Income Tax (PIT).

¹⁷ A fourth tax expenditure, the Solar Energy Systems Deduction (against gross receipts tax), was able to be estimated through indirect data associated with the Solar Market Development Credit.

Table 1: NEW MEXICO RENEWABLE ENERGY TAX CREDITS — FILED CLAIMS (\$thousands)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Renewable Energy Production Credit	5	\$2,675.3	3	\$2,030.0	4	\$8,667.0	6	\$2,822.5	NA	NA
Solar Market Development Credit	86	\$342.2	180	\$545.1	307	\$833.8	569	\$1,239.8	727	\$1,566.1
Solar Energy System Deduction	NA	\$236.1	NA	\$376.1	NA	\$575.3	NA	\$855.5	NA	\$1,080.6
TOTAL	91	\$3,253.6	183	\$2,951.2	311	\$10,076.1	575	\$4,917.8	727	\$2,646.7

Recent estimates of a portion of the increased renewable energy production capacity in New Mexico are reflected in Table 2, with the data identifying qualified and approved projects eligible for the Renewable Energy Production Tax Credit. The “net benefit” question then arises with respect to the tax expenditures. That is, of the total value of increased renewable energy production, what role should be ascribed to the identified tax expenditures? The answer to this question is not an easy one as there are many other economic factors at play. Aside from a stimulus provided by the mandatory Renewable Portfolio Standard under the Renewable Energy Act¹⁸ that *requires* utilities to install significant renewable energy facilities, the “above market” costs of energy produced from these facilities may also be passed through in utility rates under the New Mexico Public Regulation Commission’s jurisdictional authority. Additionally, federal tax expenditures may also stimulate investment.

Table 2: NEW MEXICO RENEWABLE ENERGY PRODUCTION TAX CREDIT PROJECTS -- 2012

	Approved Capacity (MW)	Estimated MWh Annual Output	Maximum MWh Output	Estimated Production Credit Potential Accrual (2012)
All Renewables Allotment (Wind, Solar, Biomass)	594 ¹	1,999,446	2,000,000	\$19,994,446
Solar Only Allotment	201 ²	500,000 ³	500,000	\$13,500,000
TOTALS	795	2,499,446	2,500,000	\$33,494,446

¹ Additional 351.1 MW (1,336,320 MWh potential production) currently pending approval.

² Additional 17.4 MW (26,556 MWh potential production) currently meeting criteria and pending approval.

³ Only 290,054 MWh/year of Solar energy is operational. The remaining 210,008 MWh/year is qualified, but construction has not been completed or production has not yet commenced. As a result, the expected amount of solar credits equals \$6,187,987. This estimate is based on the dates on which commercial operation commenced for each facility. It assumes a taxable year identical to the calendar year in order to approximate an effective rate of the credit for each facility in each year. Total potential accrual would then be \$26,182,438, subject to completion and in-service operations of the balance of the approved projects.

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

¹⁸ Section 62-16-1 et seq. NMSA 1978.

Comparing Table 1 and Table 2 suggests that only a portion of the potential tax expenditures have actually been taken as Renewable Energy Production tax credits to date. Renewable Energy Production Tax Credit claims for production from facilities certified before October 1, 2007 may be carried forward for a period of up to five years against corporate and personal income tax. Thus, there is a period where tax credits may accrue and, if not used, may be lost.¹⁹ The statute was amended in 2007, and this tax expenditure liability must now be taken as a refund for all “qualifying projects commencing operations after October 1, 2007. Table 3 presents a current estimate of the current balance of approved Renewable Energy Tax Credits that remain outstanding.

Table 3: NEW MEXICO RENEWABLE ENERGY PRODUCTION TAX CREDIT -- ESTIMATED CREDITS OUTSTANDING (\$thousands)

	TY2007	TY2008	TY2009	TY2010	TY2011
	Amount	Amount	Amount	Amount	Amount
Potential Renewable Energy Production Credits	\$13,924.6	\$13,924.6	\$13,924.6	\$14,599.1	\$20,739.9
Renewable Energy Production Credits Used	\$2,675.3	\$2,030.0	\$8,667.0	\$2,822.5	NA ¹
Potential Annual Carry-Forward of Credits	\$11,249.3	\$11,894.7	\$5,248.8	\$11,785.4	\$20,739.9 ²
TOTAL OUTSTANDING CREDIT LIABILITY	\$29,849.5	\$40,744.2	\$41,729.2	\$46,348.5	\$60,918.1

¹ Data from Taxable Year 2011 is not yet available.

² Potential annual carry-forward in 2011 will be reduced by the amount of credit used in that year.

³ Total outstanding liability assumes a 5 year carry-forward of unused credit.

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

Based on the most recent information available, it is believed the current accrual carry-forward the Renewable Energy Production Tax Credit has created a *potential additional claim* of more than \$60 million in approved tax credits, with that accrual adding at least \$33 million per year (subject to credits taken and refunded).

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

Advanced Energy Deduction and Advanced Energy Tax Credit Receipts from selling or leasing tangible personal property or services that are eligible generation plant costs to a person that holds an interest in a qualified generating facility are deductible from gross receipts and compensating tax. In addition, a taxpayer who holds an interest in a qualified generating facility in New Mexico that files a corporate income tax return may claim a credit for six percent (6%) of the eligible generation plant costs of a qualified facility.

New energy generation facilities are required as New Mexico’s energy demands grow and existing generation facilities are retired. This tax expenditure incentivizes generation plant

¹⁹ Note the limitation that CIT and PIT tax returns can only be amended for up to three years after they are due.

investments with lower carbon emissions profiles. Avoidance of air quality degradation is generally likely to have environmental and potentially direct economic benefits (e.g., avoidance of carbon emission fees, if such are established).

Under New Mexico's Renewable Energy Act (Section 62-16-1 NMSA 1978) public utilities and cooperatives are allowed to recover from ratepayers the cost of generation facilities required to meet the Renewable Portfolio Standards. Thus, offering a deduction for investment in the eligible facilities could mitigate the effect of rate increases on energy consumers. Moreover, the utility earns a return on its investment, including the value of the investment offset by the tax expenditure.

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

Alternative Energy Product Manufacturers Tax Credit Manufacturers of certain alternative energy products may receive a tax credit not to exceed five percent (5%) of qualified expenditures for purchase of manufacturing equipment used in the manufacturing operation. This credit is designed to stimulate the development of new alternative energy manufacturing facilities. In the past four years for which data are available, this credit has not been claimed by any taxpayers.

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

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

Electricity Conversion Deduction Receipts from the transmission of electricity where voltage source conversion technology is employed to provide such services and from ancillary services may be deducted from gross receipts. This tax expenditure provides an incentive for the

development of electrical transmission capacity in New Mexico using voltage source conversion and to encourage the ancillary services and related businesses that are necessary to support that industry. No historic data for this tax expenditure currently exist as the provisions of the legislation do not go into effect until July 1, 2012.

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

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

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

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

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

Data for taxable years beginning on or after January 1, 2011 were not available at the time of this report. This data will be directly obtainable by the Taxation and Revenue Department through personal income tax returns beginning in the second half of calendar year 2012.

Geothermal Ground Coupled Heat Pump Credit This tax expenditure provides a credit of up to thirty percent (30%) of the purchase and installation costs of a geothermal ground-coupled heat pump in a residence, business or agricultural enterprise in New Mexico.. The energy efficiency and fuel savings provided through this technology creates a direct benefit to the taxpayer, while minimizing energy and infrastructure costs borne by New Mexico utility ratepayers.

Film Production Tax Credit A credit against personal or corporate income tax is available for twenty-five percent (25%) of direct production and direct postproduction expenditures made in New Mexico that are subject to taxation by the state of New Mexico and directly attributable to the production of a film or commercial audiovisual product. This tax expenditure provides a tiered schedule of payments based on the total credits allowed under a specific claim, and the credit is refundable.²⁰ For productions with total credit claims under \$2 million, the total credit claim is paid immediately upon authorization. For total credit claims between \$2 million and \$5 million, one half (50%) of the credit is paid immediately upon authorization and the other half (50%) is paid twelve months following that date. For total credit claims over \$5 million, the credits will be paid in three equal payments; one paid immediately upon authorization, one paid the year following, and the last paid two years following. An aggregate annual cap limiting payouts of the film production tax credit to \$50 million across both personal and corporate income tax programs in any fiscal year became effective in FY2012. Table 4 summarizes the Film Production Tax Credits provided in the last five fiscal years. Amounts in the table reflect the dates on which credits were actually paid out to taxpayers and differ from the annual amounts sorted by when the credits were approved.

Table 4: NEW MEXICO FILM PRODUCTION TAX CREDIT (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Film Production Tax Credit Against CIT	29	\$17,610.5	43	\$45,944.2	63	\$76,659.4	59	\$65,388.5	53	\$76,167.3
Film Production Tax Credit Against PIT	5	\$56.5	8	\$83.2	15	\$47.0	21	\$524.5	2	\$845.8
TOTAL	34	\$17,667.0	51	\$46,027.4	78	\$76,706.4	80	\$65,388.5	55	\$77,013.1

²⁰ Section 7-2F-1(O) NMSA 1978.

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

Two economic impact studies have been conducted to evaluate the impacts of the film credit program on the New Mexico economy. One, by the Ernst & Young economics group was based on (calendar year) 2007 data collected from the New Mexico Film Office.²¹ The study concluded that the state received \$0.94 in additional revenue for each dollar of the credit, and local governments received \$0.56 in additional revenue for each dollar of the credit. Furthermore, the study estimated that the credit had been responsible for creating a total of 3,829 new jobs. Notably, the study used data from the year in which Albuquerque Studios was being constructed, a one-time expenditure. In addition, the study drew a strong link between film production and increased tourism in estimating economic impact. .

The other study was conducted by the Arrowhead Research Center at NMSU based on fiscal year 2008 data.²² It estimated the state received only \$0.14 in additional revenue for each dollar of the credit. The Arrowhead study did not examine induced effects such as tourism or capital expenditures.

The widely different results illustrate the fact that different assumptions, altered methodologies, and shifted time frames can yield contradictory conclusions. In any instance, estimating economic impact relies on inexact assumptions about taxpayer actions.

Over the last five fiscal years for which data is available, approved film tax credits have averaged \$56.6 million per year. Assuming that the credit is twenty-five percent (25%) of qualified direct expenditures, the observed credits translate into qualified expenditures of \$226.2 million.²³

Small Breweries and Wineries Tax Credits A tax expenditure is provided against the liquor excise tax based on an incentive rate differential for small breweries and wineries. Beer

²¹ Ernst & Young, "Economic and Fiscal Impacts of the New Mexico Film Production Tax Credit," prepared for the New Mexico State Film Office and State Investment Council, January 2009.

[<http://nmfilm.com/locals/downloads/nmfilmCreditImpactAnalysis.pdf>]

²² Anthony V. Popp and James Peach, "The Film Industry in New Mexico and The Provision of Tax Incentives," A Report Submitted to the Legislative Finance Committee of the State of New Mexico, Arrowhead Center, Office of Policy Analysis, New Mexico State University, August 26, 2008.

[http://www.nmlegis.gov/lcs/lfc/lfcdocs/film%20credit%20study%20TP&JP_08.pdf]

²³ The direct expenditures on film production can be asserted to have indirect and induced economic output multiplier effects of 1.5342, which is somewhat lower than the 1.6547 reflected for "indirect" output effects in the Ernst & Young analysis. Sector 346, Motion picture and video industries, Final Output Multipliers (Direct, Indirect, and Induced effects), New Mexico State Table, Minnesota IMPLAN Group, Inc., © 2012.

manufactured or produced by a microbrewer and sold in this state is taxed at a rate of eight cents (\$0.08) per gallon, as opposed to beer produced by larger brewers, which is taxed at forty-one cents (\$0.41) per gallon. On wine manufactured or produced by a small winegrower and sold in this state a tax of ten cents (\$0.10) per liter on the first eighty thousand liters sold and twenty cents (\$0.20) per liter on all liters sold over eighty thousand liters but less than nine hundred fifty thousand liters. In contrast, larger winegrowers are subject to an excise tax of forty-five cents (\$0.45) per liter tax. Table 5 reflects that this differential tax rate provides a more significant tax expenditure with respect to small wineries than with respect to microbreweries, that the benefit to microbreweries is increasing, and that nearly three-quarters of a million dollars in tax expenditure benefits are being provided to small wineries and microbreweries (in fiscal year 2011).

Table 5: SMALL BREWERIES AND WINERIES LIQUOR EXCISE TAX DIFFERENTIALS (\$thousands)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Microbrewer Beer Rate Differential against Liquor Excise Tax	\$151.3	\$169.3	\$207.5	\$233.2	\$307.9
Small Wineries Rate Differential against Liquor Excise Tax	\$528.1	\$352.8	\$402.5	\$443.1	\$443.3
TOTAL	\$679.4	\$522.1	\$610.0	\$676.3	\$751.2

It is also notable that these products (and all liquor products) are subject to double taxation where the product sold by the wholesaler of small brewery/winery is subject to the liquor excise tax, and the retail sale of the product is taxed again under the gross receipts tax. Especially in the case of excise taxes which are sometimes applied to activities or products considered detrimental to society, double taxation might even be intended. In this sense the impact of the *tax expenditure* against the excise tax (e.g., a “sin tax” revenue loss) may be judged less significant than is the economic benefit provided by the tax expenditure as an incentive to the small business enterprise’s economic growth and development. This type of double taxation of products deemed to have adverse public health impacts is not uncommon among the states. [all liquor products are subject to double taxation – this is discussed above.] This tax differential protects infant industries from larger competitors and provides an incentive to grow small business. According to the New Mexico Association of Small Brewers, the industry has grown from three breweries in 1988 to twenty-two in 1998. Many of the microbreweries currently doing business in New Mexico are in rural areas of the state, creating employment opportunities. According to the New Mexico Wine Growers Association, New Mexico now has about forty-two wineries and tasting rooms producing about seven hundred thousand gallons of wine each year. Moreover, the breweries and wineries actively promote tourism by exporting New Mexico products.

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

Table 6: NEW MEXICO HIGH TECHNOLOGY TAX CREDIT -- FILED CLAIMS (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Research & Development Small Business Tax Credit	NA	NA	56	\$133.1	82	\$107.1	5	\$0.7	0	\$0.0
Technology Jobs Tax Credit	23	\$59.9	174	\$1,909.8	346	\$6,042.6	397	\$6,265.3	326	\$3,112.7
TOTAL	23	\$59.9	230	\$2,022.9	428	\$6,149.7	402	\$6,266.0	90	\$3,112.7

Research and Development Small Business Tax Credit Businesses with twenty-five (25) or fewer employees, revenues under \$5 million annually, and whose qualified prior year's research and development expenditures were equal to at least twenty percent (20%) of the firm's total expenditures are eligible for this credit which is equal to their total GRT liability or to 50 percent of their withholding tax liability on behalf of employees.

Data are unclear as to whether the tax expenditures have resulted in incremental increases in the targeted high-technology activities. However, documentation from the two credits above does indicate that the tax expenditures are being used.

Due to the challenge in analyzing the tax expenditures' effectiveness, additional reporting requirements – particularly for those deductions where no data are available – would aid future analyses.

Technology Jobs Tax Credit A taxpayer²⁴ who conducts qualified research and development at a facility in New Mexico is allowed a basic tax credit equal to four percent (4%) of qualified expenditures, and an additional four percent (4%) credit toward income tax liability by raising its in-state payroll \$75,000 for every \$1 million in qualified expenditures claimed. The tax credit doubles when the qualified facility is in a rural area. Qualified expenditures include all expenditures associated with research activities in New Mexico.

²⁴ Excluding facilities operated for the U.S. government.

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

Fuel Used in Space Vehicles Exemption against Gross Receipts or Compensating Tax Receipts from selling fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate vehicle launchers and the use of fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers are exempt from gross receipts tax and compensating tax.

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

Space Related Transactions Deduction against Gross Receipts Tax Receipts from operating a spaceport; launching, operating or recovering space vehicles or payloads; preparing a payload; or research, development, testing and evaluation services for the U.S. Air Force Operationally Responsive Space Program are deductible. This deduction is provided as an incentive to promote the New Mexico space-flight industry.

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

The U.S. Green Building Council has shown that incentives are an effective way to promote the construction and renovation of LEED certified building. However, in other states and localities, tax credits are often coupled with other incentives designed to stimulate sustainable construction. New Mexico may wish to consider additional incentives, whether it be structural, technical, financial, or otherwise

Table 7: NEW MEXICO SUSTAINABLE BUILDING TAX CREDIT -- FILED TAX CLAIMS (\$thousand)

	TY2007		TY2008		TY2009		TY2010		TY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Sustainable Building Tax Credit (CIT & PIT)	NA	NA	6	\$39.6	70	\$398.3	201	\$1,263.6	209	\$679.7

Although the number of claims has grown since the inception of these tax credits in 2007, the value of the credit is not nearly as substantial as might be expected – averaging slightly more than \$6,100 per claim. The tax credit is based on the LEED rating and size of the building. If the total amount of a sustainable building tax credit approved by the department is less than twenty-five thousand dollars (\$25,000), the entire amount of the credit may be applied against the taxpayer's corporate or personal income tax liability for the taxable year for which the credit is approved. If the amount of the credit exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for up to seven years.

Table 8: NEW MEXICO SUSTAINABLE BUILDING TAX CREDIT -- APPROVED CREDITS (\$thousand)

	TY2008			TY2009			TY2010			TY2011		
	Apprvd Projects	# Tax ID's	Apprvd Credit Amnt	Apprvd Projects	# Tax ID's	Apprvd Credit Amnt	Apprvd Projects	# Tax ID's	Apprvd Credit Amnt	Apprvd Projects	# Tax ID's	Apprvd Credit Amnt
Approved Sustainable Building Tax Credits	101	80	\$954.1	139	115	\$1,190.1	337	203	\$2,905.7	635	189	\$5,600.9

Table 8 provides the *approved* Sustainable Building Tax Credits through the end of tax year 2011,²⁵ and reflects an accrual of more than \$10.6 million in tax credits since the inception of the tax expenditure program. It is apparent that the program is growing substantially since it began, and preliminary data for 2012 suggests the program continues to be popular. With only \$2.4 million of the total accrued credits having been claimed through 2011, there is now more than \$8.2 million in accumulated tax credits that can be claimed during the carry-forward eligibility period under this program.

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

Under the MFA’s program, the tax credit voucher is administered based on *donations* made to affordable housing projects and the Affordable Housing Charitable Trust. In 2006 and 2007, the tax credit voucher was capped at \$200,000 and \$500,000 respectively. As of 2008, it was set at a base rate of \$1.85 times the reported state population and it is adjusted annually for inflation. In FY13 this cap amount will be approximately \$4 million. Donations may include

²⁵ Source data from the Energy Conservation and Management Division, New Mexico Energy, Minerals and Natural Resources Department, May 17, 2012.

land, buildings, materials, cash or services. Cash equivalents, such as store credit or waived invoices, are considered a cash donation. Donations received by the project sponsor in exchange for tax credits may be used to fund the acquisition, substantial rehabilitation, and/or new construction of affordable housing projects throughout the state, including downpayment and closing cost assistance for acquisition of affordable single family housing. No minimum or maximum dollar limits are placed on donations made directly to the Affordable Housing Charitable Trust.²⁶ Table 9 reflects the use of the tax expenditure since tax year 2007.

Table 9: AFFORDABLE HOUSING TAX CREDIT -- FILED CLAIMS (\$thousand)

	TY2007		TY2008		TY2009		TY2010		TY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Affordable Housing Tax Credit	14	\$29.6	42	\$82.8	67	\$461.0	100	\$70.9	51	\$38.1

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

County Gaming Tax Credit In counties that have imposed the county business retention gross receipts tax, racetrack casinos – or racinos – with a net take of less than \$15 million in the prior calendar year may claim a credit equal to fifty percent (50%) of their gaming tax liability, provided that the amount of the total credit claimed by a racino cannot exceed \$750 thousand in any State fiscal year. This credit is designed to reduce the tax burden on racinos, while holding the state harmless. If the amount of the credit is more than the revenue generated through the local option gross receipts tax, the state could experience a negative revenue impact.

²⁶ Donations made directly to affordable housing projects in an amount less than \$200 are not eligible for investment vouchers; the maximum donation made to directly to affordable housing projects which will be eligible for investment vouchers is \$1,000,000.

Table 10: COUNTY GAMING TAX CREDIT (\$thousands)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
County Gaming Tax Credit Against Gaming Tax	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1	\$398

There are five racinos in New Mexico now: Ruidoso Downs, Albuquerque Downs, SunRay Park & Casino, Sunland Park Racetrack & Casino, and Zia Park LLC. Currently, only Ruidoso Downs is qualified to claim the gaming tax credit. Total credit claimed was \$398 thousand for six months in FY2011 as this credit was not in effect prior to January 1, 2011. The annual tax expenditure would be \$750 thousand a year if Ruidoso Downs claimed this credit for twelve months in the following fiscal years. However, the list of qualifying racinos may change if a county imposes or repeals the business retention gross receipts tax, or if net take amount changes.

Credit Unions' Sales Deduction This tax expenditure creates a deduction of sales by state-chartered credit unions from gross receipt taxes. This tax expenditure may allow state-chartered credit unions to be placed in competitive parity with federal-chartered credit unions. The direct revenue impact of this tax expenditure is unknown.

Newspapers and Publication Sales Deduction Receipts from selling newspapers, except from selling advertising space, are deductible from gross receipts tax. It can be inferred that this tax expenditure aims to serve as economic stimulus to the printed newspaper industry by allowing a deduction of its receipts from selling newspapers from gross receipts.

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

Production Or Staging Of Professional Contests Deduction This tax expenditure provides a deduction against gross receipt tax for broadcasting, producing or staging professional boxing, wrestling, or martial arts contests. It is inferred that the purpose of this tax expenditure is to promote these events. There are no data available to estimate the usage and direct revenue impact of this tax expenditure.

B. General Tax Expenditures to Improve Business Climate

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

Rural Job Tax Credit A good example of a tax expenditure that falls into this broad economic stimulus category is the Rural Job Tax Credit, which was originally enacted in 1999 and reenacted in 2007. To be eligible for the Rural Job Tax Credit, employers must be approved for the Job Training Incentive Program (JTIP) administered by the Economic Development Department (EDD). Recipients of the Rural Job Tax Credit may apply it against a taxpayer's corporate and personal income tax, or modified combined tax liability, including gross receipts tax (less local option gross receipts taxes), compensating tax and withholding tax.

The statute defines two tier areas based on population size that establish the specific tax credits applicable under the program.²⁷ A "Tier One area" is any municipality within a rural area if the municipality's population is fifteen thousand or less, or any part of the rural area that is not within the exterior boundaries of a municipality. For a Tier One area the credit is for twenty-five percent (25%) of the first \$16,000 of wages paid. For a Tier Two area — defined as any municipality within a rural area if the municipality's population is more than fifteen thousand — the credit is for twelve and one-half percent (12.5%) of the first \$16,000 of wages paid. For each of the (up to) four twelve-month qualifying periods, the annual credit is six and one-fourth percent (6.25%) of the first sixteen thousand dollars (\$16,000) of wages paid if the job is in a Tier One area. In a Tier Two area, for each of the (up to) two qualifying periods, the annual credit is six and one-fourth percent (6.25%) of the first sixteen thousand dollars (\$16,000) of wages paid.

²⁷ A "rural area" means any part of the state other than: (a) an H class county (i.e., Los Alamos County); (b) the state fairgrounds; (c) an incorporated municipality within a metropolitan statistical area if the municipality's population is thirty thousand or more according to the most recent federal decennial census; and (d) any area within ten miles of the exterior boundaries of a municipality described in Subparagraph (c) of this paragraph

Table 11: RURAL JOBS TAX CREDIT -- FILED CLAIMS (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Rural Jobs Tax Credit (CIT)	0	\$0.0	0	\$0.0	0	\$0.0	0	\$0.0	NA	NA
Rural Jobs Tax Credit (Compensating Tax)	NA	NA	6	\$1.1	15	\$1.8	9	\$1.3	6	\$116.0
Rural Jobs Tax Credit (GRT)	NA	NA	14	\$38.1	42	\$231.6	24	\$172.3	7	\$146.2
Rural Jobs Tax Credit (PIT)	0	\$0.0	10	\$41.0	12	\$40.2	8	\$31.2	7	\$21.5
Rural Jobs Tax Credit (Withholding Tax)	NA	NA	19	\$99.3	50	\$149.1	37	\$459.8	8	\$11.8
Rural Jobs Tax Credit - TOTAL	0	\$0.0	49	\$179.5	119	\$422.7	78	\$664.6	28	\$295.5

Table 11 shows that the Rural Jobs Tax Credit has been averaging approximately \$391,000 over the last four years. Recognizing that the Rural Jobs Tax Credit provides a \$1,000 annual benefit for each job it supports,²⁸ it can be asserted that the tax credit has provided direct benefit to approximately 200 to 700 new jobs in rural New Mexico during the last four years. Because a qualifying employer is one who qualifies for in-plant training assistance under the EDD's JTIP, the jobs benefiting from the Rural Jobs Tax Credit generally range in annual pay from \$40,000 to \$60,000 per year. Thus, *to the extent that* the Rural Job Tax Credit is significantly responsible for the creation of these jobs, the return on the *tax expenditure* from this program are relatively substantial. Also, as with all job incentives, it is difficult to determine whether a job would have been created in the absence of the incentive.

High Wage Jobs Tax Credit A similar, but much more complex, analysis was required for the High Wage Jobs Tax Credit,²⁹ which offers a ten percent (10%) tax credit of up to \$12,000 for qualified wages. High wage jobs eligible for the tax credit are defined as jobs with wages greater than \$28,000 per year in rural areas and greater than \$40,000 per year in urban areas.³⁰ Eligible employers are those businesses eligible for JTIP *or* with whose sales revenues are more than fifty percent (50%) to out-of-state entities in the year prior to when the employer files for the tax credit. Qualified claims may be made for jobs created since 2004, requiring documentation that the claimant created a “new high wage job,” and that the job was occupied for 48 weeks from the “start date” of the qualifying period. The tax credit may be claimed for a period of up to four years from the start date of the qualifying period. The employer may claim the tax credit against several different tax liabilities, but the credit is refundable — that is, paid

²⁸ That is, 6.25% of \$16,000 is equal to \$1,000, and if it is presumed that the great majority of qualifying jobs are paying at least \$16,000 per year in wages, then each \$1,000 of tax credit claimed is approximately equal to a new rural job created under the Rural Jobs Tax Credit program.

²⁹ Section 7-9G-1 NMSA 1978.

³⁰ The maximum tax credit allowed is \$12,000 (i.e., \$120,000 annual compensation cap), and the credit is calculated on total compensation (i.e., wages and benefits).

by the state even if the taxpayer does not have a tax liability against which to apply the credit. Table 12 provides a summary of the High Wage Jobs Tax Credit claims since FY2007.

Table 12: HIGH WAGE JOBS TAX CREDIT -- FILED TAX CLAIMS (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Credits, applied to tax liability	48	\$234.2	66	\$277.7	100	\$441.8	70	\$1,188.7	77	\$826.7
Credits, refunded		\$1,262.6		\$3,528.0		\$13,891.3		\$3,462.8		\$8,431.7
TOTAL	48	\$1,487.0	66	\$3,805.7	100	\$14,333.1	70	\$4,651.5	77	\$9,258.4

Although there has been significant historic growth in the tax credit claims, current fiscal year claims are escalating at an even more substantial rate, with claims applied to tax liability, refunded or approved (and pending against future fiscal year tax expenditures) exceeding \$40 million.³¹ This level of tax expenditure liability is likely to be durable for a number of years to come (as a result of the four year duration for new job claim filings).

Among the significant issues with the High Wage Jobs Tax Credit is the ability of a company to qualify jobs in New Mexico that do not support (or otherwise relate to) the out-of-state business activities (i.e., greater than fifty percent (50%) of sales must be out-of-state) to be qualified for the credit (e.g., sales in out-of-state retail chain stores has little or no relationship to New Mexico-based jobs). There are also difficulties with the definition of “new jobs” that are qualified under the tax expenditure program, with the potential that some existing jobs may be qualified.

A detailed analysis of claims filed in FY11 and FY12³² suggest more than 3,000 qualifying jobs have been created since 2004, with well more than half of the qualifying jobs created since the start of the recession in 2008. That same detailed analysis provides significant insight into the nature of the qualified jobs created, as reflected in Table 13.

³¹ Note that High Wage Jobs Tax Credit “claims” may be applied to either tax liability or be refunded, and in many cases an approved claim will be applied to both an existing tax liability and seek refund of the balance of the claim.

³² Memorandum to Secretary Demesia Padilla, from John C. Tysseling, Ph.D., Chief Economist, New Mexico Department of Taxation and Revenue, May 17, 2012 (NOTE: FY2012 data analyzed is partial data, and was that available through the date of the memorandum).

**Table 13: SUMMARY OF APPROVED HIGH WAGE JOBS TAX CREDITS -- BY ALLOWED CREDIT RANGE
(JOB SALARY BASED)**

Credit Allowed	FY11 & FY12 (through 5/14/2012)				
	\$2.8K-\$4K	\$4K-\$6K	\$6K-\$8K	\$8K-\$10K	\$10K-\$12K
Implied Compensation Range	\$28,000 to \$40,000	\$40,000 to \$60,000	\$60,000 to \$80,000	\$80,000 to \$100,000	\$100,000 to \$120,000
Mean	\$3,446	\$5,041	\$6,926	\$8,903	\$11,521
Median	\$3,459	\$5,061	\$6,891	\$8,862	\$12,000
# of Claims	503	1,784	1,235	683	833
TOTAL APPROVED CLAIMS	\$1,733,378	\$8,992,395	\$8,553,264	\$6,080,715	\$9,596,885

NOTE: "Mean" credit amount is the average credit approved in the Allowed Credit range (i.e., salary range), and "Median" credit amount is the dollar amount where one-half (50%) of the approved claims in the range are *less than* that amount and one-half (50%) of the approved claims in the range are *greater than* that amount.

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

Laboratory Partnership with Small Business Tax Credit The purpose of the Laboratory Partnership with Small Business Tax Credit is to bring the technology and expertise of the national laboratories to small businesses. When a national laboratory offers certain types of eligible assistance to individual small businesses, it may take a credit against the state portion of gross receipts tax of up to \$10,000 per business or \$20,000 for a business in a rural area in an amount equal to the qualified expenditure. To qualify for tax credits a national laboratory must establish a small business assistance program, including a revolving fund with initial funding from a source other than tax credits. Money from the revolving fund shall be used to pay for qualified expenditures, and the fund shall be replenished with an amount equal to the tax credits taken pursuant to the Laboratory Partnership with Small Business Tax Credit Act.³³

A national laboratory may claim the amount of each tax credit by crediting that amount against gross receipts taxes otherwise due. The tax credit shall be taken on each monthly gross receipts tax return filed by the laboratory against gross receipts taxes due the state, and shall not impact any local government tax distribution. A tax credit shall be in an amount equal to the qualified expenditure incurred by the national laboratory to provide small business assistance to a specific small business, not to exceed ten thousand dollars (\$10,000) for each small business

³³ Section 7-9E NMSA 1978.

located outside of a rural area, or twenty thousand dollars (\$20,000) if the small business assistance was provided to a small business located in a rural area. In no event shall the tax credits taken by an individual national laboratory exceed two million four hundred thousand dollars (\$2,400,000) in a given calendar year. Tax credits claimed by all national laboratories in the aggregate for qualified expenditures for a specific small business not located in a rural area shall not exceed ten thousand dollars (\$10,000). The recent history of this tax expenditure is provided in Table 14.

Table 14: LABORATORY PARTNERSHIP WITH SMALL BUSINESS TAX CREDIT -- FILED CLAIMS
(\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Laboratory Partnership w/ Small Business Tax Credit	NA	NA	0	\$0.0	4	\$2,525.3	5	\$2,394.2	4	\$3,188.0

Although the use of the tax credit to replenish the Small Business Development Revolving Fund was enacted in 2000, only in the last three fiscal years have significant claims been filed. "Small business assistance" includes the transfer of technology, including software, manufacturing, mining, oil and gas, environmental, agricultural, information and solar and other alternative energy source technologies. Eligible assistance includes nontechnical assistance related to expanding the New Mexico base of suppliers, including training and mentoring individual small businesses; assistance in developing business systems to meet audit, reporting and quality assurance requirements; and other supplier development initiatives for individual small businesses.

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

Investment Tax Credit A tax expenditure is provided by a tax credit equal to five percent (5%) of the value of the capital investments in qualifying manufacturing equipment where such investment increases employment in the manufacturing business. This investment tax credit is provided in addition to depreciation and expensing of capital equipment (for income taxes), and may be applied against a maximum of eighty-five percent (85%) of a taxpayer's gross receipts, compensating, and withholding tax liability, but may not be taken against any local option gross receipts tax imposed by a county or municipality. No limit is currently imposed on the amount of investment eligible for the credit. However, after June 30, 2020, qualified investment will be limited to no greater than two million dollars (\$2,000,000) for any taxable year. To claim the credit, a taxpayer must add at least one additional employee for every \$500,000 of eligible investment if the total investment claimed is up to \$30 million. The

taxpayer must add at least one employee for every \$1 million of investment if the total investment claimed is over \$30 million. Table 15 reflects the tax expenditures for the Investment Tax Credit since FY2007.

Table 15: NEW MEXICO INVESTMENT TAX CREDIT (QUALIFIED MANUFACTURING) -- FILED TAX CLAIMS (\$thousands)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Investment Tax Credit	NA	NA	92	\$1,053.2	197	\$11,602.8	117	\$7,037.9	90	\$1,862.0

In the last four years the investment tax credit has averaged nearly \$5.4 million per year. At the five percent (5%) credit rate, this translates into approximately \$100 million per year in qualified investment. Assuming an average of \$1 million in investment per employee added, this translates into 100 additional employees per year.

Venture Capital Investment Tax Credits Two tax credit programs are included in this tax expenditure discussion. The Venture Capital Investment Tax Credit,³⁴ enacted in 1993, is applied against personal income tax liability. The Angel Investment Tax Credit, enacted in 2007 and extended in 2012, is applied against personal income tax liability. The two investment tax credit programs are presented here as much for the contrasts and effectiveness, as for any similarities that they bear in relationship to capital investment in New Mexico. Table 16 reflects the recent history of utilization of these two tax expenditure programs for capital investment in New Mexico.

Table 16: VENTURE CAPITAL INVESTMENT TAX CREDITS -- FILED TAX CLAIMS (\$thousands)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Venture Capital Investment Tax Credit	0	\$0.0	0	\$0.0	0	\$0.0	0	\$0.0	NA	NA
Angel Investment Tax Credit	0	\$0.0	16	\$145.0	28	\$157.8	32	\$200.8	17	\$80.8
TOTAL	0	\$0.0	16	\$145.0	28	\$157.8	32	\$200.8	17	\$80.8

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

³⁴ Section 7-2D et seq. NMSA 1978.

will likely see significant activities in support of venture capital in New Mexico with such restrictions.

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

Claims for the Angel Investment Tax Credit has averaged approximately \$145,900 per year over the last four years, and have leveraged at least \$2.3 million in qualifying investment during the last five years.

Tax Increment for Development District Tax “Dedications” The incremental gross receipts tax revenue and property tax payments attributable to new development pursuant to a tax increment development plan may be dedicated to the infrastructure development within the Tax Increment Development District (“TIDD”). Since these gross receipts and property tax payments would otherwise flow to more general beneficiaries, the dedication of these revenues may be considered a *tax expenditure*. The portion of gross receipts taxes in excess of the amount of base gross receipts taxes, and the portion of property taxes in excess of the amount of base property taxes, may be irrevocably pledged by the district for the payment of the principal of, the interest on and any premiums due in connection with the bonds, loans, advances and indebtedness. A taxing entity may not dedicate more than seventy-five percent (75%) of its gross receipts tax increment to a TIDD. With the approval of the State Board of Finance, up to seventy-five percent (75%) of the GRT attributable to the imposition of the State GRT within a district may be dedicated to the district.

Because of the loss of these revenues to the more general public purposes of the gross receipts tax base and the property tax base, there is a tax expenditure created that is dedicated to retire the specific indebtedness incurred to facilitate the development of the incremental economic activities of the development district. However, the dedication of these revenues does not reduce or diminish the total tax liability of the businesses or individuals within the district.

Table 17: TAX INCREMENT FOR DEVELOPMENT DISTRICT TAX DEDICATIONS (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
TIDD Gross Receipts Tax Dedications	NA	NA	NA	NA	2	\$2,946.1	4	\$1,370.9	5	\$3,810.8
TIDD Property Tax Payment Dedications	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
TOTAL	NA	NA	NA	NA	2	\$2,946.1	4	\$1,370.9	5	\$3,810.8

Table 17 reflects that the role of TIDDs in funding economic development investments has been significant. There are cases where TIDDs have been authorized, and the participants have subsequently moved to abolish the special development districts. Thus, it is now apparent that the TIDD structure may have both benefits and additional costs. Certainly, there is a significant additional administrative cost for the Taxation and Revenue Department and for the county treasurers to identify and monitor specific gross receipts and property tax payments, allocate those receipts and report these additional subdivision revenues. TIDD's are widely seen as a beneficial structure for providing development assistance because the earmark of revenue for infrastructure is based only on the incremental revenue base, which presumably can be attributed to the developers receiving the assistance. Two significant concerns are raised by this approach. One is that it is administratively very complex to distinguish incremental from base revenue levels. The second is the concern that development within the district may be "cannibalizing" development in other districts, with the result that the combined tax base of all districts is not really increasing.

Double-Weighted Sales Apportionment Against Corporate Income Tax³⁵ A taxpayer whose principal business activity is manufacturing may elect to have business income apportioned to New Mexico by multiplying the income by a "double-weighted sales" fraction — the numerator of which is the property factor³⁶ plus the payroll factor³⁷ plus twice the sales factor,³⁸ and the denominator of which is four. The tax expenditure provides an optional, alternative method of income apportionment for manufacturers when calculating New Mexico corporate income tax liability. All other taxpayers are required to use a three-factor apportionment formula in which payroll, property and sales are equally weighted. By increasing the weight of the sales factor, this policy also has the effect of promoting an export-based manufacturing industry because exported sales reduce the share of income apportioned to this state.

³⁵ Section 7-4-10(B) NMSA 1978.

³⁶ The property factor is a fraction, the percentage of the taxpayer's real and tangible personal property that was located in New Mexico during the tax period.. [Section 7-4-12 NMSA 1978]

³⁷ The payroll factor is a fraction, the percentage of the taxpayer's total payroll that occurred in New Mexico during the tax period.. [Section 7-4-14 NMSA 1978]

³⁸ The sales factor is a fraction, the percentage of the taxpayer's national sales that occurred in New Mexico during the tax period. [Section 7-4-16 NMSA 1978]

**Table 18: DOUBLE-WEIGHTED SALES APPORTIONMENT AGAINST CORPORATE INCOME TAX
(\$thousands)**

	TY2007		TY2008		TY2009		TY2010		TY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Double-Weighted Sales Apportionment Against CIT	46	(\$108.3)	54	(\$67.5)	49	(\$6.6)	58	(\$32.6)	NA	NA

This tax expenditure has resulted in a *net revenue gain* of \$32.6 thousand in the most recent taxable year for which data were available. Furthermore, no single taxpayer that had elected to use a double-weighted sales factor in taxable year 2010 realized tax savings from the alternative apportionment method.³⁹ A taxpayer will only benefit from double-weighted sales factor apportionment if its sales factor is less than one half of the sum of the property and payroll factors. When the sales factor is equal to that level, the two apportionment methods yield identical tax liabilities, and when the sales factor exceeds that level, a single-weighted sales factor would be preferable.

Excluding taxpayers from sectors other than manufacturing from this apportionment method could violate the principle of equity in tax policy. Under the statute "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include: (1) construction; (2) farming; (3) power generation at facility regulated pursuant to the Public Utility Act;⁴⁰ or (4) processing natural resources, including hydrocarbons.⁴¹ Absent the manufacturing restriction, and based on data for the 2010 taxable year, over 2,600 taxpayers could benefit from a reduced tax liability if they were allowed to use a double-weighted sales factor with an average tax savings of approximately \$3,500. It is unclear why manufacturing is allowed this option and other industries are not, and conformity with the principle of equity would suggest extending the alternative method to other taxpayers.

The requirement that upon election of this apportionment method a taxpayer must use it for three consecutive years has both positive and negative consequences. The main positive aspect of this requirement comes from stability in administration, whereby a taxpayer cannot switch back and forth between apportionment methods merely based upon which would be preferable for a given tax year. The most apparent negative consequence, however, is when a taxpayer mistakenly expects that the alternative apportionment method will result in a decreased corporate income tax liability. In those cases, the taxpayer is unable to rectify a detrimental situation for up to three years.

³⁹ There were several taxpayers who benefited in prior years, but provision of the statute requires retention of the election for at least three year, which produced this unusual result in 2010.

⁴⁰ Section 62-13-1 NMSA 1978.

⁴¹ Section 7-4-10© NMSA 1978.

Tax Holiday Sales Deduction Against Gross Receipts This tax expenditure allows receipts from retail sales of specified tangible personal property to be deducted from gross receipts tax if the sale of the property occurs during the period between 12:01 a.m. on the first Friday in August and ending at midnight the following Sunday. The property specified by this statute includes certain clothing valued under \$100, computers and computer accessories valued under \$1000 and \$500 respectively, and school supplies. The tax expenditure is targeted at “back to school” expenditures, but its broadly stated basis allows any eligible retail sales to qualify for the economic benefits. No direct data is available to either estimate the economic benefits or lost revenues associated with this tax expenditure, and the estimate presented in Table 19 is based on an assumed ten percent (10%) of August retail sales attributed to qualifying expenditures and application of statewide average GRT rates.

Table 19: ESTIMATED TAX HOLIDAY DEDUCTIONS FOR GROSS RECEIPTS TAX LIABILITIES (\$thousands)

	FY2007	FY2008	FY2009	FY2010	FY2011
	Amount	Amount	Amount	Amount	Amount
Estimated Tax Holiday Deductions from GRT	\$4,000	\$3,600	\$4,054	\$3,595	\$3,109

A concern with this tax expenditure is that the benefits may not be limited to the intended targets. If the goal is to provide school supplies to low-income families, this could perhaps be administered as a spending program through the schools.

Jet Fuel Deduction Tax Expenditure This tax expenditure provides a deduction that reduces the effective gross receipts and compensating tax rates on jet fuel . From July 1, 2003 through June 30, 2017, fifty-five percent (55%) of the value of jet fuel prepared and sold for use in turboprop or jet engines may be deducted from the total value before computing tax due. After June 30, 2017, forty percent (40%) of the value of that same qualified jet fuel may be deducted from the total value before computing tax due. Although no direct data source exists to estimate this tax expenditure, Table 20 provides an estimate based on jet fuel expenditures data obtained from the U.S. Energy Information Administration through calendar year 2010. Expenditures were adjusted to a fiscal year basis. The analysis further assumes that eighty percent (80%) of purchases would be subject to the gross receipts tax and that the other twenty percent (20%) would be subject to compensating tax.

Table 20: ESTIMATED JET FUEL DEDUCTION TAX EXPENDITURES (\$thousand)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Estimated Jet Fuel Deduction from GRT	\$5,469.7	\$5,924.2	\$4,811.1	\$3,247.2	\$3,670.4
Estimated Jet Fuel Deduction from Compensation Tax	\$1,027.8	\$1,109.2	\$901.9	\$601.4	\$681.0
TOTAL	\$6,497.5	\$7,033.4	\$5,713.0	\$3,848.6	\$4,351.4

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

Other General Tax Expenditures to Improve Business Climate and Stimulate Economic Activities The following additional tax expenditures may be identified in New Mexico's tax code as providing benefit to the general business climate and as a stimulus to economic activities. However, there have been no data reported, or there is no requirement to report data that allows for any estimation of the lost revenue under these tax expenditure programs, and correspondingly, no ability to estimate the cost and benefits of those tax programs. It must be noted that the tax expenditure associated with County and Municipal Revenue Bonds⁴² is undoubtedly the largest of these tax expenditures, and that the complexity in assigning economic value, revenue impacts and the potential costs of the programs is very substantial.

Business Facility Rehabilitation Credit This credit can be applied against personal or corporate income tax liabilities for one-half of the cost, not to exceed fifty thousand dollars (\$50,000), incurred to restore, rehabilitate or renovate a qualified business facility. Claimants cannot also claim the cultural property preservation credit or the investment credit. The credit is intended to stimulate the creation of new jobs and revitalize economically depressed areas within New Mexico enterprise zones as designated by local governments, subject to certain restrictions and qualifications. Any portion of the credit not deducted from the taxpayer's income tax liability that remains unused at the end of the taxpayer's taxable year may be carried forward for four (4) consecutive taxable years.

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

⁴² [See the Industrial Revenue Bond Act [3-32-2 NMSA 1978], the County Industrial Revenue Bond Act [4-59-1 NMSA 1978], the Pollution Control Revenue Bond Act [3-59-1 NMSA 1978] or the Statewide Economic Development Finance Act [6-25-1 NMSA 1978], and the Hospital Equipment Loan Act [58-23-1 NMSA 1978]]

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

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

Trade-Support Companies in Border Zone Deduction against Gross Receipts Tax

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

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

Hosting World Wide Web Sites Deduction against Gross Receipts Tax Receipts from hosting web sites are deductible.

Military Acquisition Programs Deduction against Gross Receipts Tax Receipts from military transformational acquisition programs performing research and development and test and evaluation services at New Mexico major range and test facility bases are deductible.

Military Construction Services Deduction against Gross Receipts Tax Receipts from military construction services provided at New Mexico military installations to implement special operations mission transitions projects pursuant to contracts entered into with the U.S. Department of Defense are deductible.

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

C. Tax Expenditures for Specific Public Purposes

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

Cultural Property Preservation Tax Credit The tax credits are provided "...to encourage the restoration, rehabilitation and preservation of cultural properties."⁴³ Taxpayers may take this credit against corporate and personal income tax return for restoring, rehabilitating or preserving properties listed on the New Mexico Register of Cultural Properties. The credit is equal to fifty percent (50%) of the cost of construction. It may not exceed \$25,000 if listed on the New Mexico Register of Cultural Properties or \$50,000 if the property is within an arts and cultural district designed by the state or a municipality as designated in the Arts and Cultural District Act.

Table 21: CULTURAL PROPERTY PRESERVATION CREDITS AGAINST CORPORATE AND PERSONAL INCOME TAX (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Cultural Property Preservation Credits Against CIT & PIT	75	\$230.5	91	\$235.4	85	\$266.6	80	\$229.4	42	\$84.0

At a fifty percent (50%) credit rate, the nearly \$1 million in total tax credits reflected in Table 21 contributed to leveraging an additional \$1 million in direct expenditures on cultural and historic property preservation. The public benefits of these expenditures are based on the

⁴³ Sections 7-2-18.2 and 7-2A-8.6 (A) NMSA 1978.

potential for providing future generations the opportunity to enjoy and benefit from these culturally and historically important New Mexico resources. The restoring, rehabilitating or preserving of properties listed on the New Mexico Register of Cultural Properties offers many benefits in the form of heritage preservation, culture and tourism. The economic benefits from the direct expenditures on restoration, rehabilitation and preservation construction activities can be asserted to have combined direct, indirect and induced economic output multiplier effects in the range of 1.585 to 1.605,⁴⁴ but the additional benefits for communities and cultural resources must also be considered in evaluating the benefits of these tax expenditures.

Moreover, this tax expenditure, by some form of social good definition, probably should not be considered as a proper subject for a “sunset” provision. There may, however, be consideration as to whether it is appropriate to place an annual cap on the total tax expenditure, notwithstanding the relatively modest tax expenditure amount even without a cap. It should also be noted that other tax expenditures with broad social benefits are equally subject to this commentary.

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

Table 22: AGRICULTURAL WATER CONSERVATION CREDITS AGAINST CORPORATE AND PERSONAL INCOME TAX (\$thousands)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Cultural Property Preservation Credits Against CIT & PIT	0	\$0.0	0	\$0.0	19	\$56.5	11	\$42.0	0	\$0.0

In New Mexico, the availability of viable water resources is a critical issue. Without additional information regarding the water resource benefits achieved (e.g., acre-feet of

⁴⁴ Sector 040, Maintenance and repair construction of residential structures, and Sector 39, Maintenance and repair construction of nonresidential structures,(respectively) Final Output Multipliers (Direct, Indirect, and Induced effects), New Mexico State Table, Minnesota IMPLAN Group, Inc., © 2012.

additional beneficial use provided) through these conservation investments it is not possible to assess the direct benefits from the tax expenditure. All the claims made have been taken against personal income tax liabilities.

Land Conservation Tax Credits Land that is conveyed for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation as an unconditional donation in perpetuity by the landowner or taxpayer to a public or private conservation agency eligible to hold the land and interests therein for conservation or preservation purposes may be eligible for a credit against the tax liability against personal and corporate income and franchise taxes in an amount equal to fifty percent (50%) of the fair market value of land contributed. The amount of the credit that may be claimed by a taxpayer shall not exceed one hundred thousand dollars (\$100,000) for a conveyance made prior to January 1, 2008, or not exceed two hundred fifty thousand dollars (\$250,000) for a conveyance made on or after that date. In addition, for any taxable year the credit used may not exceed the amount of personal or corporate income tax otherwise due. A portion of the credit that is unused in a taxable year may be carried over for a maximum of twenty (20) consecutive taxable years following the taxable year in which the credit originated until fully expended.

Table 23: LAND CONSERVATION TAX CREDITS (\$thousands)

	TY2007		TY2008		TY2009		TY2010		TY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Land Conservation Tax Credit Against CIT	0	\$0.0	0	\$0.0	1	1	4	\$2,247.5	NA	NA
Land Conservation Tax Credit Against PIT	22	\$441.8	25	\$284.5	40	\$1,338.2	51	\$1,289.9	27	\$463.2
TOTAL	22	\$441.8	25	\$284.5	41	\$1,339.2	4	\$3,537.4	27	\$463.2

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

Potential concerns with this approach include the possibility that a taxpayer may continue to derive substantial private benefit from the conserved land notwithstanding the transfer of rights to the property by its appurtenance to other property retained by the taxpayer.

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

The maximum aggregate credit allowable shall not apply to more than ten qualified students employed by the taxpayer for up to three hundred twenty (320) hours of employment of each qualified student in each taxable year for a maximum of three (3) taxable years for each qualified student. In no event shall a taxpayer claim a credit in excess of twelve thousand dollars (\$12,000) in any taxable year. The employer must certify that hiring the qualified student does not displace or replace a current employee.

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

Table 24: JOB MENTORSHIP TAX CREDITS AGAINST CORPORATE AND PERSONAL INCOME TAX (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Job Mentorship Tax Credits Against CIT & PIT	5	\$15.2	7	\$25.1	5	\$13.9	2	\$12.6	NA	NA

The training and experience that is provided by the programs supported by the job mentorship tax credits certainly increase opportunity for many of the students who benefit from the employment created by the tax expenditure. Certainly some employers are given enough incentive by the tax expenditure to create the opportunity, but it is impossible to know whether these employers would undertake similar engagement of students simply as a matter of commitment to their communities. The low utilization of this credit may be due to the qualification restrictions (e.g., certifications by sponsoring school personnel) or may reflect abroad lack of awareness of the program.

Non-athletic Special Events Deduction Against Gross Receipts Tax Receipts from admissions to nonathletic special events held at a venue that holds at least 10,000 people and is located on the campus of a post-secondary school within 50 miles of the New Mexico border are deductible from gross receipts. This tax expenditure serves to allow certain venues within 50 miles of the New Mexico border to compete with out-of-state facilities for special events because Texas does not charge a tax on tickets to these events.

Data on gross ticket sales were provided by administrators at the only qualified institution, New Mexico State University. Foregone revenue was then calculated by applying the five percent (5%) governmental gross receipts tax rate. The governmental gross receipts tax rate is used in lieu of the gross receipts tax rate for the following reason. Prior to 2007 when the original deduction was enacted, the Pan American Center at New Mexico State University applied the governmental gross receipts tax to income from special events. After the gross receipts tax deduction was enacted, the performer contracts were revised to take advantage of the gross receipts tax deduction. In the absence of this tax expenditure, the Pan American Center would presumably revise contracts to move the receipts, once again, under the governmental gross receipts tax provisions.

Table 25: NONATHLETIC SPECIAL EVENTS DEDUCTION AGAINST GOVERNMENTAL GROSS RECEIPTS TAX (\$thousand)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Nonathletic Events Deduction Against GGRT	N/A	\$36.1	\$22.8	\$99.3	\$71.2

The direct benefits of this tax expenditure accrue to event promoters and performers receiving proceeds from ticket sales. An argument can be made that but for the gross receipts deduction, promoters would host these events in El Paso, Texas where ticket sales are not subject to taxation. If this were true, the benefit of the tax expenditure encompasses all economic activity associated with these special events including certain vendor sales, hotel stays and other goods and services purchased by attendees. These additional economic benefits from the direct expenditures on promotion and ticket sales associated with performing arts, sports and public figures can be asserted to have indirect and induced economic output multiplier effects of 1.894.⁴⁵ Total receipts from admissions have averaged \$1.60 million annually from FY2010 through FY2012, but it is unknown how much of those sales can be attributed to the tax expenditure.

Officiating at NMAA-Sanctioned School Events Exemption against Gross Receipts

Tax Receipts from refereeing, umpiring, scoring, or other officiating at school events sanctioned by the New Mexico Activities Association (“NMAA”) are exempt from gross receipts taxation.

This tax expenditure provides incentive for New Mexicans to provide officiating services at NMAA-sanctioned events by. These taxpayers likely engage in officiating activities as a secondary or supplemental income source. The desire to engage in supplemental employment is generally more responsive to taxation than the demand for primary employment, meaning

⁴⁵ Sector 404, Promoters of performing arts and sports and agents for public figures, Final Output Multipliers (Direct, Indirect, and Induced effects), New Mexico State Table, Minnesota IMPLAN Group, Inc., © 2012.

taxpayers are less likely to pursue such jobs if the income earned is highly taxed. This tax expenditure also provides schools a greater pool of potential officiators and reduces the costs of hiring these individuals.

Table 26: OFFICIATING AT NMAA-SANCTIONED EVENTS AGAINST GROSS RECEIPTS TAX (\$thousand)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Officiating NMAA-Sanctioned Events Exemption against GRT	\$152.2	\$151.7	\$158.2	\$160.8	\$166.7

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

Gasoline and Special Fuels Tax Issues Gasoline and other special fuels⁴⁶ are (predominantly) taxed under separate excise taxes rather than under the gross receipts tax (GRT). There are many issues related to the taxation of gasoline and special fuels, with these issues primarily related to the specific purposes to which the tax revenues are applied. In particular, the primary beneficiary of these fuel taxes is the State Road Fund, although distributions are also provided to the State Aviation Fund, Motorboat Fuel Tax Fund, County Government Road Fund, Municipal Roads Fund, Local Governments Road Fund, County, Municipal and Tribal Governments, and the General Fund.⁴⁷ The distribution issue is significant where tax policy is *premised* on a primary Road Fund-related purpose, but tax expenditures reduce revenues for *non-road* related activities (e.g., off-road vehicles) and these expenditures can impact distributions to other tax program beneficiaries.

One issue is whether the different tax rates applied by these fuel taxes. In this *Report* tax rate differentials are not treated as tax expenditures, but because some of these fuel volumes are subject to GRT or Compensating Tax, and because of the more generally distribution of revenues (beyond simply the Road Fund) it is informative to present the data related to these tax rate differentials. That is, if the sales of the fuels were taxed consistent with the gross receipts tax rate (5.125%) applied to other retail sales activities, would the taxes produce a different revenue

⁴⁶ Special fuel" means any diesel-engine fuel or kerosene used for the generation of power to propel a motor vehicle, except for gasoline, liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet engines. [Section 7-16A-3 NMSA 1978]

⁴⁷ NOTE: Appendix 1 to this *Report* provides the distribution of all tax revenues discussed herein, as provided (in most cases) by the Tax Administration Act (Section 7-1 NMSA 1978).

stream to the state. A seventeen cent (\$0.17) per gallon excise tax is imposed on gasoline, and a twenty-one cent (\$0.21) per gallon excise tax is imposed on special fuels for the privilege of receiving special fuels in New Mexico. This is in lieu of the gross receipts tax (GRT) currently at five and on-eight percent (5.125%). As shown in Table 27, both gasoline and special fuels provide for *greater* tax revenues to the state under their respective excise tax rates than would be provided under the GRT, although it should be noted that when the average price of gasoline rises above \$3.32 per gallon and the average price of special fuels exceed \$4.10 per gallon the GRT would produce higher revenues than do the respective excise taxes.

Table 27: GASOLINE AND SPECIAL FUELS TAX EXPENDITURE ISSUES — COMPARISON TO GROSS RECEIPTS TAX REVENUES (\$thousand)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Gasoline Tax versus GRT	(\$28,493.8)	(\$10,074.2)	(\$30,667.0)	(\$23,270.7)	(\$5,912.5)
Special Fuels Tax versus GRT	(\$31,620.8)	(\$10,070.4)	(\$38,408.5)	(\$25,783.6)	(\$6,081.8)

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

Fuels Tax Issues — Federal & Indian Deductions/Exemptions Under Sections 7-13-4(B), 7-16A-10(B) and 7-13A-4(B) gasoline and special fuels received in New Mexico sold to and for the exclusive use of the United States or an agency or instrumentality thereof the United States may be deducted from gasoline and special fuels taxes, and the petroleum products loading fee. This is not a tax expenditure as a result of the federal constitutional preemption from taxation.

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

A special deduction is provided under Sections 7-13-4(F) for gasoline received in New Mexico and sold by a registered Indian tribal distributor from a non-mobile storage container located within that distributor's Indian tribal lands for resale outside that distributor's Indian tribal land. In this case the department must certify that the distributor claiming the deduction sold no less than one million gallons of gasoline from such facility during the period of May through August 1998, and that the amount of gasoline deducted under this subsection shall not exceed two million five hundred thousand gallons per month.⁴⁸ This tax policy must be considered a specific *tax expenditure*, as it is a specific deference to the commerce of a Indian tribal distributor operating on Indian tribal lands but selling gasoline and special fuels in resale activities outside the boundaries of the distributor's Indian tribal lands.

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

Table 28: FUELS TAX ISSUES -- FEDERAL & INDIAN DEDUCTIONS/EXEMPTIONS (\$thousands)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Gasoline Tax Deductions against Gasoline Tax 7-13-4. E (Retail Sales from Indian Lands)	\$8,367.6	\$6,497.8	\$5,848.7	\$6,320.1	\$4,914.0
Gasoline Tax Deductions against Gasoline Tax 7-13-4.4 (Additional Deduction: Certain Retail Sales on Indian Lands)	\$169.2	\$1,239.5	\$1,437.7	\$1,362.4	\$1,180.3
Gasoline Tax Deductions against Gasoline Tax 7-13-4. F (Special Indian Distributor Sales)	N/A	N/A	N/A	N/A	N/A
Petroleum Products Loading Fee 7-13A-4(B) (US Govt)	\$282.7	\$243.2	\$204.4	\$244.9	\$302.8
Alternative Fuels Tax Exemption 7-16B-5 (Federal, State or Indian Use)	\$96.0	\$88.3	\$199.7	\$135.3	\$118.2

⁴⁹ Centers for Medicare and Medicaid Services, "Health Expenditures by State of Provider, 1980-2009" <http://www.cms.gov/NationalHealthExpendData/Downloads/provider-state-estimates.zip>, accessed May 24, 2012.

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

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

Table 29: GASOLINE AND FUELS TAX ISSUES — SPECIAL USE EXEMPTIONS AND DEDUCTIONS (\$thousands)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Special Fuels Suppliers' Deduction 7-16A-10. F (PubEd School Buses)	\$102.2	\$102.9	\$144.0	\$95.9	\$218.1
Alternative Fuels Tax Exemption 7-16B-5. Reg. 3.16.300.8	\$0.3	\$14.7	\$0.2	\$0.0	\$1.1

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

School Bus Use of Special Fuels Exemption against Special Fuels Tax Receipts from the sale of special fuel dyed in accordance with federal regulations for use in school buses is subject to gross receipts tax and not the special fuel excise tax. Assuming a rate per gallon of

\$4.00 for diesel fuel, applying the gross receipts tax rate of 5.125% to the purchase of special fuel would result in a per gallon tax of \$0.18. This compares to the special fuel excise tax rate of \$0.21 per gallon. This exemption reduces the operating costs of school buses, which are funded through state general fund appropriations, which could allow the use of more buses, more routes, or better wages and benefits for bus drivers. It should also be noted that fuel for school bus use is also exempt from federal fuel taxes. However, if the net price less the federal exemption is above \$4.10 per gallon, the amount paid per gallon in gross receipts taxes will surpass the special fuel excise tax rate, thereby creating a tax disadvantage.

Motor Vehicle Excise Tax

Under Section 7-14-6.G. from July 1, 2004 through June 30, 2009, vehicles that are gasoline-electric hybrid vehicles with a United States environmental protection agency fuel economy rating of at least twenty-seven and one-half miles per gallon were eligible for a one-time exemption from the tax at the time of the issuance of the original certificate of title for the vehicle. This provision was a tax expenditure that served to stimulate sales of gasoline-electric hybrid vehicles which may minimize environmental effects through fuel efficiency, but the provision has since sunset.

Table 30: HYBRID VEHICLE MOTOR VEHICLE EXCISE TAX EXMPTION (\$thousands)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Tax Exemption 7-14-6. G (Hybrid Vehicles)	\$1,215.6	\$1,504.9	\$1,350.7	N/A	N/A

Other Tax Expenditures for Specific Public Purposes

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

- Electronic ID Card Readers Credit against Personal and Corporate Income Tax**
 New Mexico provides a one-time credit up to \$300 for the purchase of electronic card-reading equipment for age verification. The credit provides incentive for establishments serving alcohol to invest in technology that could allow better enforcement of under-age alcohol consumption.
- Event Center Surcharge Exemption against Gross Receipts or Governmental Gross Receipts Taxes**
 Receipts from selling tickets, concessions, and all other products or services sold at or related to a municipal event center on which an event center surcharge is imposed pursuant to the Municipal Event Center Funding Act are exempt from the gross receipts tax. Revenue from the event center surcharge is

earmarked for payment on bonds issued to secure funding for the construction of the event center. By statute, a surcharge of at least 5 percent is imposed on each vendor contract. In this light, it would appear that the surcharge is meant to prevent double taxation. However, to the extent that the county or municipality could have obtained funding through general obligation bonds, without imposing either a surcharge or receiving an exemption from that surcharge, this is a tax expenditure. Moreover, unlike general obligation bonds which are secured with local government revenues, this exemption effectively reduces state revenues to provide payment for local government bonds. On the other hand, the surcharge allows a more efficient form of taxation whereby the tax is imposed only on those utilizing the final project. In this case, the tax exemption may be necessary for the purpose of tax efficiency. In either case, the preference provided to municipal event centers under this tax expenditure is substantial, and improves the competitiveness of these event offerings.

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

D. Tax Expenditures for Health Care Facilities and Programs

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

Twelve such tax expenditure programs have been identified. Of those twelve, data from tax returns could be used to obtain the direct revenue cost for only six programs: the Health Care Practitioners Deduction, the Unpaid Doctor Services Credit, the Hospitals Credit, the Rural Health Care Practitioners Credit, the NM Medical Insurance Pool (NMMIP) Assessment Credit, and the Medical Care Savings Accounts Exemption. The revenue cost of three additional programs could be estimated with indirect data: the Medical Services Deduction, the Prescription Drugs Deduction, and the Hospitals Deduction. For the remaining three programs, no estimate of direct revenue cost could be made.

The benefits of these tax expenditures must be measured against the health policy goals with which they were enacted. This is an exceedingly difficult task as none of the tax expenditures provides a mechanism to evaluate their efficacy within their enabling statute. The

studies needed to evaluate the specific impact of each program would be time consuming and require a joint effort between the New Mexico Department of Health, the Taxation and Revenue Department and other agencies.

Health Care Practitioners Deduction against Gross Receipts Tax A tax expenditure is created by the deduction against taxable gross receipts the receipts of licensed health care practitioners from payments by managed health care providers or health care insurers for commercial contract services or Medicare Part C services provided by a health care practitioner.

Although this tax expenditure could be considered an antipoverty measure, its structure might not support that claim. Only receipts from managed care, health insurance and Medicare Part C qualify for this deduction. This notably excludes receipts directly made by a patient for copayments and deductibles; however, the cost savings from the deduction might be passed on in the form of reduced premiums. Moreover, individuals with some form of private health insurance (i.e. individuals in a position to benefit from this deduction) are less likely to face poverty, **and are therefore not likely to need this tax expenditure. The tax expenditure doesn't benefit the uninsured at all.** Finally, providers reimbursed by the Medicaid program, which serves low-income households, are not eligible for the deduction.

The primary rationale given for the adoption of this policy was that some managed care organizations refused to reimburse providers for the GRT. However, the GRT is imposed on sellers generally, and no general provision pre-empts the tax when buyers decline to reimburse for it. Thus, the true purpose of this statute should be seen as one intended to subsidize health care providers.

Table 31: HEALTH CARE PRACTITIONERS' DEDUCTION AGAINST GROSS RECEIPTS TAX (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Health Care Practitioners Deduction Against GRT	19,457	\$54,609.7	19,423	\$57,693.2	19,064	\$59,473.4	19,281	\$64,293.3	NA	\$70,409.9

As reflected in Table 31, the Health Care Practitioners' Deduction has averaged nearly \$61.3 million over the last five years, and is escalating at more than 5.2% per year. *Separate sections of statute provide that the revenues of municipal and county governments are to be held harmless from the deduction. Although these hold-harmless transfer payments are not strictly tax expenditures in and of themselves, any analysis of the cost of the underlying deduction must include their effects; in the absence of the deduction, no hold-harmless payment would occur.* The hold harmless payments distribute to County and Municipal governments approximately forty percent (40%) of the tax expenditures reflect in Table 31 (i.e.,

are included in the tax expenditure shown in the table), and are paid directly from the state's General Fund. Annually, the direct revenue cost of the tax expenditure is equal to roughly 1.3 percent of total General Fund revenues when both the foregone revenue and the hold-harmless payments are considered.

Medical Services Deduction against Gross Receipts Tax A tax expenditure is created by the deduction of receipts from payments by the United States government or any agency thereof for Medicare services from payments by a third-party administrator of the federal TRICARE program, and from payments by or on behalf of the Indian Health Service of the U.S. Department of Health and Human Services received by certain medical practitioners (e.g., medical-related facilities, receipts of medical doctors and osteopathic physicians) for the provision of medical and other health services to covered beneficiaries.

No direct data for this tax expenditure currently exist as the enabling statute provides no means for tracking the use of this deduction. Whereas the most notable of the health care deductions, Section 7-9-93 NMSA 1978, requires the taxpayer to separately report the deduction, this tax expenditure makes no such provision. Data from the Centers for Medicare and Medicaid Services (CMS) on Medicare expenditures by state of residence⁴⁹ were used to estimate the cost of this tax expenditure with respect to only the Medicare deduction. State level data were not available for TRICARE or Indian Health Service expenditures.

Table 32: MEDICAL SERVICES DEDUCTION AGAINST GROSS RECEIPTS TAX (\$thousands)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Medical Services Deduction Against GRT	\$36,913.1	\$39,808.3	\$42,859.5	\$45,171.4	\$47,107.7

This tax expenditure results in less expensive medical care under specific programs by avoiding the gross receipts tax liability. However, no data currently support or detail the exact impact this expenditure (e.g., additional health care services rendered to New Mexicans, or whether these services would be decreased if a gross receipts tax obligation were imposed). Until this data exists, the benefits cannot be quantified. The effective decrease in medical care costs for those programs primarily benefits the entity funding those programs, the federal government. Receipts from Medicaid spending do not qualify for this or any other health care tax expenditures.

⁴⁹ Centers for Medicare and Medicaid Services, "Health Expenditures by State of Provider, 1980-2009" <http://www.cms.gov/NationalHealthExpendData/Downloads/provider-state-estimates.zip>, accessed May 24, 2012.

Prescription Drugs Deduction against Gross Receipts Tax A tax expenditure is provided by this deduction against gross receipts for sales related to certain drugs and medical equipment. This tax expenditure reduces the tax liability of certain sellers of prescription drugs, oxygen, and oxygen services. The benefit of the tax expenditure could filter down to the purchaser of those goods, whether that is an individual or an insurance company, through decreased costs. It is inferred that the purpose of this deduction is to decrease the final cost of prescription drugs, oxygen, and oxygen services.

No direct data for this tax expenditure currently exist as the enabling statute provides no means for tracking the use of this deduction. Data on total retail sales of prescription drugs in New Mexico in calendar year 2010⁵⁰ were obtained, and growth factors from the Centers for Medicare and Medicaid Services' projections of health care spending⁵¹ were used to attain estimates of foregone revenue for the remaining calendar years. Data is not available for expenditures on oxygen and oxygen services.

Table 33: PRESCRIPTION DRUGS AGAINST GROSS RECEIPTS AND GOVERNMENTAL GROSS RECEIPTS TAXES (\$thousands)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Prescription Drugs Deduction Against GRT & GGRT	\$50,549.6	\$53,965.5	\$56,060.2	\$58,424.1	\$61,310.8

The legislation enacting this statute repealed a personal income tax credit that reimbursed a portion of income spent on prescription drugs. Restructuring the tax expenditure as a deduction rather than a credit has several implications. One concern is that the deduction may primarily benefit the sellers of these goods, extending only a possible indirect benefit to the purchaser. An extension of this first point is that insurance companies' prescription coverage can now receive the indirect benefit. In that case, the insured's co-pay (i.e., their upfront cost of the prescription or oxygen) remains unchanged, but the cost savings of the insurer could be passed down through lower premiums. The final implication is that the deduction provides very limited information about the distribution of the benefits of the tax expenditure relative to a personal income tax credit.

Unpaid Doctor Services Provided in a Hospital Credit Licensed medical doctors and licensed osteopathic physicians may claim a credit against gross receipts taxes due for one hundred percent (100%) of the value of unpaid bills for medical care services performed while

⁵⁰ The Kaiser Family Foundation, *statehealthfacts.org*. Data Source: "Total Sales for Retail Prescription Drugs" -- SDI Health, L.L.C.: Special Data Request, 2011, accessed May 24, 2012.

⁵¹ Centers for Medicare and Medicaid Services, "National Health Expenditure Projections, 2010-2020" <http://www.cms.gov/NationalHealthExpendData/Downloads/proj2010.pdf>, accessed May 24, 2012.

on call to a hospital. This tax expenditure provides an incentive for certain licensed medical professionals to provide health care services to individuals who are either unable or unwilling to pay for those services.

The direct tax expenditure subsidizes medical care for individuals who are unable or unwilling to pay for it, but for whom the cost of that care cannot be reimbursed through either Medicaid or an indigent health care program. Data concerning the number of patients benefitting from these services and the average unpaid bill are not available.

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

Table 34: UNPAID DOCTOR SERVICES PROVIDED IN A HOSPITAL CREDIT AGAINST GROSS RECEIPTS TAX (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Unpaid Doctor Services Credit Against GRT	N/A	N/A	45	\$269.7	211	\$488.9	329	\$1,252.2	312	\$1,379.9

Note, in particular, the rapid escalation of this tax expenditure in the last four years, increasing at an annual rate exceeding fifty percent (50%) annually. The federal Emergency Medical Treatment and Active Labor Act (EMTALA) require hospitals and their physicians to provide medical screening examinations and stabilization of all individuals seeking emergency care, regardless of ability to pay. Although the cost of some of this care can be reimbursed through Medicaid or through a program established pursuant to the Indigent Hospital and County Health Care Act [Section 27-5-1 NMSA 1978], some of the care will not be reimbursed. This tax expenditure transfers the burden of an unfunded federal mandate from certain licensed medical professionals to the State.

A concern with this provision is whether the value of unpaid expenses can be measured with accuracy, and prevent the over-subsidization of these costs.

Hospitals Deduction against Gross Receipts Tax A tax expenditure is created by the deduction against gross receipts of fifty percent (50%) of the receipts remaining after all other appropriate deductions are taken by hospitals licensed by the Department of Health. The tax

expenditure reduces the operating cost of hospitals by eliminating some portion of their tax liability. It can be inferred that the tax expenditure intends to lower the cost of health care received at a hospital, but no data exist to assess the efficacy of this incentive.

No direct data for this tax expenditure currently exist as the enabling statute provides no means for tracking the use of this deduction. Gross receipts tax data from the hospitals sector, NAICS code 622000, were obtained from the Taxation and Revenue Department's RP-80 Report and used to estimate the direct revenue cost of the deduction.

Table 35: HOSPITALS' DEDUCTION AGAINST GROSS RECEIPTS TAX (\$thousands)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Hospitals Deduction Against GRT	NA	\$39,122.3	NA	\$44,689.9	NA	\$40,615.3	NA	\$41,198.3	NA	\$41,275.7

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

A concern with this and other health-care related deductions is that they eliminate a significant and growing portion of the consumption base from taxation. As a result, the State could be forced into taxing other activities, including investment and income. Taxes on investment and income have been proven to have more negative impacts on the economy than taxes on consumption. Another concern is that a significant portion of state revenue is dedicated to providing health care benefits, especially to low-income families. Tax expenditures like this one, however, do not discriminate based on income. If some of the benefits accrue to medical service providers, for example, they may benefit some of the highest income families in the state. Thus, the use of deductions is poorly targeted in their impacts on income distribution.

Hospitals Credit A tax expenditure is created as a credit against gross receipts tax for hospital facilities, licensed by the Department of Health, providing emergency or urgent care, inpatient medical care and nursing care for acute illness, injury, surgery or obstetrics and includes a facility licensed by the department of health as a critical access hospital, general hospital, long-term acute care hospital, psychiatric hospital, rehabilitation hospital, limited services hospital and special hospital. It is inferred that the tax expenditure is intended to provide economic subsidy to health care.

Table 36: HOSPITALS' CREDIT AGAINST GROSS RECEIPTS TAX (\$thousands)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Hospitals Credit Against GRT	N/A	N/A	57	\$592.0	200	\$4,711.1	198	\$7,462.4	211	\$9,957.2

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

New Mexico Medical Insurance Pool Assessment Credit A tax expenditure is provided as a credit allowed against the Insurance Premium Tax for a portion of an insurer's required assessments paid to the New Mexico Medical Insurance Pool ("NMMIP"). Previously this *Report* has discussed how the preferential tax rate under the Premium Tax serves the insurance companies. However, beyond that potential stimulus the NMMIP Credit explicitly creates a situation where the State's General Fund indirectly finances the NMMIP without an appropriation⁵².

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

Table 37: NMMIP ASSESSMENT CREDIT AGAINST INSURANCE PREMIUM TAX (\$thousand)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
NMMIP Assessment Credit Against Insurance Premium Tax	\$14,498.9	\$26,262.5	\$40,353.5	\$47,244.8	\$57,603.7

⁵² New Mexico Medical Insurance Pool, "How are operations of the Pool financed?", Frequently Asked Questions, : <http://nmmip.com/2009/faq.htm>, accessed April 12, 2012.

As is shown in Table 37: NMMIP ASSESSMENT CREDIT AGAINST INSURANCE PREMIUM TAX (\$thousand), the rapid escalation of the credits against NMMIP Assessments, increasing at more than thirty-one percent (31%) per year in the past five years, imposes a substantial impact on the General Fund. Moreover, the federal Patient Protection and Affordable Care Act⁵³ (PPACA) could have implications for this tax expenditure as its provisions are phased in through 2014. By way of a health insurance exchange or some other mechanism that ensures coverage for individuals currently covered under the NMMIP, the PPACA could render the state's insurance pool obsolete. If the NMMIP were no longer in existence, assessment payments from insurers wouldn't occur and subsequently, there would be no credits claimed on their insurance premium tax returns. This is unlikely to impact General Fund revenues until FY2015, and even then, other revenue losses due to the fundamental restructuring of health care could offset any gains.

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

Table 38: RURAL HEALTH CARE PRACTITIONER CREDIT AGAINST PERSONAL INCOME TAX (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Rural Health Care Practitioner Credit Against PIT	N/A	N/A	1,276	\$5,172.2	1,385	\$5,464.1	1,447	\$5,655.5	1,068	\$4,181.9

The purpose of the credit is to increase the number of primary care physicians working in the rural areas of New Mexico. The credit averaging more than \$5.1 million for the last four years, as reflected in Table 38, provides financial support to community-based primary care health clinics throughout the state ensuring the provision of basic health care for the underserved. It helps bring physicians to rural areas of the state. Although some net economic activity gains may be realized by providing health care service directly to rural residents, it is difficult to assert that there is any particular net increase in services provided. To the extent that *incremental net*

⁵³ Pub. Law 111-148, 124 Stat. 119 through 124 Stat. 1025.

increases in health care services are provided, a comprehensive (direct, indirect and induced) economic output multiplier of 1.689 can be asserted.⁵⁴

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

Table 39: MEDICAL CARE SAVINGS ACCOUNT EXEMPTIONS AGAINST PERSONAL INCOME TAX
((\$thousands)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Medical Care Savings Accounts Exemption Against PIT	302	\$43.3	357	\$57.8	816	\$63.4	804	\$59.6	782	\$4,763.7

The potential economic benefit of this provision is to encourage medical savings accounts associated with the hoped-for improved efficiency in managing health care expenses. However, as Table 39 makes clear, there has been a rapid escalation value of exemptions claimed in the most recent year that data is available, creating a substantially increased impact on General Fund revenues.

Construction of Public Health Care Facilities Deduction against Gross Receipts Tax and Sole Community Provider Hospital Construction Deduction against Gross Receipts Tax Receipts from the sale of construction services, equipment, and material to a foundation or nonprofit organization for use in the construction of new facilities for a sole community provider hospital located in a federally designated health professional shortage area (HSPA) are deductible from gross receipts. This deduction intends to provide an incentive for the construction of new medical facilities located in HPSAs.

HPSAs are designated using five criteria: population-to-primary care physician ratio, percent of the population with incomes below the poverty level, infant mortality rate, low birth weight rate,

⁵⁴ Sector 396, Medical and diagnostic labs and outpatient and other ambulatory care services, Final Output Multipliers (Direct, Indirect, and Induced effects), New Mexico State Table, Minnesota IMPLAN Group, Inc., © 2012.

and travel time or distance to nearest available source of care. There are approximately 369 HPSAs in New Mexico as defined by county, geographical area, census tract, or other type.⁵⁵

The statutes provide no means for reporting the deduction's usage. Consequently, no estimate of the expenditure's direct revenue cost can be made. Adding a reporting mandate or restructuring the incentive as a tax credit would allow for analysis of the expenditure's cost.

Hearing and Vision Aides Deduction against Gross Receipts Tax Sales of vision aids, hearing aids, or related services are deductible from gross receipts. There is no means to estimate this tax expenditure's impact.

E. Tax Expenditures (expressly) for Public Welfare, Elderly and Low Income Protections

Tax expenditures providing benefit to public welfare, the elderly and low income residents are among the most important of the social purposes served by these tax policies. The single largest of the general public welfare tax expenditures relates to the deduction of retail food sales against the gross receipts tax.

Retail Food Sales Deduction A tax expenditure is provided by a deduction from gross receipts tax liability for qualifying food sales at retail food stores. One possible purpose of the deduction would be as an anti-poverty measure since low-income households spend a greater share of their income on food than do high-income households. However, the fact that the deduction applies to all qualifying retail food sales, and the fact that food purchased with food stamps is deductible under a separate section of statute, suggests that its tax policy purpose is not just to provide low-income benefits. Another argument for the existence of this expenditure is that because food is a necessity it should be taxed at a lower rate. In addition to the foregone revenue from the deduction, the hold-harmless transfer to local governments means that the full revenue burden of the food deduction falls on the State.⁵⁶ Table 40 reports the claims for retail food sales deduction against gross receipts taxes.

⁵⁵ For a full listing of New Mexico HPSAs visit <http://hpsafind.hrsa.gov/HPSASearch.aspx>.

⁵⁶ The "hold harmless" provision of Sections 7-1-6.46 and 7-1-6.47 NMSA 1978 require distribution to local governments of monies from the General Fund to compensate those government entities from the revenue costs of the retail food sales deductions. Even if you treat food sales as a merit good, and assert that this characterization should result in its treatment as a tax base definition issue for gross receipts taxation, the hold harmless payments from the General Fund would certainly be treated as a tax expenditure.

Table 40: RETAIL FOOD SALES DEDUCTIONS AGAINST GROSS RECEIPTS TAX (\$thousands)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Food Sales Deductions Against GRT	3,480	\$160,419.1	3,419	\$226,609.0	3,265	\$199,174.3	3,184	\$205,415.8	NA	\$219,425.0

The foregone revenue from the retail food sales deduction against gross receipts has averaged in excess of \$202.2 million per year during the last five years, and is roughly equal to ten percent (10%) of annual General Fund Gross Receipt Tax revenue and roughly four percent (4%) of total General Fund revenues. In addition to the revenue costs shown in the table, the food deduction imposes a relatively high administrative cost because the deduction must be separately stated on the GRT return, and also because the definitions and limitations on the deduction create significant taxpayer uncertainty.

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

Textbook Exemptions Against Gross Receipts Tax This tax expenditure reduces the tax liability of certain taxpayers engaged in selling textbooks and other materials required for courses at a public post-secondary educational institution. Qualifying receipts are from textbooks sold by a bookstore located on the campus of the institution and operated pursuant to a contractual agreement with that institution to a student enrolled at the institution who displays a valid student identification card. It is inferred that the purpose of the tax expenditure is to reduce the cost of textbooks and other materials for students of qualified institutions. As shown in Table 41, this exemption produces a significant economic benefit that is estimated to have averaged \$6.3 million per year for the last five years.⁵⁷

⁵⁷ Data from ten major New Mexican institutions of higher education is used to create these estimates, relying on these institutions estimated cost of books and supplies for a given year, and enrolled in their respective programs. An estimate of the total dollar value of textbooks sold in a given institution is, therefore, equal to the number of students attending that institutions multiplied by the estimated cost of books and supplies. This method is used to estimate the amount of forgone revenue for the FY 2011, and extrapolated to FY 2007 to 2010 by deflating backwards by using the 5.6%, annual average increase in post-graduate education costs (2000-2010). [Source: www.CollegeBoard.org]

Table 41: TEXTBOOK SALES EXEMPTION FROM GROSS RECEIPTS TAXES (\$thousands)

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

Low Income Tax Expenditures Against Personal Income Tax Three significant tax expenditure programs are designed to benefits low-income households through their personal income tax liability: the Low Income Comprehensive Tax Rebate; the Low Income Property Tax Rebate; and the Low- and Middle-Income Persons Exemption. Collectively these three tax expenditures provide for approximately \$48.1 million per year economic benefit to low income taxpayers during each of the last five years. This data is summarized in Table 42.

Table 42: LOW INCOME TAX EXPENDITURES AGAINST PERSONAL INCOME (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Low Income Comprehensive Tax Rebate against PIT	271,848	\$24,244.4	290,516	\$25,553.9	288,841	\$24,948.6	272,759	\$24,823.7	250,745	\$21,132.4
Low Income Property Tax Rebate against PIT	73	\$20.2	82	\$22.7	66	\$20.0	1,219	\$352.1	1,406	\$407.4
Low- and Middle-Income Persons Exemption against PIT	499,695	\$16,558.9	621,393	\$25,673.1	626,866	\$25,824.7	617,032	\$26,042.8	582,975	\$24,799.5
TOTAL	NA	\$40,823.5	NA	\$51,249.7	NA	\$50,793.3	NA	\$51,218.6	NA	\$46,339.3

The wide-spread use of these tax expenditures against personal income tax demonstrate the role that low-income social support programs play in New Mexico.

Welfare-to-Work Credit Against Personal and Corporate Income Tax A tax expenditure was created as a credit against personal and corporate income tax available for companies participating in the federal welfare-to-work program. This credit is available to certain companies, located mostly in rural counties, who employ welfare recipients. Its purpose

was to encourage the employment of welfare recipients in the hopes that they will no longer need welfare. The credit equals fifty percent (50%) of the federal welfare-to-work credit⁵⁸ for which the employer is eligible. For each qualified person hired, the employer receives from the state fifty percent (50%) of the credit earned for federal purposes. However, Beginning January 1, 2008, the federal credit was repealed and a new federal work opportunity credit was established. Employers who qualify for the new federal work opportunity credit will no longer qualify for the New Mexico credit.

Table 43: WELFARE-TO-WORK CREDITS AGAINST CORPORATE AND PERSONAL INCOME TAX (\$thousand) -- (Federal Welfare-to-Work Credit was Repealed 1/2008)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Welfare to Work Programs Credit against CIT	0	\$0.0	4	\$52.0	1	████	3	\$124.7	NA	NA
Welfare to Work Programs Credit against PIT	0	\$0.0	4	\$12.4	3	\$0.3	0	\$0.0	0	\$0.0
TOTAL	0	\$0.0	8	\$64.4	4	████	3	\$124.7	0	\$0.0

Elderly Population Tax Expenditures A number of tax expenditures are provided as economic assistance to the elderly population of New Mexico. Averaging nearly \$12 million per year for the last five years, these tax expenditures against PIT liability provide significant economic benefits to the elderly citizens of New Mexico as shown in Table 44.

⁵⁸ Claimed under 26 USC Section 51A.

**Table 44: ELDERLY POPULATION TAX EXPENDITURES AGAINST PERSONAL INCOME TAXES
(\$thousands)**

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Persons 100 Years of Age or Older Exemption against PIT	83	\$72.3	95	\$69.1	96	\$98.0	95	\$86.4	73	\$53.5
Persons 65 Year of Age or Older Property Tax Rebate against PIT	19,475	\$3,639.8	19,170	\$3,594.2	18,408	\$3,507.3	17,290	\$3,313.1	16,245	\$3,163.3
Persons 65 Years of Age or Older or Blind Exemption against PIT	76,349	\$4,898.8	81,903	\$5,256.7	83,657	\$5,335.3	85,285	\$5,477.8	80,813	\$5,148.2
Unreimbursed or Uncompensated Medical Expenses for Persons 65 Years of Age or Older Exemption against PIT	1,337	\$142.0	1,519	\$165.1	1,644	\$167.8	1,556	\$158.4	1,180	\$125.1
Unreimbursed or Uncompensated Medical Expenses for Persons 65 Years of Age or Older Credit against PIT	1,038	\$2,900.8	1,276	\$3,560.2	1,341	\$3,750.6	1,326	\$3,703.0	3,127	\$1,235.6
TOTAL	NA	\$11,654	NA	\$12,645	NA	\$12,859	NA	\$12,739	NA	\$9,726

[NOTE: NA due to double counting as individuals may be eligible for multiple programs.]

Children, Working Families and Educational Trust Tax Expenditures A group of tax expenditures are generally directed to economically support New Mexico's children, education and families. In general, it can be asserted that these programs provide direct economic support to children and families that supplant other forms of social support programs. In addition to the specific tax credits that are reflected in Table 45, the Head-of-Household Property Tax exemption described below would be included in the general category of tax expenditures.

Table 45: CHILDREN, WORKING FAMILIES AND EDUCATIONAL TRUST TAX EXPENDITURES (\$thousands)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Child Care Credit against PIT	3,688	\$1,378.3	3,156	\$1,186.1	4,078	\$1,446.6	4,356	\$1,604.7	4,139	\$1,520.5
Corporate Supported Child Care Credit against CIT	█	██	█	██	█	██	█	██	NA	NA
Educational Trust Fund Payments Deduction against PIT	3,719	\$1,538.7	4,148	\$1,981.5	3,989	\$1,156.5	3,634	\$937.4	3,278	\$824.3
Special Needs Adopted Child Tax Credit against PIT	0	\$0.0	532	\$867.5	654	\$1,082.0	684	\$1,163.0	692	\$1,207.5
Working Families Tax Credit against PIT	N/A	N/A	183,639	\$30,146.9	192,469	\$40,358.6	198,061	\$45,335.2	203,447	\$46,293.5

Child Care Tax Credits Opportunity is provided under both personal corporate income tax programs to take a credit for the expenses of child care services. A resident who files an individual New Mexico personal income tax return who has a modified gross income of not more than the equivalent of double the federal minimum wage may take a credit for forty percent (40%) of actual compensation paid to a caregiver and may not exceed \$480 for each qualifying dependent or \$1,200 for all qualifying dependents in any taxable year. Corporations providing or paying for licensed child care services for employees' children under 12 years of age may deduct thirty percent (30%) of eligible expenses from their corporate income tax liability (up to \$30,000). Approximately \$1.5 million per year of tax relief for child care services has been provided over the last five years under these tax expenditure programs.

Educational Trust Fund Payment Deductions The tax expenditure against personal income tax is allowed as a deduction from net income in an amount equal to the payments made by the taxpayer into the education trust fund pursuant to a college investment agreement or prepaid tuition contract under the Education Trust Act (Section 21-21K-1 NMSA 1978). Nearly \$1.3 million per year has been deducted from personal income tax liabilities for the deposits into this educational trust fund by New Mexico taxpayers, building asset balances that will be used to offset the future educational costs of these taxpayers' dependents.

Special Needs Adopted Child Tax Credit This tax expenditure provides financial incentive for the adoption of special needs children. Enacted in 2007, a taxpayer who has adopted a special needs child (an individual certified as a "difficult to place child") may claim a credit in the amount of one thousand dollars (\$1,000). If the amount of credit due to a taxpayer exceeds the taxpayer's individual income tax liability, the excess is refunded. This tax expenditure has provided credits of nearly \$1.1 million per year in support of these special needs adoption activities since its enactment.

Working Families Tax Credit Individuals may claim a credit equal to ten percent (10%) of their federal Earned Income Tax Credit, and provides crucial tax relief to working, low-income families, helping them close the gap between what they earn and what they need to make ends meet. Assisting a significant number of New Mexican (e.g., averaging more than 190,000 taxpayers per year), and providing more than \$40.5 million per year in direct tax credits, the tax expenditure must also be recognized to be a direct monetary injection into the New Mexico economy.

Head-of-Household Exemption Against Property Tax Up to two thousand dollars (\$2,000) of the taxable value of residential property is exempt if the property is owned by the head of a family who is a New Mexico resident or if the property is held in a grantor trust. The direct revenue cost of the tax expenditure totaled \$16.25 million with respect to property tax in FY 2011. The revenue impact is spread among all property tax beneficiaries, including school districts, municipalities, counties, community colleges, hospitals and others.

It is important to note that the assessment authorities may do a poor job in educating taxpayers on the exemption. Based on the property tax abstracts, there are about 281,000 taxpayers taking advantage of this exemption. The 2.0 million population of New Mexico would imply 800,000 households, assuming 2.5 persons per household. Assuming that there is roughly 80% home ownership in the state would imply 640,000 homeowners eligible for the Head-of-Household Exemption. Even if this estimate is high, it still implies a poor job of promoting the exemption. Improved public outreach should be implemented.

Non-Profit Elderly Care Facilities Exemption This tax expenditure exempts from gross receipts taxes the receipts of nonprofit entities operating facilities for retired elderly persons, and promotes the private provision of housing for retired elderly persons through such nonprofit entities. As the exemption applies to only nonprofit entities, it is likely that the benefits of the exemption are passed on to retired elderly persons through decreased cost of accommodations. The expenditure serves to promote the social welfare of retired elderly persons. The exemption is estimated to have provided nearly a \$1 million per year of support in recent years (Table 46), however no data exist to assess the efficacy of this tax policy incentive.

**Table 46: NON-PROFIT ELDERLY CARE FACILITIES EXEMPTION FROM GROSS RECEIPTS TAX
(\$thousands)**

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Non-Profit Elderly Care Facilities Against GRT	\$892.73	\$881.82	\$912.26	\$908.60	\$932.43

Veterans-Related Tax Expenditures There are several tax expenditures that provide economic support and recognition of the service provided by New Mexico armed services veterans and servicemen. The first of these is the life insurance premium exemption against personal income tax liability for members of the National Guard. As shown in Table 47, this has reduced personal income tax liability by more than \$30,000 per year for an average of 990 taxpayers who are eligible members of the National Guard (i.e., an average veterans tax benefit of approximately \$300 per year).

**Table 47: NATIONAL GUARD LIFE INSURANCE PREMIUMS EXEMPTION FROM PERSONAL INCOME TAX
-- FILED CLAIMS (\$thousands)**

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
National Guard Member Premiums Paid for Life Insurance Exemption against PIT	783	\$10.9	952	\$49.6	1,079	\$25.4	1,113	\$45.8	1,027	\$20.1

Disabled Veterans Exemption Against Property Tax The property of a disabled veteran, including joint or community property of the veteran and the veteran's spouse, is exempt from property taxation if it is the disabled veteran's principal place of residence. The direct revenue cost of the tax expenditure totaled \$9.86 million with respect to property tax in FY 2011. The tax expenditure is generally considered to be a social obligation to the disabled veterans and is some measure of recognition and support for the economic impact with which they are burdened by their service-related disability.

Veterans Exemption Against Property Tax Up to four thousand dollars (\$4,000) of the taxable value of property, including the community or joint property of husband and wife, is exempt from the tax if the property is owned by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident or if the property is held in a grantor trust. The direct revenue cost of the tax expenditure totaled \$8.37 million with respect to property tax in the FY 2011. This revenue impacts is spread among all property tax beneficiaries, including school districts, municipalities, counties, community colleges, hospitals and others.

Other Tax Expenditures for Public Welfare, Elderly and Low Income Protections

The following additional tax expenditures may be identified in New Mexico's tax code as providing benefit to the public welfare, elderly or low income residents. However, there has been no data reported, or there is no requirement to report data that allows for any estimation of the lost revenue under these tax expenditure programs, and correspondingly, no ability to estimate the cost/benefit justification for the tax programs.

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

F. Tax Expenditures for Specific Not-for-Profit Enterprises

Certain New Mexico enterprises gain their status as not-for-profit enterprises under federal and state authority in recognition that they serve economic and social purposes that are significant in their public character, and are valuable in improving many diverse elements of social wellbeing.

However, as is shown in the Table 48 these entities produce very significant revenues,⁵⁹ and details of the largest category of not-for-profit entities — that is, public charities — is reflected description of the organization types shown in Table 49. But for the explicit non-taxable provisions of New Mexico statute, the revenues might otherwise be subject to taxation. Therefore, it is informative to understand the magnitude of these tax expenditure – if for no other reason than to understand the scope of economic resources that can be associated with the activities of these not-for-profit organizations within the State of New Mexico. In many instances, these organizations receive deductions and exemptions directly related to operating or construction costs, many of which are funded through private donation. Such a reduction in cost could allow a greater portion of funding to flow to the beneficiary of the nonprofit organization.

⁵⁹ Data extracted from National Center for Charitable Statistics, Center on Nonprofits and Philanthropy, Urban Institute, Washington, DC [<http://nccsdataweb.urban.org/PubApps/profile1.php?state=NM> accessed May 31, 2012].

Table 48: NEW MEXICO NOT-FOR-PROFIT ENTITIES, 2010

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

There is significant business activities undertaken by many of these not-for-profit public charities, and as is reflect in table x the Health and Medical Research registered public charities stand out as typically representing very large business organizations on an annual revenue basis.

Table 49: NEW MEXICO NOT-FOR-PROFIT PUBLIC CHARITIES, BY TYPE, 2010

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

Table 49 also lists the number and total revenue of New Mexico public charities by advocacy type. Religious organizations constitute the largest group of public charities representing twenty-three percent (23%) of the registered entities, followed by educational

organizations, which constitute fourteen percent (14%) of all registered public charities. In terms of total revenue, New Mexico health organizations produce the lion's share, comprising nearly sixty percent (60%) of total public charity revenues. Human services charities generate an additional ten percent (10%) of New Mexico public charity revenues.

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

Nonprofit Facilities Exemption against Gross Receipts Tax Receipts of nonprofit entities from operating facilities designed and used for providing accommodations for retired elderly persons are exempt from gross receipts tax.

As the exemption applies to only nonprofit entities, it is likely that the benefits of the exemption are passed on to retired elderly persons through decreased cost of accommodations. The expenditure serves to promote the social welfare of retired elderly persons. No data exist to assess the efficacy of this incentive.

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

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

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

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

This exemption encourages nonprofits to manage the functions of these services, which provide social benefit in the form of information and guidance. Such service would be difficult to

provide through the private sector as it would be nearly impossible to charge for such information.

Bus Use by Businesses Operated by Religious or Nonprofit Organizations Exemption against Weight Distance Tax Exempted from the Weight Distance Tax is the use of highways by buses operated by religious and charitable institutions. This exemption reduces operating costs.

Fees from Social Organizations Exemption against Gross Receipts Tax Receipts from dues and registration fees of nonprofit organizations are exempt from gross receipts tax. Such membership fees are used by nonprofits to cover operating costs. This exemption allows more funding to flow to the beneficiary of the nonprofit, and allows nonprofits to reduce fees and thereby attract a greater membership. Nonprofits often secure additional funding through donations as a result of meeting certain membership levels.

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

Religious Activities Exemption against Gross Receipts Tax Receipts of a minister of a 501(c)(3) religious organization from performing religious services are exempt.

G. Tax Expenditures and Natural Resource Tax Policy

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

The resource endowment of the state is composed of many renewable and non-renewable resources that provide the foundation for the cultural, social and economic organization of our state. A significant component of this natural wealth with which New Mexico is endowed includes oil, natural gas, coal, minerals and other natural resource substances that, once removed and used, are lost forever to the citizens of the state. The severance and use of these non-renewable resources is generally subject to one-time taxes on the economic values obtained, which are distributed to several different funds, including two permanent endowed trusts for

future generations as well as other operating and capital outlay functions of state and local government.

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

Therefore, in the context of the *2012 New Mexico Tax Expenditure Report* it is appropriate to discuss taxation of natural resources both with respect to the setting of tax rates, and the revenue foregone by allowing certain credits, deduction, exemptions or preferential taxation of the extracted resources. It is certainly true that *some* tax policies related to natural resource taxation can properly be characterized as *tax expenditures*, but it is equally correct to understand that many of the policies simply define the tax base and baseline of tax revenues that are properly recovered from the severance of the state's non-renewable natural resource endowments.

New Mexico applies several excise taxes to businesses that extract natural resources. Revenues from these taxes benefit state and local operations as well as capital outlay programs and one of the state's permanent endowment funds. Most states with large endowments of natural resources also impose some form of excise taxation on their extraction industries.

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

Oil and Natural Gas Tax Policy Issues The production of oil and natural gas in New Mexico provides for significant share of the state's gross state product. Table 50 below reflects the volume and value of oil and natural gas production subject to taxation in New Mexico.

Table 50: NEW MEXICO OIL AND NATURAL GAS PRODUCTION VOLUMES AND GROSS VALUES

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Volume (million bbls or bcf)	Value (\$MM)	Volume (million bbls or bcf)	Value (\$MM)	Volume (million bbls or bcf)	Value (\$MM)	Volume (million bbls or bcf)	Value (\$MM)	Volume (million bbls or bcf)	Value (\$MM)
Oil Production	60.1	\$3,553	60.0	\$5,628	62.3	\$4,037	62.9	\$4,470	68.8	\$5,840
Natural Gas Production	1,513	\$9,931	1,429	\$11,996	1,387	\$7,780	1,294	\$6,681	1,245	\$6,837
TOTAL	NA	\$13,484	NA	\$17,624	NA	\$11,817	NA	\$11,151	NA	\$12,677

The total economic value of oil and natural gas production in New Mexico has averaged more than \$13.3 billion over the last five fiscal years. With the state's gross state product approaching \$80 billion, approximately one-sixth of the total output of the state is directly from production of oil and natural gas resources. This measure does not take into account the employment and related business activities that are tied to these oil and natural gas production activities. State and local revenues from direct production activities are a major contribution to the state's economy. In FY11 direct production taxes provided approximately \$956.9 million in revenues, with an additional \$769.6 million earned in royalties from state and federal mineral leases.

Note that the following discussion of oil and natural gas tax policy also frequently includes carbon dioxide, helium and other non-hydrocarbon gases. The tax programs associated with these other resources (e.g., Emergency School Tax) provide for the common reporting of tax liabilities on all the resources, and no effort is made to segregate the other resources from the primary oil and natural gas resources. Carbon dioxide is the largest of these other resource tax revenue streams, yet constitutes less than one and one-half percent (1.5%) of the total revenues. Since carbon dioxide is produced by the oil industry for use in its own operations, the policy issues raised by its taxation are similar to those for the oil and gas taxes as a whole.

Intergovernmental Production Tax Credit This tax expenditure reduces the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax, and the oil and gas ad valorem production tax otherwise imposed by allowing a credit for a portion of tax where an Indian nation, tribe or pueblo also imposes taxes on production. The credit is equal to seventy-five percent (75%) of the lesser of: (1) the aggregate amount of tax liability in effect on

March 1, 1995, imposed by the Indian nation, tribe or pueblo upon the qualifying wells; or (2) the aggregate amount of the current tax liability imposed by the state from qualifying wells.

Table 51: INTERGOVERNMENTAL OIL & NATURAL GAS PRODUCTION TAX CREDIT (\$thousand)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Intergovernmental Production Tax Credit	13	\$5,599.0	15	\$6,102.0	12	\$3,751.0	13	\$2,786.0	12	\$3,030.0

The intergovernmental production tax credit has resulted in a revenue reduction to the state averaging \$4.25 million over the last five fiscal years. The benefits of this intergovernmental tax credit relate to tax policy and equitable taxation where multiple tax authorities have jurisdiction. Although there is no requirement that the state forego revenues in favor of the Indian sovereign's right to impose production taxes, such tax policy provides for a balancing of socio-economic concerns. Additionally, recognizing that multiple tax authorities may have jurisdiction, production properties can be economically disadvantage vis-à-vis competing properties (not subject to multiple jurisdictional tax authorities), and this tax expenditure reflects a tax policy that is deferential to tribal authorities tax jurisdiction in favor of maintaining the competitive market position of subject properties.

Jicarilla Apache Tribal Capital Improvement Tax Credit Against the Emergency School Tax A tax expenditure exists by provision of a credit against the Oil and Gas Emergency School Tax equal to the lesser of: (1) the amount of the Jicarilla Apache tribal capital improvements tax imposed by the Jicarilla Apache Nation upon the products severed from qualifying wells, or (2) seven-tenths percent (0.7%) of the taxable value of the products severed from qualifying wells. The credit against the Emergency School Tax is provided in deference to the Jicarilla Apache tribal capital improvements tax imposed by the Jicarilla Apache Nation upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells. Table 52 summarizes the Emergency School Tax foregone revenues resulting from application of the credit to production from qualifying wells.

Table 52: EMERGENCY SCHOOL TAX CREDITS FOR THE JICARILLA TRIBAL CAPITAL IMPROVEMENT TAX (\$thousands)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount	Claims	Amount
Jicarilla Capital Improvement Tax Credit Against Emergency School Tax	26	\$1,591.1	28	\$2,014.8	25	\$1,195.6	24	\$1,055.4	23	\$1,097.9

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

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

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

Coal Tax Policy Issues The production of coal in New Mexico contributes significantly to the state's economic output. Table 53: NEW MEXICO COAL PRODUCTION VOLUMES AND GROSS VALUE below reflects the volume and value of coal production subject to taxation in New Mexico.

Table 53: NEW MEXICO COAL PRODUCTION VOLUMES AND GROSS VALUE

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Sales Volume (1,000 tons)	Value (\$million)	Sales Volume (1,000 tons)	Value (\$million)	Sales Volume (1,000 tons)	Value (\$million)	Sales Volume (1,000 tons)	Value (\$million)	Sales Volume (1,000 tons)	Value (\$million)
Total Coal Production	25,591.9	\$677.8	22,801.3	\$665.4	25,482.8	\$792.3	23,213.8	\$672.6	24,202.2	\$715.1

Table 53 shows that the total value of coal production in New Mexico has averaged more than \$704.6 million in the last five fiscal years. Note that total tax revenue from New Mexico's coal production has averaged \$21.5 million per year.

Intergovernmental Severance Tax Credit An intergovernmental coal severance tax credit is allowed for taxes imposed by an Indian nation, tribe, or pueblo on coal severed from tribal land. The credit is equal to seventy-five percent (75%) of the lesser of the amount of the tax imposed by the tribal government or the amount of the State severance tax. This tax

expenditure reduces the tax burden imposed on any person who severs coal from tribal land because the tribal tax is also imposed on the person. The benefits of this intergovernmental tax credit relate to tax policy and equitable taxation where multiple tax authorities have jurisdiction. The tax expenditure has provided an economic benefit to coal producers averaging \$3.9 million per year in the last five years.

Potash Tax Policy Issues The production of potash in New Mexico contributes significantly to the state's economic output. Table 54 reflects the volume and value of potash production subject to taxation in New Mexico.

Table 54: REPORTED NEW MEXICO POTASH PRODUCTION VOLUMES (1,000 tons) AND GROSS VALUE (\$millions)

	FY2007		FY2008		FY2009		FY2010		FY2011	
	Sales Volume	Value	Sales Volume	Value	Sales Volume	Value	Sales Volume	Value	Sales Volume	Value
Potash Production Reported for Severance Tax	932.5	\$89.7	1,021.6	\$120.0	513.2	\$204.0	7,136.2 ¹	\$187.5	777.2	\$190.6
Potash Production Reported for Resources Excise Tax	2,121.9	\$306.6	2,117.0	\$452.0	1,294.9	\$600.2	1,780.9	\$502.2	1,904.3	\$563.2

¹ NOTE: It is presumed this FY10 Sales Volume data value is erroneous, and is based on data reported in the state's GenTax system.

The reason for the difference in reported volumes and values of potash production is that for the Severance Tax reported on the basis of sales of muriate of potash and sulphate of potash magnesia, as standard grades – that is, of refined potash ore products. On the other hand, the Resource Excise Tax is based on the total volume and value of the potash production.

Table 55: POTASH SEVERANCE AND RESOURCE EXCISE TAX RECEIPTS (\$thousands)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Potash Severance Tax Receipts	\$890.0	\$1,136.9	\$2,014.1	\$1,881.6	\$1,854.5
Potash Resource Excise Tax Receipts	\$371.6	\$546.8	\$723.5	\$604.1	\$677.5
TOTAL	\$1,261.6	\$1,683.7	\$2,737.6	\$2,485.7	\$2,532.0

The total economic value of potash production in New Mexico has averaged nearly \$383 million over the last five fiscal years, and total tax revenue from New Mexico's potash production has averaged \$2.1 million per year.

H. Tax Expenditures Related to Indian Nations, Tribes or Pueblos

In prior sections of the *2012 New Mexico Tax Expenditure Report* discussion of tax policy related to Indian nations, tribes and pueblos has addressed issues where commerce related to Indian lands has generally been exempted from taxation as a result of New Mexico tax policy that seeks to equitably balance competitive market opportunities between business conducted within and outside the boundaries of the Indian lands. These tax policies, although generally deferential to the Indian sovereign, have sought to maintain the equity considerations and address efficiency concerns of good tax policy by reducing the distorting effects of double taxation.

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

Table 56: INTERGOVERNMENTAL NATURAL RESOURCES PRODUCTION TAX CREDIT (\$thousand)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Intergovernmental Oil & Gas Production Tax Credit	\$5,599.0	\$6,102.0	\$3,751.0	\$2,786.0	\$3,030.0
Intergovernmental Production Tax Credit against Coal Severance Tax	\$5,478.6	\$4,534.1	\$3,810.2	\$2,257.6	\$3,267.4
TOTAL INTERGOVERNMENTAL RESOURCE PRODUCTION TAX CREDITS	\$11,077.6	\$10,636.1	\$7,561.2	\$5,043.6	\$6,297.4

The intergovernmental production tax credit has resulted in a revenue reduction to the state averaging \$8.1 million over the last five fiscal years. The benefits of this intergovernmental tax credit relate to tax policy and equitable taxation where multiple tax authorities have jurisdiction. Although there is no requirement that the state forego revenues in favor of the Indian sovereign's right to impose production taxes, such tax policy provides for a balancing of socio-economic concerns. Additionally, recognizing that multiple tax authorities may have

jurisdiction, production properties can be economically disadvantage vis-à-vis competing properties (not subject to multiple jurisdictional tax authorities), and this tax expenditure reflects a tax policy that is deferential to tribal authorities tax jurisdiction in favor of maintaining the competitive market position of subject properties.

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

Table 57: INDIAN BUSINESS ACTIVITY EXEMPTIONS – ESTIMATED TAX EXPENDITURES (\$thousand)

	FY2007 Amount	FY2008 Amount	FY2009 Amount	FY2010 Amount	FY2011 Amount
Federal, State, or Tribal Exemption against Cigarette Tax	\$44,676.0	\$38,848.0	\$29,416.0	\$28,460.0	\$41,359.0

Sales Exemptions Against Tobacco Products Tax A tax expenditure is created in the exemption against the tobacco products tax of sales to a federal government entity, Indian nation, tribe or pueblo, and to the State of New Mexico and its political subdivisions. Tribes are now required to impose a qualifying tribal cigarette tax of 75 cents, which generated approximately \$18.3 million revenue to tribes in FY 2011.

SECTION IV

SUMMARY OF FINDINGS

The *2012 New Mexico Tax Expenditure Report* followed a bottom-up methodology, analyzing each statutory exemption, deduction and credit in the tax code. After determining whether each identified statutory provision constituted a tax expenditure or a definition of the tax base, the analysis focused on the amount of foregone revenue, the administrative costs, the taxpayer compliance costs and the benefits attributable to the program. Once the tax expenditures had been identified and analyzed, it became possible to aggregate the information into categories as presented in the body of **SECTION III**. This process yielded several key findings on the limitations of future tax expenditure analysis, the overall budget impact of tax expenditures, several specific tax expenditure programs that threaten increased future revenue exposure and certain policy options.

LIMITATIONS OF TAX EXPENDITURE ANALYSIS

Two general findings emerge from the *2012 New Mexico Tax Expenditures Report*. First, there is no consistent, straight-forward means available to routinely track tax expenditures.⁶⁰

The estimates provided are based on *ad hoc* extractions of data and information, with significant areas where the analysis is constrained simply by the partial or complete lack of data availability. Care has been taken not to overextend the analysis of any single tax expenditure beyond the limitations of available data. This has resulted in an overall direct cost estimate that is conservative, although still very substantial.

Second, the ability to analyze the specific *benefits* of the tax expenditures is largely beyond the resources of this *Report* and the scope of the analyses described herein. In order to estimate how *an increment* of additional income or economic output is

2012 New Mexico Tax Expenditure Report

Key Findings

- *There is no consistent, straightforward means available to routinely track tax expenditures.*
- *The ability to analyze the specific benefits of the tax expenditures is largely beyond the scope of the analyses summarized in this Report, and will require a concerted, multi-agency effort.*
- *Several tax expenditures constitute large and impending or persistent exposure for government revenues.*

⁶⁰ This report is the result of *at least* twelve person-months of dedicated effort representing a fully-loaded one-time cost of more than \$175,000. The Taxation and Revenue Department is currently planning the implementation of a Business Credit Manager module in the upgrade to its GenTax systems at a cost of approximately \$200,000. Such systems functionality will vastly improve [not sure about this] the ability to track and analyze tax expenditures, but will not be fully implemented until FY2014.

created through a tax expenditure, detailed data must be obtained from the specific taxpayers benefitting from the tax expenditure to understand how the expenditure's benefit modified the taxpayer's economic behavior.⁶¹ Moreover, many tax expenditures stem from social, not economic, policy objectives. For those programs, alternative measures of benefit will have to be conceived, and they might not strictly rely on economic output data. Further benefit analysis (in many cases) can only be accomplished through a concerted, multi-agency effort. Forgone

EXAMINATION OF POLICY ALTERNATIVES

The *2012 New Mexico Tax Expenditure Report* has attempted to remain as objective as possible. Its purpose has been to articulate the revenue costs of the tax expenditures identified, offer useful characterizations of tax base issues, and provide an insight into the benefits and objectives served by the tax policies evaluated. In keeping with this philosophy, the Report makes no comprehensive policy recommendations.

By deliberately implementing tax policies that reduce tax revenues, however, tax expenditures are a form of government spending administered through the tax code. The opportunity cost of these tax expenditures is what the foregone revenue *could have funded in their absence*. As such, this *Report* must recognize that fundamentally restructuring current tax expenditures could fund significant policy proposals. The *Report* is not necessarily the appropriate venue through which to advocate such alternatives, but one proposal – broad based tax reform – is presented for consideration.

⁶¹ Such analyses may be accomplished by the *sampling* of the behavior of economic entities, but such analysis requires much greater research and development than simply applying economic output multipliers to changes in economic sector income levels.

2012 NEW MEXICO TAX EXPENDITURE REPORT

APPENDIX A-1

DESCRIPTION OF NEW MEXICO TAX PROGRAMS AND TAX BASE

Definition of Specific Tax Programs and Tax Base

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

Corporate Income and Franchise Tax — The franchise tax in the amount of fifty dollars (\$50.00) per taxable year or any fraction thereof is imposed on every domestic or foreign corporation employed or engaged in the transaction of business in, into or from this state or deriving any income from any property or employment within this state. A "corporation" includes every domestic and foreign corporation or other organization having or exercising its corporate franchise in this state, whether active or not, or engaging in business in or deriving income from this state, and which either is required to file a corporate income tax return under the Internal Revenue Code or is a disregarded entity for federal income tax purposes. The corporate income tax is imposed at a rate of 4.8% of the first \$500,000 of net income, 6.4% of net income between \$500,000 and \$1 million and 7.6% of net income in excess of \$1 million. Net income is defined by reference to the federal Internal Revenue Code, with certain adjustments for New Mexico tax purposes.

Personal Income Tax — The personal income tax is imposed on individuals (whether married, heads of households, surviving spouses, estates, or trusts) as an income-graduated tax rate based on taxable income, and is a tax rate that currently ranges from 1.7% to 4.9% of taxable income.⁶² Taxable income is defined as net income, which is derived from base income adjusted and modified by numerous provisions of the tax statutes and regulations.⁶³

Withholding Tax — Every employer having control of the payment of wages, doing business in or deriving income from sources within the state for whom an individual performs or performed any service as the employee of that person must deduct and withhold a portion of an employee's wages for payment of income tax under the provisions of a state withholding tax table. Additionally, withholding tax must be deducted and withheld by any person required to from winnings of a wager, and by a person making payment of a pension or annuity to an individual domiciled in New Mexico that is subject to withholding.⁶⁴

Oil and Gas Proceeds and Pass-Through Entity Withholding Tax — A person paying oil and gas proceeds to any person ("remittee") shall deduct and withhold tax at the top personal income tax rate. The entire amount of oil and gas proceeds and net income upon which the tax was deducted and withheld shall be included in the base income of the remittee for purposes of the Personal and Corporate Income Tax Act. The amount of tax deducted and withheld or

⁶² Section 7-2-7 NMSA 1978; effective January 1, 2008.

⁶³ Only if requested by the individual. Section 7-2-2 NMSA 1978; ¶ 3.3.1.7 NMAC.

⁶⁴ Sections 7-3-1 and 7-3-3 NMSA 1978.

payments made by owners in lieu of withholding pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act during the taxable year shall be credited against any income tax or corporate income tax due from the remittee or owner.

Gross Receipts Tax — For the privilege of engaging in business this tax is imposed on gross receipts received from certain transactions for consideration. “Gross receipts” is revenue generated by either selling property in New Mexico, leasing (or licensing) property employed in New Mexico, from granting a right to use a franchise, performing services outside of New Mexico the product of which is initially used in New Mexico, or performing services in New Mexico. Under the Gross Receipts Tax, “engaging in business” means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit.⁶⁵ Certain types of businesses are explicitly excluded from the definition. For the privilege of engaging in business, the state imposed an excise tax rate equal to five and one-eighth percent (5.125%) of gross receipts. Local options taxes are also authorized to be imposed by counties and municipalities.

Governmental Gross Receipts Tax — For the privilege of engaging in certain activities within New Mexico the Governmental Gross Receipts Tax is imposed on gross receipts received by a state or an agency, institution, instrumentality or political subdivision from: (1) the sale of tangible personal property other than water from facilities open to the general public; (2) the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public; (3) refuse collection or refuse disposal or both; (4) sewage services; (5) the sale of water by a utility owned or operated by a county, municipality or other political subdivision of the state; and (6) the renting of parking, docking or tie-down spaces or the granting of permission to park vehicles, tie-down aircraft or dock boats. “Governmental gross receipts” includes receipts from the sale of tangible personal property handled on consignment when sold from facilities open to the general public but excludes cash discounts taken and allowed, governmental gross receipts tax payable on transactions reportable for the period and any type of time-price differential.⁶⁶ An excise tax rate of five percent (5.0%) is imposed on governmental gross receipts.

Compensating Tax — For the privilege of engaging in certain activities within New Mexico a Compensating Tax is imposed on the privilege of using tangible property in New Mexico. The excise tax rate equal to five and one-eighth percent (5.125%) of the value of use of

⁶⁵ “Benefit” is any consideration to either party. “Benefit” is not limited to profits, pecuniary gains, or any particular kind of advantage. “Consideration” is any benefit, interest, gain or advantage to one party, usually the seller, or any detriment, forbearance, prejudice, inconvenience, disadvantage, loss of responsibility, act or service given, suffered, or undertaken by the other party, usually the buyer. [Regulation 3.2.1.7 NMAC]

⁶⁶ The statutes defining governmental gross receipts provides that “facilities open to the general public” does not include point of sale registers or electronic devices at a bookstore owned or operated by a public post-secondary educational institution when the registers or devices are utilized in the sale of textbooks or other materials required for courses at the institution to a student enrolled at the institution who displays a valid student identification card.

tangible property⁶⁷ that was: (1) manufactured by the person using the property in the state; (2) acquired inside or outside of this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the tangible personal property been acquired from a person with nexus with New Mexico; or (3) acquired as the result of a transaction that was not initially subject to the compensating tax imposed by (2) above or the gross receipts tax but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by (2) above or the gross receipts tax. For the privilege of using services rendered in New Mexico, there is imposed on the person using such services an excise tax equal to five percent (5.0%) of the value of the services at the time they were rendered. The services, to be taxable under this subsection, must have been rendered as the result of a transaction that was not initially subject to the gross receipts tax but which transaction, because of the buyer's subsequent use of the services, should have been subject to the gross receipts tax.

Interstate Telecommunications Gross Receipts Tax — For the privilege of engaging in interstate telecommunications business, an excise tax equal to four and one-fourth percent (4.25%) of interstate telecommunications gross receipts is imposed upon any person engaging in interstate telecommunications business in New Mexico. "Interstate telecommunications gross receipts" means the total amount of money or the value of other consideration received from providing: (1) interstate telecommunications services, other than mobile telecommunications services, that either originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico, regardless of where the bill for such services is actually delivered; and (2) mobile telecommunications services that originate in one state and terminate in any location outside that state, whether within or outside the United States, to a customer with a place of primary use in New Mexico. "Interstate telecommunications gross receipts" excludes mobile telecommunications services provided to a customer with a place of primary use outside of New Mexico, cash discounts allowed and taken and interstate telecommunications gross receipts tax payable for the reporting period. Also excluded from "interstate telecommunications gross receipts" are any gross receipts or sales taxes imposed by any Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions.

Cigarette Tax — For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at the following rates for each cigarette sold, given or

⁶⁷ The value of tangible property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

consumed in this state: (1) eight and three-tenths cents (\$.083) if the cigarettes are packaged in lots of twenty or twenty-five; (2) sixteen and six-tenths cents (\$.166) if the cigarettes are packaged in lots of ten; or (3) thirty-three and two-tenths cents (\$.332) if the cigarettes are packaged in lots of five.⁶⁸ Only a distributor with a valid license to sell or distribute cigarettes in New Mexico issued pursuant to the Cigarette Tax Act may purchase or obtain unaffixed tax-exempt stamps, tax-credit stamps or tax stamps.

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

Gasoline Tax — For the privilege of receiving gasoline in this state, there is imposed an excise tax at a rate of seventeen cents (\$.17) per gallon “received” in New Mexico. Gasoline that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by a person is received by that person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment, or when it is placed there into a tank or other container from which sales or deliveries not involving transportation are made. Gasoline is also received when delivered at the refinery or pipeline terminal to a person registered as a distributor (or for the account of a distributor).⁶⁹

Petroleum Products Loading Fee — For the privilege of loading gasoline or special fuel from a rack at a refinery or pipeline terminal into a cargo tank, or importing gasoline or special fuel into this state for resale or consumption, there is imposed a fee on the distributor on each gallon of gasoline or special fuel loaded in New Mexico. A “load” means eight thousand gallons of gasoline or special fuel, and the fee shall be one hundred fifty dollars (\$150) per load. If, however, the unobligated balance of the Corrective Action Fund⁷⁰ at the end of the prior fiscal year (1) equals or exceeds eighteen million dollars (\$18,000,000) the fee shall be set at forty dollars (\$40.00) per load, (2) exceeds twelve million dollars (\$12,000,000) but is less than eighteen million dollars (\$18,000,000) the fee shall be set at eighty dollars (\$80.00) per load, (3)

⁶⁸ Section 7-12-3 NMSA 1978.

⁶⁹ Sections 7-13-4 NMSA 1978.

⁷⁰ The fund is intended to provide for financial assurance coverage and shall be used by the Department of Environment (to the extent that revenues are available) to take corrective action in response to a release, to pay for the costs of a minimum site assessment in excess of ten thousand dollars (\$10,000), to pay the state's share of federal leaking underground storage tank trust fund cleanup costs as required by the federal Resource Conservation and Recovery Act and to make payments to or on behalf of owners and operators for corrective action taken in accordance with Section 74-6B-13 NMSA 1978. [Section 74-6B-7(A) NMSA 1978]

exceeds six million dollars (\$6,000,000) but is less than twelve million dollars (\$12,000,000) the fee shall be set at one hundred twenty dollars (\$120) per load, and (4) is less than six million dollars (\$6,000,000) the fee shall be set at one hundred fifty dollars (\$150) per load. The duty to report and pay the petroleum products loading fee is imposed on the distributor when it loads the petroleum products from a rack at a refinery or pipeline terminal in this state into a cargo tank, or the person, whether a distributor or not, who imports petroleum products into New Mexico for sale or consumption in this state at the time of importation.

Motor Vehicle Excise Tax — An excise tax is imposed upon the sale of every vehicle, except for vehicles used in short term leasing⁷¹ and manufactured homes, required to be registered in this state under the Motor Vehicle Code.⁷² It is presumed that the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered under the provisions of the Motor Vehicle Code constitutes a sale for tax purposes, unless specifically exempted by the Motor Vehicle Excise Tax Act or unless there is shown proof satisfactory to the department that the vehicle for which the certificate of title is sought came into the possession of the applicant as a voluntary transfer without consideration or as a transfer by operation of law. The rate of the motor vehicle excise tax is three percent (3.0%) and is applied to the price paid for the vehicle. If the price paid does not represent the value of the vehicle in the condition that existed at the time it was acquired, the tax rate shall be applied to the reasonable value of the vehicle in such condition at such time. However, allowances granted for vehicle trade-ins may be deducted from the price paid or the reasonable value of the vehicle purchased.

Leased Vehicle Gross Receipts Tax — For the privilege of engaging in business of leasing vehicles for direct or indirect benefit, an excise tax equal to five percent (5.0%) of gross receipts is imposed on any person engaging in business in New Mexico. Additionally, there is imposed a surcharge on the leasing of a vehicle to another person if the lease is subject to the leased vehicle gross receipts tax. The amount of this surcharge is two dollars (\$2.00) for each day the vehicle is leased by the person, but shall not apply to the lease of a temporary replacement vehicle if the vehicle is to be used as a replacement for another vehicle that is being repaired, serviced or replaced.

Weight Distance Tax — A tax is imposed upon the registrants, owners and operators for the use of the highways of this state by all motor vehicles having a declared gross weight or gross vehicle weight in excess of twenty-six thousand pounds and registered in this state, registered under proportional registration or qualified under interstate commerce reciprocity agreements.⁷³ The tax is imposed as a rate (mills per mile) that increases with the declared gross weight of the vehicle, and is reduced to two-thirds of the applicable rate if the vehicle is customarily used for a one-way haul or if forty-five percent (45%) or more of the mileage

⁷¹ For a period of less than six months, pursuant to Section 7-14-7.1 NMSA 1978.

⁷² Section 66-1-1 NMSA 1978.

⁷³ Sections 65-1-32 and 65-1-33 NMSA 1978.

traveled is traveled with an empty load. Exempted from the tax are school buses, buses used exclusively for the transportation of agricultural laborers, buses operated by religious or nonprofit charitable organizations, and commercial motor carrier vehicles while operating exclusively within ten miles of a border with Mexico in conjunction with crossing the border with Mexico.⁷⁴

Special Fuel Excise Tax — For the privilege of receiving or using special fuel in this state, there is imposed an excise tax⁷⁵ at a rate of twenty-one cents (\$.21) per gallon of special fuel received or used in New Mexico. A "special fuel" is any diesel-engine fuel or kerosene used for the generation of power to propel a motor vehicle, except for gasoline, liquefied petroleum gas, compressed or liquefied natural gas, and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet engines. Special fuel imported into New Mexico is received at the time and place and by the person who owns the fuel at the time of importation. Special fuel that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by a person is received by that person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment, or when it is placed there into a tank or other container from which sales or deliveries not involving transportation are made. Special fuel is also received when delivered at the refinery or pipeline terminal to a person registered as a distributor (or for the account of a distributor). Any product other than special fuel that is blended in this state to produce special fuel other than at a refinery or pipeline terminal is received by the person who is the owner of the special fuel at the time and place the blending is completed.

Alternative Fuel Tax — To encourage the use of alternative fuel for the propulsion of motor vehicles on the roads of New Mexico, thereby increasing the market for supplies of New Mexico natural gas and reducing harmful environmental emissions, it is the purpose of the Alternative Fuel Tax Act to provide for fair taxation of alternative fuel used for such purposes. An "alternative fuel" means liquefied petroleum gas, compressed natural gas, liquefied natural gas or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion. The excise tax rate is twelve cents (\$.12) per gallon. Any user who registers, owns or operates a motor vehicle whose gross vehicle weight does not exceed fifty-four thousand pounds that is propelled by alternative fuel may pay the alternative fuel excise tax on an annual basis that increases with vehicle weight and ranges (after January 1, 2002) from \$60.00 to \$1,100 per year.

Liquor Excise Tax — There is imposed on a wholesaler who sells alcoholic beverages an excise tax at the following rates on alcoholic beverages sold: (1) on spirituous liquors, one dollar sixty cents (\$1.60) per liter; (2) on beer, except as provided in (5) below, forty-one cents (\$.41)

⁷⁴ Section 7-15-2.1(B) NMSA 1978.

⁷⁵ Section 7-16A-3 NMSA 1978.

per gallon; (3) on wine, except as provided in (4) and (6) below, forty-five cents (\$.45) per liter; (4) on fortified wine, one dollar fifty cents (\$1.50) per liter; (5) on beer manufactured or produced by a microbrewer and sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a microbrewer, eight cents (\$.08) per gallon; (6) on wine manufactured or produced by a small winegrower and sold in this state ten cents (\$.10) per liter on the first eighty thousand liters sold and twenty cents (\$.20) per liter on all liters sold over eighty thousand liters but less than nine hundred fifty thousand liters; and (7) on cider, forty-one cents (\$.41) per gallon. Deductions are provided for wholesaler sales shipped to a person in another state, and transfers between winegrowers.

Resources Excise Tax — The Resources Excise Tax⁷⁶ is imposed for the privilege of severing and processing natural resources within New Mexico. To encourage the development of the extractive industries of this state, through imposed rates that are a fraction of the gross receipts tax.⁷⁷ The "taxable value" is the value after severing or processing, without deduction of any kind for any natural resource severed or processed in New Mexico unless otherwise authorized. It is presumed, in the absence of preponderant evidence of another value, that the taxable value means the total amount of money or the reasonable value of other consideration received for the severed or processed natural resource. However, if the amount of money received does not represent the value of the severed or processed natural resource or if the severed or processed natural resource is not sold, the taxable value shall be the reasonable value of the severed or processed natural resource. All natural resources severed or processed in New Mexico shall be included in determining taxable value, regardless of the place of sale or the fact that delivery may be made to points outside of New Mexico.

Resource Excise Tax: Resources Tax — For the privilege of severing natural resources, the Resources Tax⁷⁸ is imposed at the following rates on the taxable value of the natural resources: (1) all natural resources except potash and molybdenum, three-fourths of one percent (0.75%); (2) potash, one-half of one percent (0.5%); and (3) molybdenum, one-eighth of one percent (0.125%). Resources on which the Processors Tax has been paid are exempt from the Resources Tax.

Resource Excise Tax: Processors Tax — For the privilege of processing natural resources, the Processors Tax⁷⁹ is imposed on any processor of natural resources an excise tax at the following rates on the taxable value of the natural resources: (1) all natural resources except timber, potash and molybdenum, three-fourths of one percent (0.75%); (2) timber, three-eighths of one percent (0.375%); (3) potash, one-eighth of one percent (0.125%); and (4) molybdenum, one-eighth of one percent (0.125%).

⁷⁶ Section 7-25-1 *et seq.* NMSA 1978.

⁷⁷ *Carter & Sons, Inc. v. New Mexico Bureau of Revenue*, 92 N.M. 591, 592 P.2d 191 (Ct. App. 1979).

⁷⁸ Section 7-25-4 NMSA 1978.

⁷⁹ Section 7-25-5 NMSA 1978.

Resource Excise Tax: Service Tax — For the privilege of severing or processing in New Mexico natural resources that are owned by another person (and are not otherwise taxed under the Resources Tax or Processors Taxes), the Service Tax⁸⁰ is imposed on the service charge of any person severing or processing natural resources that are owned by another person an excise tax at the same rate that would be imposed on an owner of natural resources for performing the same function.

Severance Tax — For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax⁸¹ on the taxable value or the quantity of natural resources severed and saved by or for him. For all natural resources⁸² the gross value of the natural resource is the sales value of the severed and saved product at the first marketable point without any deductions, except that: (1) for those products having a posted field or market price at the point of production, the gross value is its posted field or market price; and (2) for those products that must be processed or beneficiated before sale, the gross value is the sales value after deducting freight charges from the point of severance to the point of first sale and the cost of processing or beneficiation. The taxable value of all severed natural resources (except coal and uranium) is the gross value of the severed resource less rental or royalty payments belonging to the United States or the state.

The Severance Tax on *potash* (or potash products) is imposed as two and one-half percent (2.5%) of taxable value, which shall be thirty-three and one-third percent (33.33%) of the proceeds realized from the sale or value of products consumed in the production of potash products, less fifty percent (50%) of such reported value as a deduction for expenses of hoisting, loading, crushing, processing and beneficiation.

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

The Severance Tax on the gross value for *copper* at a rate of one-half of one percent (0.5%), and *lead* and *zinc* at a rate of one-eighth of one percent (0.125%) of sixty-six and two-thirds percent (66.67%) of the sales value established from published price data, less fifty percent (50%) of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. The taxable event occurs when the severer sells copper, lead or

⁸⁰ Section 7-25-6 NMSA 1978.

⁸¹ Section 7-26-1 *et seq.* NMSA 1978.

⁸² Except as otherwise provided for potash, molybdenum, copper, lead, zinc, gold, silver, coal and uranium.

zinc in New Mexico or when the severer ships, transmits or transports copper, lead or zinc out of New Mexico without first making sale of the resource.

The Severance Tax for *gold* and *silver* is at a rate of one-fifth of one percent (0.2%) of the taxable value of the severed resource. The taxable value for *gold* shall be the sales value established from published price data, less fifty percent (50%) of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. The taxable value for *silver* shall be eighty percent (80%) of the sales value established from published price data, less fifty percent (50%) of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. The taxable event occurs when the severer sells gold or silver in New Mexico or when the severer ships, transmits or transports gold or silver out of New Mexico without first making sale of the resource.

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

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

The severance tax on *coal* is for surface coal, fifty-seven cents (\$.57); and for underground coal, fifty-five cents (\$.55) per short ton (two thousand pounds) of coal severed and saved. The severance tax on coal shall be increased by a surtax at the rates of sixty cents (\$.60) per short ton for surface coal, and fifty-eight cents (\$.58) per short ton for underground coal. The surtax rate on coal is increased on July 1 each year by a price inflation amount determined by the percentage rise in the producer price index for coal, but in no case shall the surtax rate be decreased by such annual adjustment.

Oil and Gas Severance Tax — There is imposed a tax on all natural gas, oil, other liquid hydrocarbon, carbon dioxide, helium and non-hydrocarbon gases products that are severed and

sold, at the rate of three and three-fourths percent (3.75%) of the taxable value.⁸³ The "value" of all natural gas, oil and other liquid hydrocarbon products that are severed and sold is the actual price received for products at the production unit, and in determining the taxable value of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead there shall be deducted from the value of products royalties paid or due the United States or the state of New Mexico, royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States of America; and the reasonable expense of trucking any product from the production unit to the first place of market. Actual price includes all receipts, whether the receipt is characterized as a payment for the product, a reimbursement for tax or other expense, a price adjustment pursuant the Taxation and Revenue Department's authority, or a payment or reimbursement for services such as sweetening, dehydration, measurement, compression or gathering. The value determined by the department shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area. If there are no sales of products of like quality, character and use severed in the same field or area, then the department shall establish a reasonable value. Reasonable value shall be determined when actual price is established in a transaction among affiliated persons or established at a point other than at the production unit.

Oil and Gas Conservation Tax — There is levied and shall be collected by the department a tax on all *oil, natural gas or liquid hydrocarbon, uranium, coal, geothermal energy, carbon dioxide, helium or a non-hydrocarbon gas* that are severed and sold. The measure and rate of the tax shall be nineteen-hundredths percent (0.19%) of the taxable value of sold products. When the average price of west Texas intermediate crude in the previous quarter exceeds seventy dollars (\$70.00) per barrel, the tax rate on *oil* shall be twenty-four hundredths percent (0.24%) of the taxable value of the sold product. The taxable value of *coal* shall be the taxable value determined under Resource Excise Tax, less royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States. The taxable value of *uranium* shall be twenty-five percent (25%) of an amount equal to the difference between the taxable value determined under Resource Excise Tax, and royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States. The taxable value of *geothermal energy* shall be the value at the point of first sale, less the cost of transporting it from the point of severance to the point of the first sale, less the royalties paid or due the United States or the state of New Mexico or any Indian tribe, Indian pueblo or Indian that is a ward of the United States. Every interest owner shall be liable for this tax to the extent of the owner's interest in the value of the products or to the extent of the owner's interest as may be measured by the value of the products. An

⁸³ Numerous economic hardship-related reductions from the severance tax rate are provided under Section 7-29-4 NMSA 1978, including production from a qualified enhanced recovery project, a certified well workover project, and several categories of stripper wells that are generally triggered by specific market price conditions. These market conditions have not existed for a number of years, although current natural gas market conditions are approaching qualifying status again.

Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

Oil and Gas Emergency School Tax — There is levied a privilege tax on the business of every person severing certain products in this state. The measure of the tax shall be: (1) on *oil* and on *oil and other liquid hydrocarbons removed from natural gas* at or near the wellhead three and fifteen hundredths percent (3.15%) of the taxable value; (2) on *carbon dioxide, helium and non-hydrocarbon gases*, three and fifteen hundredths percent (3.15%) of the taxable value; (3) on *natural gas* four percent (4.0%) of the taxable value of the products severed and sold.⁸⁴

Oil and Gas Ad Valorem Production Tax — There is levied an ad valorem tax on the assessed value of products which are severed and sold from each production unit at the rate certified to the Property Tax Division by the Department of Finance and Administration (DFA) under the provisions of the Property Tax Code.⁸⁵ Such rate shall be levied for each month following its certification and until a new rate is certified. The taxable value of products is determined by DFA based on the value of products after deducting: (1) royalties paid or due the United States or the state of New Mexico; (2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States; and (3) the reasonable expense of trucking any product from the production unit to the first place of market. Every interest owner shall be liable for this tax to the extent of his interest in the value of such products, or to the extent of his interest as may be measured by the value of such products. Provided, any Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

Oil and Gas Production Equipment Ad Valorem Tax — An ad valorem tax is levied on the assessed value of the equipment at each production unit. The tax shall be at the rate certified to the division by the department of finance and administration under the provisions of Property Tax Code.⁸⁶ The taxable value of equipment of each production unit is an amount equal to twenty-seven percent (27%) of the value of products of each production unit for the previous calendar year. The assessed value of equipment of each production unit shall be determined by DFA by applying the uniform assessment ratio to the taxable value of equipment of each production unit.

Natural Gas Processors Tax — There is levied a privilege tax on processors for the privilege of operating a natural gas processing plant in New Mexico. The tax shall be imposed on the heat content, measured in million British Thermal Units (“mmbtu”), of natural gas

⁸⁴ Several economic hardship-related reductions from the Emergency School Tax rate are provided under Section 7-31-4 NMSA 1978, including production from categories of stripper wells that are generally triggered by specific market price conditions. These market conditions have not existed for a number of years, and prices are not likely to fall below this threshold in the future. (NG prices need to fall below \$1.35/mcf for a full calendar year – I think it’s highly unrealistic that this will occur.)

⁸⁵ Section 7-37-7 NMSA 1978.

⁸⁶ Section 7-37-7 NMSA 1978.

delivered to the processor at the inlet of the natural gas processing plant after subtracting the mmbtu deductions authorized in Subsection E of Section 7-33-4 NMSA 1978. The tax shall be imposed at the rate per mmbtu determined by multiplying the rate of sixty-five hundredths of one cent (\$.0065) per mmbtu by a fraction, the numerator of which is the annual average taxable value per thousand cubic feet (“mcf”) of natural gas produced in New Mexico during the preceding calendar year and the denominator of which is one dollar thirty-three cents (\$1.33) per mcf. The resulting tax rate shall be rounded to the nearest one-hundredth of one cent per mmbtu. A processor may deduct from the amount of mmbtus of natural gas subject to the tax the mmbtus of natural gas that are used for natural gas processing by the processor, returned to the lease from which it is produced, legally flared by the processor, or lost as a result of natural gas processing plant malfunctions or other incidences of force majeure. On or before June 15, 1999, and June 15 of each succeeding year, the department shall inform each processor in writing of the tax rate applicable for the succeeding fiscal year.

Copper Production Ad Valorem Tax — An ad valorem tax is levied upon the owner of each copper mineral property that is not subject to valuation and taxation under the provisions of the Property Tax Code.⁸⁷ The amount of the tax shall be equal to the product of the taxable value determined for each copper mineral property owned multiplied by the rate certified to the department by the department of finance and administration for nonresidential property under the provisions of Property Tax Code for the taxing jurisdictions in which the copper mineral property is located.⁸⁸ The valuation of copper mineral property of the following types shall be determined annually, as follows: (1) the value of any mine and all real property and personal property held or used for the mining of ore from the mine: (a) any part of which is mined for processing in a concentrator shall be thirty percent (30%) of the value of salable copper and other minerals contained in concentrate produced from the ore produced from the mine; or (b) which is mined solely for solvent extraction or electrowinning shall be twenty percent (20%) of the value of salable copper and other minerals produced through solvent extraction or electrowinning from the ore produced from the mine; (2) the value of a concentrator and all real property and personal property held or used in connection with the concentrator shall be twenty-five percent (25%) of the value of salable copper and other minerals contained in concentrate produced in the concentrator; (3) the value of a precipitation plant and all real property and personal property held or used in connection with the precipitation plant shall be twenty-five percent (25%) of the value of salable copper and other minerals contained in precipitate produced in the precipitation plant; (4) the value of the solvent extraction or electrowinning plant and all real property and personal property held or used in connection with the solvent extraction or electrowinning plant shall be one hundred thirty-five percent (35%) of the value of salable copper and other minerals produced through the solvent extraction or electrowinning process, less four times the value of property determined for the same tax year under (b) of (1)

⁸⁷ Articles 35 to 38 of Chapter 7 NMSA 1978.

⁸⁸ Sections 7-37-7 and 7-37-7.1 NMSA 1978.

above; and (5) the value of a smelter and all real property and personal property held or used in connection with the smelter shall be twenty-one percent (21%) of the value of salable copper and other minerals produced in the smelter.

Property Tax — A tax is imposed upon all property subject to valuation for property taxation purposes under Article 36 of Chapter 7 NMSA 1978. The tax shall be imposed at the rates authorized and in the manner and for the purposes provided by statute. The tax rates specified by statute are the maximum rates that may be set by the Department of Finance and Administration for the use of the stated governmental units for the stated purposes. The following tax rates for the indicated purposes are the maximum tax rates authorized: (1) for the use of each county for general purposes a rate of eleven dollars eighty-five cents (\$11.85) for each one thousand dollars (\$1,000) of net taxable value of both residential and nonresidential property allocated to the county; (2) for the use of each school district for general operating purposes, a rate of fifty cents (\$.50) for each one thousand dollars (\$1,000) of net taxable value of both residential and nonresidential property allocated to the school district; and (3) for the use of each municipality for general purposes for the 1987 and subsequent property tax years, a rate of seven dollars sixty-five cents (\$7.65) for each one thousand dollars (\$1,000) of net taxable value of both residential and nonresidential property allocated to the municipality. In addition, there are also authorized: (1) those rates or impositions authorized under provisions of law outside of the Property Tax Code⁸⁹ that are for the use of the indicated governmental units for the stated purpose of paying principal and interest on a public general obligation debt incurred under those provisions of law; (2) those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the governmental units indicated in those provisions, are for the stated purposes authorized by those provisions and have been approved by the voters of the governmental unit in the manner required by law; (3) those rates or impositions necessary for the use of a governmental unit to pay a tort or workers' compensation judgment for which a county, municipality or school district is liable,⁹⁰ but, except as provided in Paragraph (4) of this subsection, no rate or imposition shall be authorized to pay any judgment other than one arising from a tort or workers' compensation claim; and (4) those rates or impositions ordered by a court pursuant to Section 22-24-5.5 NMSA 1978 and for the use of a school district to pay a judgment pursuant to that section.

⁸⁹ Articles 35 to 38 of Chapter 7 NMSA 1978.

⁹⁰ Subject to the limitations in Section 41-4-25(B) NMSA 1978.

2012 NEW MEXICO TAX EXPENDITURE REPORT

APPENDIX A-2

DISTRIBUTION OF TAX REVENUES TO BENEFICIARIES, BY TAX PROGRAM

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

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

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

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

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

Tax Program/Beneficiary	Statute	Distribution
Gasoline Tax		
– State Aviation Fund.	7-1-6.7	0.26% of net receipts.
– Motorboat Fuel Tax Fund.	7-1-6.8	0.13% of net receipts.
– Municipalities and Counties.	7-1-6.9	10.38% of net receipts.
– County Government Road Fund	7-1-6.19	5.76% of net receipts.
– Tribal Governments	7-1-6.44	40% of Gasoline Tax from 2.5M gallons is distributed to each qualified tribe.
– General Fund	7-1-6.44	\$33,333 per qualified tribe is distributed to the General Fund.
– Municipal roads.	7-1-6.27	5.76% of net receipts.
– Local governments road fund.	7-1-6.28	1.44% of net receipts.
– State Road Fund.	7-1-6.10	The balance of net receipts is distributed to the State Road Fund.
Special Fuels Supplier Tax		
– Local governments road fund.	7-1-6.39	9.52% of net receipts.
– State Road Fund.	7-1-6.10	The balance of net receipts is distributed to the State Road Fund.
Petroleum Products Loading Fee		
– Local Governments	7-1-6.25	\$40/load is distributed to local governments
– Corrective Action Fund	7-1-6.25	The balance of net receipts is distributed to the Corrective Action Fund.

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

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

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

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

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

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

2012 NEW MEXICO TAX EXPENDITURE REPORT

APPENDIX A-3

COMPREHENSIVE LIST OF TAX PROGRAMS ANALYZED

2012 NEW MEXICO TAX EXPENDITURE REPORT

Appendix A-3

Comprehensive List of Tax Programs Analyzed

The following lists all of the individual tax programs analyzed by the *2012 New Mexico Tax Expenditure Report*. These programs are presented in alphabetical order, and a reader is advised that they rely on the index search feature provided on the CD that accompanies this *Report* if they wish to find details of the analyses performed.

2005 Income Tax Rebate Exemption against Personal Income Tax
Administrative / Accounting Services Deduction against Gross Receipts Tax
Advanced Energy Deduction
Advanced Energy Tax Credit
Aerospace Services to Certain Organizations Deduction against Gross Receipts Tax
Affordable Housing Tax Credit against Gross Receipts, Compensating, Withholding, Personal Income, or Corporate Income Taxes
Agricultural Biomass Credit against Corporate Income Tax
Agricultural Biomass Credit against Personal Income Tax
Agricultural Implements Deduction against Compensating Tax
Agricultural Implements Deduction against Gross Receipts Tax
Agricultural Products Exemption against Gross Receipts or Governmental Gross Receipts Taxes
Agricultural Water Conservation Credit against Corporate Income Tax
Agricultural Water Conservation Credit against Personal Income Tax
Aircraft Manufacturer Sales, Aircraft Parts, Services and Training Deduction Against Gross Receipts
Aircraft Services Deduction against Gross Receipts Tax
Alcohol Sales to the Armed Forces Exemption against Liquor Excise Tax
Allocation and Apportionment of Income Derived Within and Without NM Credit against Corporate Income Tax
Alternative Energy Product Manufacturers Tax Credit against CRS (except Local Option)
Alternative Fuel Excise Tax versus Gasoline and Special Fuels Taxes
Amounts Received As An Agent On Behalf Of Someone Exemption From Gross Receipts Tax
Angel Investment Credit against Personal Income Tax
Armed Forces Salaries Exemption against Personal Income Tax
Athletic Facility Surcharge Exemption against Gross Receipts or Governmental Gross Receipts Taxes
ATVs Rate Differential against Gross Receipts Tax
Bad Debts Deduction against Interstate Telecommunications Gross Receipts Tax
Biodiesel Blending Facility Credit against Gross Receipts or Compensating Taxes
Biodiesel Deduction Against Special Fuels Excise Tax
Biomass-Related Equipment and Biomass Materials Deduction against Gross Receipts Tax

Blended Biodiesel Fuel Credit against Corporate Income Tax
Blended Biodiesel Fuel Credit against Personal Income Tax
Boats Exemption against Compensating Tax
Boats Exemption against Gross Receipts Tax
Business Facility Rehabilitation Credit against Corporate Income Tax
Capital Gains Deduction against Personal Income Tax
Certain Commissions Deduction against Gross Receipts Tax
Certain Diplomats' / Missions' Sales Deduction against Gross Receipts Tax
Certain Individuals Exemptions against Motor Vehicle Excise Tax
Certain Services to an Out-of-State Buyer Deduction against Gross Receipts Tax
Child Care Credit against Personal Income Tax
Cigarette Stamp Rate Differential against Cigarette Tax
Coal, Underground-Mined: Rate Differential against Severance Tax
Coal, Underground-Mined: Rate Differential against Severance Surtax
Coal: Exemption from Severance Surtax
Coal: Intergovernmental Production Tax Credit against Severance Tax
Coal: Sales to Tax-Exempt Entities, Service Charges, and Royalty Deductions against Oil and Gas Conservation Tax
Compensating Tax Estoppel on Households
Construction Material Deduction against Compensating Tax
Construction of Public Health Care Facilities Deduction against Gross Receipts Tax
Construction Services Deduction against Gross Receipts Tax
Contributions to Certain Organizations / Agencies Deduction against Compensating Tax
Copper, Lead, and Zinc: Hoisting, Crushing and Loading, and Processing, or Beneficiation Costs Deductions against Severance Tax
Copper: Rate Differential from Severance Tax
Corporate Income Tax Exemption for Insurance Companies, Certain Trusts and Religious and Charitable Organizations
Corporate Supported Child Care Credit against Corporate Income Tax
Corporate Telecommunication Services Provided Internally or to Affiliates Deduction against Interstate Telecommunications Gross Receipts Tax
County Gaming Tax Credit
County Industrial Revenue Bonds
Credit Unions' Sales Deduction against Gross Receipts Tax
Cultural Property Preservation Credit against Corporate Income Tax
Cultural Property Preservation Credit against Personal Income Tax
Destroyed Gasoline Credit or Refund against Gasoline Tax
Destroyed or Damaged Alcohol Beverages Refund or Credit against Liquor Excise Tax
Destroyed or Damaged Alcohol Beverages Refund or Credit against Local Liquor Excise Tax
Destroyed Special Fuels Credit or Refund against Special Fuels Excise Tax
Disabled Street Vendors Exemption against Gross Receipts Tax
Disabled Veterans Exemption against Property Tax
Dividends and Interest Exemption against Gross Receipts Tax
Double Local Option Payment Penalty Credit against Gross Receipts, Compensating or Withholding Taxes
Double-Weighted Sales Apportionment Against Corporate Income Tax

Educational Trust Fund Payments Deduction against Personal Income Tax
Electric Transmission Facilities Deduction against Compensating Tax
Electric Transmission Facilities Deduction against Gross Receipts Tax
Electricity Conversion Deduction from Gross Receipts Tax
Electricity Exchange Deduction from Gross Receipts Tax
Electricity Exemption against Compensating Tax
Electronic ID Card Readers Credit against Corporate Income Tax
Electronic ID Card Readers Credit against Personal Income Tax
Enriched Uranium Deduction against Gross Receipts Tax
Event Center Surcharge Exemption against Gross Receipts or Governmental Gross Receipts Taxes
Expenses Related to Organ Donation Deduction against Personal Income Tax
Exports of Petroleum Products and Federal Sales Exemptions against Petroleum Products Loading Fee
Federal Vehicle Sales Exemption against Motor Vehicle Excise Tax
Federal, State, or Tribal Exemption against Alternative Fuel Excise Tax
Federal, State, or Tribal Exemption against Cigarette Tax
Feed and Fertilizers Deduction against Gross Receipts Tax
Fees from Social Organizations Exemption against Gross Receipts Tax
Film Companies Deduction against Gross Receipts Tax
Film Production Tax Credit against Corporate Income or Personal Income Taxes
Food Deduction against Gross Receipts Tax
Food Stamps Exemption against Gross Receipts Tax
Fuel Exemption against Gross Receipts or Compensating Taxes
Fuel Used in Space Vehicles Exemption against Gross Receipts or Compensating Taxes
Fundraising Events Deduction against Gross Receipts Tax
Gasoline Tax Deductions against Gasoline Tax
Gasoline Tax versus Gross Receipts Tax
Geothermal Energy: Transportation Costs and Royalty Deductions against Oil and Gas Conservation Tax
Geothermal Ground Coupled Heat Pump Credit against Corporate Income Tax
Geothermal Ground Coupled Heat Pump Credit against Personal Income Tax
Gold and Silver Rate Differential from Severance Tax
Gold: Hoisting, Crushing and Loading, and Processing, or Beneficiation Costs Deductions against Severance Tax
Government Agencies Exemption against Gross Receipts Tax
Governmental Agencies and Indians Exemption against Compensating Tax
Governmental Agencies Deduction against Gross Receipts or Governmental Gross Receipts Taxes
Gross Receipts Tax Receipts Exemption From Gross Receipts Tax
Head-of-Family Exemption against Property Tax
Health Care Practitioners Deduction against Gross Receipts Tax
Hearing and Vision Aides Deduction against Gross Receipts Tax
High-Wage Jobs Tax Credit against Gross Receipts (except Local Option), Compensating, or Withholding Taxes
Hospitals Credit against Gross Receipts Tax
Hospitals Deduction against Gross Receipts Tax
Hosting World Wide Web Sites Deduction against Gross Receipts Tax

Indian Land Sales Deduction against Gasoline Tax
Indian Tribe Purchase of Interstate Telecommunications Exemption against Interstate Telecommunications Gross Receipts Tax
Indian Tribe Reception of Special Fuels on Indian Territory Exemption against Special Fuel Excise Tax
Indians' Exemption against Personal Income Tax
Insurance Companies Exemption against Gross Receipts Tax
Insurance Companies Pre-Empted From Taxation
Interest Income Exemption From Gross Receipts Tax
Intergovernmental Business Credit against Corporate Income Tax
Internet Services Deduction against Gross Receipts Tax
Interstate Commerce Transactions Deduction against Leased Vehicle Gross Receipts Tax
Interstate Sales and Transfers to Other Winegrowers Deduction against Liquor Excise Tax
Interstate Sales Deduction against Tobacco Products Tax
Interstate Telecommunication Services Exemption against Gross Receipts Tax
Interstate Telecommunications Rate Differential against Gross Receipts Tax
Intrastate Transportation and Services in Interstate Commerce Deduction against Gross Receipts Tax
Investment Advisory Services Deduction against Gross Receipts Tax
Investment Tax Credit against Gross Receipts, Compensating, or Withholding Taxes
Jet Fuel Deduction against Compensating Tax
Jet Fuel Deduction against Gross Receipts Tax
Jewelry Manufacturers Deduction against Gross Receipts Tax
Job Mentorship Programs Credit against Corporate Income Tax
Job Mentorship Programs Credit against Personal Income Tax
Laboratory Partnership with Small Business Tax Credit against Gross Receipts Tax (except Local Option)
Land Conservation Credit against Corporate Income Tax
Land Conservation Credit against Personal Income Tax
Lease of Construction Equipment Deduction from Gross Receipts Tax
Leasing for Subsequent Lease Deduction against Gross Receipts Tax
Leasing or Licensing Films and Tapes Deduction against Gross Receipts Tax
Livestock Feeding Exemption against Gross Receipts Tax
Loans Deduction against Gross Receipts Tax
Local Hospital Transportation Exemption against Gross Receipts Tax
Lottery Retailers Deduction against Gross Receipts Tax
Low- and Middle-Income Persons Exemption against Personal Income Tax
Low Income Comprehensive Tax Rebate against Personal Income Tax
Low Income Property Tax Rebate against Personal Income Tax
Manufacturers Deduction against Gross Receipts or Governmental Gross Receipts Taxes
Medical Care Savings Accounts Exemption against Personal Income Tax
Medical Services Deduction against Gross Receipts Tax
Microbrewer Beer Rate Differential against Liquor Excise Tax
Military Acquisition Programs Deduction against Gross Receipts Tax
Military Construction Services Deduction against Gross Receipts Tax

Molybdenum or Molybdenum Products: Hoisting, Crushing and Loading, and Processing, or Beneficiation Costs Deductions against Severance Tax
Molybdenum: Rate Differential against Processors Tax Component of the Resources Excise Tax
Molybdenum: Rate Differential against Resources Tax Component of the Resources Excise Tax
Molybdenum: Sales to Tax-Exempt Entities, Service Charges, and Royalty Deductions against Processors Tax Component of Resources Excise Tax
Molybdenum: Sales to Tax-Exempt Entities, Service Charges, and Royalty Deductions against Resources Tax Component of Resources Excise Tax
Motor Vehicle Excise Rate Differential vs. Gross Receipts Tax
National Guard Member Premiums Paid for Life Insurance Exemption against Personal Income Tax
NATO Gasoline Sales Deduction against Gasoline Tax
NATO Petroleum Products Loading Fee Deduction against Gasoline Tax
NATO Special Fuels Sales Deduction against Special Fuels Tax
NATO Vehicle Sales Exemption against Motor Vehicle Excise Tax
Natural Gas, Carbon Dioxide, and Helium: Rate Differential against Oil and Gas Conservation Tax
Natural Gas: Exemption against Oil and Gas Severance Tax (Restoration Well)
Natural Gas: Force Majeure Deductions against Natural Gas Processors Tax
Natural Gas: Gas Already Taxed Exemption from Natural Gas Processors Tax
Natural Gas: Gas Flared Deductions against Natural Gas Processors Tax
Natural Gas: Gas Returned to Lease Deductions against Natural Gas Processors Tax
Natural Gas: Processing Costs Deductions against Natural Gas Processors Tax
Natural Gas: Rate Differential (Based on Price) against Oil and Gas Emergency School Tax (Stripper Well)
Natural Gas: Rate Differential (Based on Price) against Oil and Gas Severance Tax (Stripper Well)
Natural Resources Subject to Resources Excise Tax Act Exemption against Gross Receipts Tax
Natural Resources, all, except Coal and Uranium: Royalty Deductions against Severance Tax
Natural Resources, all, except Potash or Potash Products, Molybdenum or Molybdenum Products, Copper, Lead, Zinc, Gold, Silver, Coal, and Uranium: Hoisting, Crushing and Loading, Freight Charges, and Processing, or Beneficiation Costs Deductions against Severance Tax
Natural Resources, all, except Timber, Potash and Molybdenum: Sales to Tax-Exempt Entities, Service Charges, and Royalty Deductions against Processors Tax Component of Resources Excise Tax
Natural Resources, except Potash and Molybdenum: Sales to Tax-Exempt Entities, Service Charges, and Royalty Deductions against Resources Tax Component of Resources Excise Tax
Natural Resources: The Taxable Value on which the Processors Tax Component of the Resources Excise Tax was Paid is Exempt from the Resources Tax Component of the Resources Excise Tax
Newspapers Deduction against Gross Receipts Tax
NMMIP Assessment Credit against Insurance Premium Tax
Nonathletic Special Events Deduction against Gross Receipts Tax
Non-highway Use of Alternative Fuel Exemption against Alternative Fuel Excise Tax
Non-highway Use of Special Fuels Exemption against Special Fuel Excise Tax
Nonprofit Facilities Exemption against Gross Receipts Tax
Nonprofit Organizations Deduction against Gross Receipts or Governmental Gross Receipts Taxes
Nonprofit Organizations Exemption against Compensating Tax
Nonprofit Organizations Exemption against Gross Receipts Tax
Occasional Sale of Property or Services Exemption against Gross Receipts Tax

Off Highway Vehicle Use Exemption against Weight Distance Tax
Officiating at NM Activities Association-Sanctioned School Events Exemption against Gross Receipts Tax
Oil and Gas or Mineral Interests Exemption against Gross Receipts Tax
Oil and other Liquid Hydrocarbons, Carbon Dioxide, Helium, and Non-Hydrocarbon Gases and Natural Gas: Processing Costs Deduction against Oil and Gas Conservation Tax
Oil and Other Liquid Hydrocarbons, Carbon Dioxide, Helium and Non-Hydrocarbon Gases, and Natural Gas: Intergovernmental Production Tax Credit against Oil and Gas Emergency School, Oil and Gas Severance, Oil and Gas Conservation, Oil and Gas Ad Valorem Production, and Oil and Gas Ad Valorem Production Equipment Taxes
Oil and Other Liquid Hydrocarbons, Carbon Dioxide, Helium and Non-Hydrocarbon Gases, and Natural Gas: Processing Costs Deduction against Oil and Gas Severance Tax
Oil and Other Liquid Hydrocarbons, Carbon Dioxide, Helium and Non-Hydrocarbon Gases, and Natural Gas: Processing Costs Deduction from Oil and Gas Emergency School Tax
Oil and Other Liquid Hydrocarbons, Carbon Dioxide, Helium and Non-Hydrocarbon Gases, and Natural Gas: Royalty Deductions against Oil and Gas Emergency School Tax
Oil and Other Liquid Hydrocarbons, Carbon Dioxide, Helium and Non-Hydrocarbon Gases, and Natural Gas: Royalty Deductions from Oil and Gas Severance Tax
Oil and Other Liquid Hydrocarbons, Carbon Dioxide, Helium and Non-Hydrocarbon Gases, and Natural Gas: Transportation Expenses Deduction from Oil and Gas Emergency School Tax
Oil and Other Liquid Hydrocarbons, Carbon Dioxide, Helium and Non-Hydrocarbon Gases, and Natural Gas: Transportation Expenses Deduction from Oil and Gas Severance Tax
Oil and Other Liquid Hydrocarbons, Carbon Dioxide, Helium, and Non-Hydrocarbon Gases: Rate Differential against Oil and Gas Emergency School Tax
Oil and Other Liquid Hydrocarbons, Natural Gas, and Carbon Dioxide: Jicarilla Apache Tribal Capital Improvement Tax Credit against Oil and Gas Emergency School Tax
Oil and Other Liquid Hydrocarbons: Exemption against Oil and Gas Severance Tax (Restoration Well)
Oil and Other Liquid Hydrocarbons: Rate Differential (Based on Price) against Oil and Gas Emergency School Tax (Stripper Well)
Oil and Other Liquid Hydrocarbons: Rate Differential (Based on Price) against Oil and Gas Severance Tax (Enhancement Recovery Project, Stripper Well, and Well Workover Projects)
Oil, Natural Gas or Liquid Hydrocarbon, Uranium, Coal, geothermal energy, Carbon Dioxide, Helium and Non-Hydrocarbon Gases: Royalty Deductions from Oil and Gas Conservation Tax
Oil, Natural Gas or Liquid Hydrocarbon, Uranium, Coal, Geothermal Energy, Carbon Dioxide, Helium and Non-Hydrocarbon Gases: Transportation Expenses Deduction from Oil and Gas Conservation Tax
Oil, Natural Gas or Liquid Hydrocarbons, Carbon Dioxide, Helium and Non-Hydrocarbon Gases: Royalty Deductions against Ad Valorem Production Tax
Oil, Natural Gas, or Liquid Hydrocarbons, Carbon Dioxide, Helium and Non-Hydrocarbon Gases: Processing Costs Deduction against Ad Valorem Production Tax
Oil, Natural Gas, or Liquid Hydrocarbons, Carbon Dioxide, Helium and Non-Hydrocarbon Gases: Transportation Expenses Deduction against Ad Valorem Production Tax
Other Taxes Paid Exemption against Governmental Gross Receipts Tax
Personal Effects Exemption against Compensating Tax
Persons 100 Years of Age or Older Exemption against Personal Income Tax
Persons 65 Year of Age or Older Property Tax Rebate against Personal Income Tax
Persons 65 Years of Age or Older or Blind Exemption against Personal Income Tax
Petroleum Products Loading Fee Returned Gasoline Deduction against Gasoline or Special Fuels Taxes

Pipeline Transportation of Oil and Gas Products Exemption against Compensating Tax
Pipeline Transportation of Oil and Gas Products Exemption against Gross Receipts Tax
Potash or Potash Products: Hoisting, Crushing and Loading, Freight Charges, and Processing or Beneficiation Costs Deductions against Severance Tax
Potash: Rate Differential against the Resources Component of Resources Excise Tax
Potash: Rate Differential from Processors Tax Component of Resources Excise Tax
Potash: Rate Differential from Severance Tax
Potash: Sales to Tax-Exempt Entities, Service Charges, and Royalty Deductions against Processors Tax Component of Resources Excise Tax
Potash: Sales to Tax-Exempt Entities, Service Charges, and Royalty Deductions against Resources Tax Component of Resources Excise Tax
Preemption by Federal Law against Petroleum Products Loading Fee
Prescription Drugs Deduction against Gross Receipts or Governmental Gross Receipts Taxes
Production or Staging of Professional Contests Deduction against Gross Receipts Tax
Products Subject to Oil and Gas Emergency School Tax Act Exemption against Gross Receipts Tax
Prosthetic Devices Deduction against Gross Receipts or Governmental Gross Receipts Taxes
Publication Sales Deduction against Gross Receipts Tax
Purchase of Certain Chemicals and Reagents Deduction against Gross Receipts Tax
Purchase of Gasoline for Off-road Use Refund against Gasoline Tax
Purchases by or on Behalf of the State Deduction against Gross Receipts Tax
Purchases Made by Instrumentality of Armed Forces Exemption against Local Liquor Excise Tax
Purchases Made for Resale Exemption against Local Liquor Excise Tax
Purses and Jockey Remuneration at NM Racetracks and Gross Amounts Wagered Exemption against Gross Receipts Tax
Railroad Equipment and Aircraft Exemption against Compensating Tax
Real Estate Transactions Deduction against Gross Receipts Tax
Receipts of Homeowners Associations Exemption against Gross Receipts Tax
Refiners and Persons Subject to the Natural Gas Processors Tax Act Exemption against Gross Receipts Tax
Religious Activities Exemption against Gross Receipts Tax
Renewable Energy Production Credit against Corporate Income Tax
Renewable Energy Production Credit against Personal Income Tax
Rental or Lease of Vehicles Used in Interstate Commerce Deduction against Gross Receipts Tax
Resale Activities of an Armed Forces Instrumentality Exemption against Gross Receipts or Compensating Taxes
Resale of Certain Manufactured Homes Deduction against Gross Receipts Tax
Resale Transactions Deduction against Interstate Telecommunications Gross Receipts Tax
Research and Development Small Business Tax Credit against Gross Receipts, Compensating, or Withholding Taxes
Returned or Spoiled Tobacco Products Refund or Credit against Tobacco Products Tax
Rural Health Care Practitioners Credit against Personal Income Tax
Rural Job Tax Credit against Gross Receipts, Compensating, Withholding, Personal Income, or Corporate Income Taxes
Sale of a Service for Resale Deduction against Gross Receipts or Governmental Gross Receipts Taxes
Sale of a Service for Resale Deduction against Gross Receipts or Governmental Gross Receipts Taxes
Sale or Lease of Real Property Deduction against Gross Receipts Tax
Sales By Out Of State Florists In New Mexico Exemption From Gross Receipts Tax
Sales for Resale Credit against Gross Receipts or Governmental Gross Receipts Tax

Sales to Governments and Tribes Exemption against Tobacco Products Tax
School Bus Use of Special Fuels Exemption against Special Fuels Tax
School Buses, Buses that Transport Agricultural Laborers, Business Operated by Religious or Nonprofit Organizations, and Motor Carrier Vehicles Operating Exclusively within 10 Miles of Mexican Border Exemption against Weight Distance Tax
Services for Electric Transmission Facilities Deduction against Gross Receipts Tax
Services on Manufactured Products Deduction against Gross Receipts Tax
Services Performed Outside NM Credit against Interstate Telecommunications Gross Receipts Tax
Services Performed Outside NM Exemption against Gross Receipts Tax
Silver: Hoisting, Crushing and Loading, and Processing or Beneficiation Costs Deductions against Severance Tax
Small Wineries Rate Differential against Liquor Excise Tax
Software Development Services Deduction against Gross Receipts Tax
Solar Energy Systems Deduction against Gross Receipts Tax
Solar Market Development Credit against Personal Income Tax
Sole Community Provider Hospital Construction Deduction against Gross Receipts Tax
Space Related Transactions Deduction against Gross Receipts Tax
Space-Related Test Articles Deduction against Compensating Tax
Special Fuel Credit against Special Fuels Excise Tax
Special Fuels and Dyed Diesel Deduction against Gross Receipts Tax
Special Fuels Credit against Special Fuels Tax
Special Fuels Supplier Tax versus Gross Receipts and Gasoline Taxes
Special Needs Adopted Child Tax Credit against Personal Income Tax
Stadium Surcharge Exemption against Gross Receipts or Governmental Gross Receipts Taxes
Suppliers' Deduction against Special Fuels Excise Tax
Sustainable Building Credit against Corporate Income Tax
Sustainable Building Credit against Personal Income Tax
Tangible Personal Property and Licenses for Leasing Deduction against Gross Receipts Tax
Tangible Personal Property Exemption against Property Tax
Tangible Personal Property or Licenses for Resale Deduction against Gross Receipts or Governmental Gross Receipts Taxes
Tangible Property Used for Leasing Deduction against Compensating Tax
Tax Holiday Sales Deduction against Gross Receipts Tax
Tax Increment for Development
Tax Paid in Another State credit against Compensating Tax
Tax Paid in Another State on Services Credit against Gross Receipts Tax
Taxes Paid to Another State Credit against Motor Vehicle Excise Tax
Taxes Paid to Another State Credit against Personal Income Tax
Taxes Paid to Certain Tribes Credit against Gross Receipts Tax
Taxes Paid to Navajo Nation for Selling Coal Credit against Gross Receipts Tax
Technology Jobs Tax Credit against Gross Receipts, Compensating, Withholding, Personal Income or Corporate Income Taxes
Telecommunications Services Exemption against Gross Receipts Tax
Test Articles Deduction against Compensating Tax
Textbooks Exemption against Gross Receipts Tax
Third-Party Call Centers Primarily Engaged In Exports Exemption From Gross Receipts Tax

Timber, Pumice, Gypsum, Sand, Gravel, Clay, Fluorspar, Other Nonmetallic Minerals, Lead, Zinc, Thorium, Molybdenum, Manganese, Rare Earth and Other Metals: Rate Differential from Severance Tax 5
Timber: Rate Differential from Processors Tax Component of Natural Resources Excise Tax
Timber: Sales to Tax-Exempt Entities, Service Charges, and Royalty Deductions against Processors Tax Component of Resources Excise Tax
Trade-In Allowance Deduction against Gross Receipts Tax
Trade-in Vehicle Deduction against Motor Vehicle Excise Tax
Trade-Ins Deduction against Leased Vehicle Gross Receipts Tax
Trade-Support Companies in Border Zone Deduction against Gross Receipts Tax
Transactions in Interstate Commerce Deduction against Gross Receipts or Governmental Gross Receipts Taxes
Transportation Exemption against County Correctional Gross Receipts Tax
Transportation Exemption against County Local Option Gross Receipts Tax
Transportation Exemption against Municipal Local Option Gross Receipts Tax
Transportation Exemption against Supplemental Municipal Gross Receipts Tax
Travel Agents' Commissions Deduction against Gross Receipts Tax
Tribe Received Gasoline Exemption against Gasoline Tax
Trusts and Religious and Charitable Organizations Exemption against Personal Income Tax
Uncollectable Debt and Refunds Deduction against Gross Receipts or Governmental Gross Receipts Taxes
United States Government Obligations Income / Interest Exemption against Personal Income Tax
Unpaid Doctor Services Performed in a Hospital Credit against Gross Receipts Tax
Unreimbursed or Uncompensated Medical Expenses for Persons 65 Years of Age or Older Exemption against Personal Income Tax
Unreimbursed or Uncompensated Medical Expenses for Persons 65 Years of Age or Older Credit against Personal Income Tax
Uranium Enrichment Plant Equipment Deduction against Compensating Tax
Uranium: 50% Deduction against Severance Tax
Uranium: Deductions equal to 25% of difference between Indian Royalties and Taxable Value under Resources Excise Tax against Oil and Gas Conservation Tax
Valuation freeze against Property Tax
Vehicle Acquired before July 1, 1991 with Paid Motor Vehicle Excise Tax Exemption against Leased Vehicle Gross Receipts Tax
Vehicles Exemption against Compensating Tax
Vehicles Exemption against Gross Receipts Tax
Vehicles Held for Short-Term Lease Credit against Motor Vehicle Excise Tax
Vehicles Operating Within 10 Miles of Border with Mexico Exemption against Trip Tax
Venture Capital Investment Credit against Corporate Income Tax
Veteran Employment Tax Credit against Corporate Income or Personal Income Taxes
Veterans Exemption against Property Tax
Veterans' Organizations Exemption against Property Tax (Contingent Effective Date)
Veterinary Medical Services Deduction against Gross Receipts Tax
Wages Exemption against Gross Receipts Tax
Warehousing, Threshing, Harvesting, Growing, Cultivating and Processing Agricultural Products Deduction against Gross Receipts Tax

Warranty Obligations Deduction against Gross Receipts Tax
Weight Distance Rate Differential against Weight Distance Tax
Welfare to Work Programs Credit against Corporate Income Tax (Federal Welfare-to-Work Credit was Repealed 1/2008)
Welfare to Work Programs Credit against Personal Income Tax (Federal Welfare-to-Work credit was repealed 1/2008)
Wide Area and Private Communications Deduction against Interstate Telecommunications Gross Receipts Tax
Wind and Solar Generation Equipment Deduction against Gross Receipts Tax
Working Families Tax Credit against Personal Income Tax
World Wide Web Sites Exemption From Gross Receipts Tax
World Wide Web Sites' Sales Deduction against Gross Receipts Tax

2012 NEW MEXICO TAX EXPENDITURE REPORT

APPENDIX A-4

EXECUTIVE ORDER 2011-071



State of New Mexico

Susana Martinez
Governor

EXECUTIVE ORDER 2011-071

REQUIRING PREPARATION OF AN ANNUAL TAX EXPENDITURE BUDGET

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUSANA MARTINEZ
GOVERNOR

ATTEST

DIANNA J. DURAN
SECRETARY OF STATE

