

New Mexico Tax Legislation, in Brief 2023

Three bills enacted most of 2023's changes to the tax code. CS/HB-547 ("Tax Package") enacted four substantive changes and would have enacted many more to rates, deductions, credits, etc., absent the Governor's extensive line-item vetoes. SB-146 ("Tax Admin Package") revises administrative provisions of the Tax Administration Act and the Property Tax Code. CS/SB-147 ("Admin Tweaks") adjusts mainly administrative provisions in the Tax Administration Act and a variety of taxes. Because these bills cover more than one tax area, their provisions are reported in the relevant areas.

PERSONAL AND CORPORATE INCOME TAXES

HB-368, as amended

PTE TAX OPTION CHANGE

Under current law, owners of pass-through entities may elect (7-3A-10) to pay income tax on the entity's New Mexico income at the entity, rather than the owner, level. This bill changes the form of the election from an exemption to a more administrable credit. Applicable to 2023 and subsequent taxable years.

CS/HB-547, as amended

TAX PACKAGE

Additional 2021 income tax rebates of \$500 for single filers and married persons filing separately and \$1,000 for all other filers. [Effective 6/16/2023, despite what it claims.]

Child credit (7-2-18.34): Raises credit amount for first 3 brackets [AGI \$0 to \$25,000, from \$175 to \$600; \$25,001 to \$50,000, from \$150 to \$400 and \$50,001 to \$75,000, from \$125 to \$200]. Starting with 2024, indexed for inflation. Applies to the 2023 and subsequent taxable years.

CS/SB-147, as amended

ADMIN TWEAKS

Effective 7/1/2023

Exemption for earnings by Indians on Indian Lands (7-2-5.5): replaces description of Indian lands with the term "Indian country" as defined in 18 USC 1151 and changes application to Indians who are domiciled there (not merely live there).

CIT definitions (7-2A-2): adds as an addition to net income an amount equal to any credit claimed and allowed with respect to the distributed net income of a pass-through entity. (See also HB-368.)

Repeals these credits: qualified business facility rehabilitation (7-2-18.4, 7-2A-15), welfare-to-work (7-2-18.5, 7-2A-8.8), purchase of certain age-verification electronic equipment (7-2-18.8, 7-2A-18), blended biodiesel fuel (7-2-18.21, 7-2A-23), advanced energy (7-2-18.25, 7-2A-25), physician participation in clinical trial (7-2-18.27), veteran employment (7-2-18.28, 7-2A-27) and venture capital investment (7-2D-8.1).

GROSS RECEIPTS & COMPENSATING TAXES

CS/HB-547, as amended

TAX PACKAGE

July 1, 2023

Prior to 7/1/2028, receipts of health care practitioners (7-9-93) from copayments or insurance deductibles are deductible.

CS/SB-147, as amended

ADMIN TWEAKS

Effective 7/1/2023, except as noted

Re-defines "disclosed agency" (7-9-3) – exists if the agent or the principal has disclosed the relationship to the third party or if the third party has actual knowledge of the relationship.

Definition of "gross receipts" (7-9-3.5) – adds cannabis excise tax to list of taxes excluded from "gross receipts".

Compensating tax exemption for governments (7-9-14) – adds use of services.

Exemption for fuel (7-9-26) – technical corrections.

Exemption for federal payments to health care providers: adds provider receipts under the federal American Rescue Plan of 2021. *Note: effective April 1, 2023.*

Deduction for receipts from sales to manufacturers (7-9-49) – belatedly provides for alternative evidence (last of the NTTCC deductions to be so amended).

Deduction for receipts from sales to government agencies (7-9-54) – adds receipts from selling licenses to use digital goods in order to loan those digital goods to the public.

Credit for tribal tax (7-9-88.1) – removes restriction that the tribal tax may not exceed the combined state and local option rate.

Repeals gross receipts exemption for nonprofit entities operating facilities for retired elderly persons (7-9-16), deduction for qualified film production company (7-9-86), credit for certain penalty paid (7-9-105) [penalty itself repealed in 2007], deduction for construction services at Cannon AFB (7-9-106) and advanced energy deductions (7-9-114, 7-9G-2).

Repeals leased vehicle gross receipts tax exemption for vehicles titled in New Mexico before July 1, 1991.

LOCAL OPTION TAXES

SB-205

COUNTY HOSPITAL GRT

Effective 7/1/2023

Allows qualifying counties (i.e., Taos County) to impose a county hospital local option GRT of up to one-half percent. Requires an election. 25% of proceeds to support a nurse training program operated by a state university (or one of its branches) within the county. Remainder to finance county hospital projects (relatively broadly defined).

SPECIFIC EXCISE TAXES

CS/SB-147, as amended

ADMIN TWEAKS

Effective 7/1/2023

Cigarette manufacturing/distributing license (7-12-9.1) – applicant may not be a delinquent taxpayer with respect to either the gross receipts tax or the cigarette tax.

Motor vehicle excise tax exemptions (7-14-6) – deletes an obsolete exemption.

Trip tax (7-15-3.1) – Clarifies imposition of this tax to each trip made in this state by the registrant, owner or operator of a foreign-based commercial motor carrier vehicle.

Weight distance tax permits (7-15A-12) – permits may be suspended or declined if the owner or operator is a delinquent taxpayer with respect to the gross receipts tax or the weight distance tax.

Insurance premium tax:

a. (7-40-3) Extends tax to premiums paid by an insured to a non-admitted insurer. Requires (at 59A-15-4) any insured who procures or renews insurance with a non-admitted insurer on a risk located or to be performed in whole or in part in this state to file insurance premium tax returns.

b. Credit for medical insurance pool assessments (7-40-6) – any excess of credit over tax liability shall not be refunded or carried forward.

Cannabis excise tax:

a. (7-42-4) Establishes reporting locations (parallel to those of 7-1-14 for gross receipts) for reporting location of sale of cannabis products.

b. License renewal (26-2C-6) – license may not be renewed if licensee is delinquent with respect to gross receipts or cannabis excise tax.

PROPERTY TAXES

HB-186, as amended

PROOF OF ELIGIBILITY

Effective 6/16/2023

When a disabled veteran or the disabled veteran's unmarried surviving spouse provides proof of eligibility, the exemption shall be allowed for the current tax year but not for amounts due in previous years.

SB-146

TAX ADMIN CHANGES

Effective 7/1/2023

Sets up separate protest channels for protests of valuations of state-assessed property versus county-assessed property.

SB-324

COUNTY ASSESSOR CERTIFICATION PAY

Effective 7/1/2023

Boosts the additional annual pay (by \$250 or \$500, depending on the certificate) that a county assessor or any of the assessor's employees can receive by earning an Appraiser 1, 2, 3 or 4 certificate.

FILM CREDITS

CS/HB-547, as amended

TAX PACKAGE

July 1, 2023

Boosts cap on aggregate annual claims allowable (currently \$110 million) by \$10 million per year, beginning with fiscal year 2024 to a new level of \$160 million per year for 2029 and subsequent fiscal years.

New film production tax credit—excludes services of resident performing artists cast in industry standard feature performing roles from the \$5 million cap on this credit. Also, sets a cap for New Mexico film partners at \$10 million for each production, with an aggregate of \$40 million for all productions. Raises from 5% to 10% the percentage of qualifying direct production and postproduction expenditures for production work, services and items on locations in New Mexico that are at least 60 miles from the Albuquerque and Santa Fe city halls.

Nonresident below-the-line crew credit—applies to 2024 and subsequent taxable years: Excludes from eligibility payments for producers, directors, screenwriters, cast and production assistants and personal services businesses. Until July 1, 2028, allows a New Mexico film partner to claim an amount equal to resident below-the-line wages claimed, provided that a notice requirement is met. Also until July 1, 2028, permits other production companies to claim this credit for up to 20 positions, depending on the size of the production's New Mexico budget and whether the production is a television series pilot shot in New Mexico.

TAX ADMINISTRATION & OTHER

HB-78

AVIATION FUND DISTRIBUTION

Effective 7/1/2023

Eliminates the 6/30/2031 sunset on the 0.46% distribution of gross receipts revenue to the state Aviation Fund and raises the additional \$250,000/month to \$500,000/month.

SB-146

TAX ADMIN CHANGES

Effective 7/1/2023

Ups from \$25 to \$50 both the minimum amount of tax due requiring the Secretary of Taxation and Revenue to assess and the minimum amount a taxpayer is permitted to protest.

Creates a separate formal process (similar to that for protests) by which taxpayers may apply for a tax credit and cuts from 180 to 120 days the time TRD has to act on the application. Trick is that the clock does not start until TRD deems the application to be complete.

Declares as tax fraud the purchase, installation or use or the selling, transferring, developing or possessing of sales suppression software with intent to evade or defeat any tax.

CS/SB-147, as amended

ADMIN TWEAKS

Effective 7/1/2023

Amends the Tax Administration Act:

a. Requires TRD to prepare and publish a tax expenditure budget annually by November 15 (which it already does).

b. Requires cannabis businesses to report cannabis sales and tax by same reporting locations as for gross receipts.

c. Prepare a public monthly report on special fuel (like that for gasoline).

d. Adopts rules for determining business locations for sale or license of intangible property (same as for tangible personal property); changes the term "business location" to "reporting location" and eliminates the definition of "business location".

e. Declares an amended insurance premium tax return showing a lesser liability than the original to be automatically a claim for refund (like PIT returns).

f. Transfer of liquor license: scope of determination of tax delinquency narrowed to gross receipts tax and liquor excise tax.

SB-336

TEMPORARY GAMING TAX DISTRIBUTION

Effective April 4, 2023

Until July 1, 2027, the gaming tax rate is cut from 26% of net take to 21.4%. The 4.6% difference must be spent by the tracks on insurance for jockeys and exercise riders and the costs of complying with federal and state law regarding horse racing. State Racing Commission to review the effectiveness of these amendments and report to the Legislature by December 1, 2026 with any recommendations.

SB-491

DISTRIBUTION OF PREMIUM TAX ON HEALTH INSURANCE

Effective 7/1/2023

Distributes ten percent of proceeds from premium tax on health insurance to the Law Enforcement Protection Fund (in addition to ten percent of premium tax proceeds on life, general casualty and title insurance policies).

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