

## **MODRALL SPERLING TAX ALERT**

### **New Mexico Legislature and Executive to Consider Tax Measures in 2010 Legislative Session**

Facing a substantial projected revenue shortfall, the New Mexico legislature is very likely to address a number of measures to increase taxes in the upcoming legislative session, which runs from January 19 to February 18, 2010. There may also be measures that would reduce or end some existing tax incentives. However, because 2010 is an election year for the entire 72-member New Mexico House of Representatives, tax increases that have broad impact will not be popular among legislators. More likely to pass will be measures that target narrow sectors, such as personal income tax increases on high income taxpayers, or business taxes on corporations based out of state.

This update provides some background on New Mexico's budget and revenue picture, the work of a recent task force that studied revenue options, as well as some of the possible tax proposals to watch for.

#### **Background: New Mexico's Revenue Projections**

The New Mexico legislature will have a difficult time balancing the budget for fiscal year (FY) 2011 without considering new sources of revenues. New Mexico state government continues to deal with significant revenue shortfalls, due to low oil and gas revenues as well as continued low gross receipts tax revenues and personal income tax revenues likely related to the recession. Currently, FY2011 revenues are over \$600 million lower than the estimates earlier this year. (For comparison purposes, note that the state's general fund appropriations were approx \$5.4 billion in the current fiscal year.)

On the spending side of the equation, there has been little appetite for serious cuts in state government appropriations, either from the legislature or the executive branch. During an October, 2009 special legislative session to address a large budget deficit in the current fiscal year, the legislature passed FY2010 budget cuts of about 7 percent on state executive agencies. Governor Bill Richardson vetoed those cuts. Instead, he imposed a set of his own, smaller cuts on current fiscal year appropriations. Increased demand for state programs, in particular Medicaid, is also putting pressure on the state budget.

#### **Governor's Budget Balancing Task Force**

Following the October, 2009 special session, Governor Richardson appointed a diverse, 42-member task force to comprehensively study revenue options for the state. The task force looked at everything from personal income

taxes to “sin” taxes to various business taxes, including increases in taxes on the natural resources sector.

The task force recently completed its work and sent its report to the Governor on December 21. The task force did not make any recommendations, but only studied and analyzed the range of proposals. For most proposals, the task force studied New Mexico’s tax rates relative to other states, especially our neighboring states. The work of the task force, including detailed analysis and discussion of 34 possible options, is reported at <http://www.nmrevenueoptions.com/>.

### Corporate Income Tax and Personal Income Tax Proposals

Among the proposals studied by the task force that would have the largest positive fiscal impact are related to income tax, both corporate and personal. A 1% increase in the rate of personal income tax paid by high income earners would have the effect of partially reversing reforms made in 2003 which reduced the marginal rate from 8.9% to 4.9%.

One corporate tax proposal considered by the task force is requiring unitary combined reporting of corporate income tax. Combined reporting has also been the subject of several bills in recent years by Senator Peter Wirth (D-Santa Fe). According to the task force’s draft report, “[u]nder current law corporations may elect, but are not required, to report on a combined basis with other corporations that have a unitary relationship with the corporation. This option would require all corporations that are members of a unitary group to file their New Mexico income tax return on a combined basis.” Staff to the task force estimate that the positive fiscal impact to the state of combined reporting would be \$32 million in FY2012 and \$18.9 million in FY2013.

Tax proposals targeting high income earners and corporations are already being supported by “Better Choices New Mexico,” a large coalition of liberal, social service, and union organizations. For more information on this coalition, see <http://betterchoicesnewmexico.com/>.

### Legislative Developments

In addition to focusing on tax increases, the legislature is also likely to look at the “tax expenditure” side of the coin. Tax expenditures are tax credits and other incentives aimed primarily at stimulating business activity. In a presentation to a legislative committee recently, Tom Clifford, formerly chief economist at New Mexico Taxation & Revenue Department, now chief economist for the Legislative Finance Committee, reviewed a number of such tax expenditures. His principal points were that tax expenditures lack accountability and that the legislature’s goals might be better met through direct expenditures.

There will be legislation in the 2010 session aimed at improving the state's ability to assess tax expenditures. Senator Tim Keller (D-Albuquerque) has pre-filed a bill that would require the Taxation and Revenue Department to develop a tax expenditure budget. The bill is available at <http://www.nmlegis.gov/Sessions/10%20Regular/bills/senate/SB0023.html>. There may also be measures to reduce or eliminate some tax credits. For example, Senator John Arthur Smith (D-Deming), chair of the Senate Finance Committee, has expressed interest in capping a generous tax credit for the film industry.

#### NM Association of Commerce and Industry Positions

The Association of Commerce and Industry (New Mexico's statewide chamber of commerce) will actively lobby against tax measures generally, preferring an approach of balancing the budget through expenditure reductions and efficiency improvements. ACI will specifically oppose any tax increases that are not "broad-based, simple to administer, derived from stable revenue sources, fair and equitable, [and] spread across multiple taxes without a disproportionate burden upon particular industries, individuals or businesses." ACI's positions are in direct conflict with those of Better Choices New Mexico and may be difficult to reconcile with the state's need for additional revenue.

For additional information on any of the subjects discussed here, please contact any of the attorneys in Modrall Spering's taxation or lobbying practices in our Albuquerque and Santa Fe offices:

R.E. Thompson: [ret@modrall.com](mailto:ret@modrall.com)  
Pat Rogers: [pjr@modrall.com](mailto:pjr@modrall.com)  
Curtis Schwartz: [cschwartz@modrall.com](mailto:cschwartz@modrall.com)  
Marco Gonzales: [meg@modrall.com](mailto:meg@modrall.com)  
Leslie Padilla: [imp@modrall.com](mailto:imp@modrall.com)  
Ryan Flynn: [rxfl@modrall.com](mailto:rxfl@modrall.com)