

New Mexico – New laws provide comprehensive tax reform and deadline extensions

April 12, 2013

In brief

On April 4, 2013, New Mexico Governor Susana Martinez signed H.B. 641, enacting numerous significant corporate income tax changes, including: (1) reducing the corporate income tax rate; (2) requiring combined reporting for 'big box' retailers; (3) allowing a single sales factor apportionment election for manufacturers (including the elimination of throwback for those making the election); (4) enhancing the film production credit; and (5) narrowing the high wage jobs tax credit. [[H.B. 641](#), including [Senate Floor Amendment #1](#)]

On March 21, 2013, the governor signed [H.B. 299](#), which makes the following changes: (1) taxpayers amending returns as a result of an IRS action have 180 days to file instead of 90 days; (2) the protest period is increased from 30 days to 90 days; and (3) interest on overpayments begins accruing on the date of the overpayment rather than the date of a claim.

In detail

Corporate income tax rate reduction

New Mexico's current corporate income tax has three brackets: a 4.8% tax is imposed on net income not over \$500,000; 6.4% is imposed on net income over \$500,000 but not over \$1,000,000; and 7.6% is imposed on net income over \$1,000,000.

H.B. 641 reduces the maximum corporate income tax rate from 7.6% to 5.9% over five years as follows:

- 7.3% on net income over \$1,000,000 for taxable years

beginning on or after January 1, 2014 and prior to January 1, 2015

- 6.9% on net income over \$1,000,000 for taxable years beginning on or after January 1, 2015 and prior to January 1, 2016
- 6.6% on net income over \$1,000,000 for taxable years beginning on or after January 1, 2016 and prior to January 1, 2017
- 6.2% on net income over \$500,000 for taxable years beginning on or after January 1, 2017 and prior to

January 1, 2018 (thus creating only two tax brackets going forward)

- 5.9% on net income over \$500,000 for taxable years beginning on or after January 1, 2018.

Mandatory unitary combined reporting for 'big box' retailers

For taxable years beginning on or after January 1, 2014, H.B. 641 requires mandatory unitary combined reporting for certain large retailers. Specifically, unitary corporations that make retail sales of goods in a facility

in New Mexico that is larger than 30,000 square feet must file a combined return with other unitary corporations. There is an exception for large retailers that employ at least 750 employees at facilities that do not provide retail sales of goods.

Single sales factor apportionment election for manufacturers and throwback

Under current law, manufacturers may elect to apportion business income to New Mexico using a double-weighted sales factor apportionment formula. For taxpayers whose principal business activity is manufacturing, H.B. 641 provides an election, binding for three years, to phase in single sales factor apportionment as follows:

- for taxable years beginning on or after January 1, 2014 and prior to January 1, 2015, using a double-weighted sales factor
- for taxable years beginning on or after January 1, 2015 and prior to January 1, 2016, using a triple-weighted sales factor
- for taxable years beginning on or after January 1, 2016 and prior to January 1, 2017, by multiplying the income by a fraction, the numerator of which is seven multiplied by the sales factor plus one and one half multiplied by the property factor plus one and one half multiplied by the payroll factor and the denominator of which is ten
- for taxable years beginning on or after January 1, 2017 and prior to January 1, 2018, by multiplying the income by a fraction, the numerator of which is eight multiplied by the sales factor plus one multiplied by the property factor plus one multiplied by the

payroll factor and the denominator of which is ten

- for taxable years beginning on or after January 1, 2018, using a single sales factor.

H.B. 641 removes the sales factor throwback rule for manufacturers making the election to apportion income using the phased-in single sales factor formula.

Defining ‘consumable’ for GRT deduction

Current law provides for a phased-in deduction, with a full deduction available on or after January 1, 2017, for receipts from selling certain tangible personal property consumed in the manufacturing process of a product.

H.B. 641 provides that the deduction is applicable to a ‘consumable’ and defines a consumable as “tangible personal property that is incorporated into, destroyed, depleted, or transformed in the process of manufacturing a product.” Consumables include electricity, fuels, water, manufacturing aids and supplies, chemicals, gases, repair parts, spares, and other tangibles used to manufacture a product. Consumables do not include tangible personal property used in: the generation of power; the processing of natural resources, including hydrocarbons; and the preparation of meals for immediate consumption on- or off-premises.

Changes to the high-wage jobs tax credit

H.B. 641 makes numerous changes to the high-wage jobs tax credit program, including:

- generally precluding application of the credit when jobs are created due to a business merger,

acquisition, or other change in business organization

- narrowing the ‘export’ sales qualifying requirement to provide that an ‘eligible employer’ must have more than 50% of sales of goods and services *produced in New Mexico* made to persons outside of New Mexico (the prior ‘export’ sales requirement merely provided that 50% of sales, regardless of where produced, be made to persons outside of New Mexico)
- narrowing the development training qualifying requirement by providing that an ‘eligible employer’ must be *certified* for development training program assistance by the economic development department (the prior development training requirement merely required that an employer be *eligible* for development training program assistance)
- providing a new definition of ‘benefits’ included within qualifying wages for purposes of calculating the credit
- increasing the qualifying wage requirements for jobs created on or after July 1, 2015
- requiring taxpayers to apply for the credit within 12 months following the end of the calendar year in which the taxpayer’s final qualifying period closes, and
- extending the sunset date to July 1, 2020 (from July 1, 2015).

Film production credit changes

H.B. 641 provides the following changes to the film production credit:

- allowing a maximum of \$10 million of unclaimed film production tax

credits to be carried forward for three fiscal years

- increasing the film production tax credit for certain direct production expenditures
- providing for accelerated payments of future scheduled payments of film production tax credits, and
- providing for additional eligibility requirements.

Deadline extensions

Touted by the governor as legislation to simplify tax procedures and processes for New Mexico taxpayers, H.B. 299 provides the following changes:

- **180 days to file amended return following final determination of federal adjustment.** Current law provides that taxpayers must file an amended New Mexico corporate income tax return following a federal tax adjustment resulting from an IRS audit within 90 days of the IRS adjustment. Effective July 1, 2013, taxpayers will have to file amended returns for such adjustments within 180 days of

‘final determination’ of the adjustment.

H.B. 299 includes a definition of ‘final determination,’ which includes when (1) a taxpayer makes payment on additional federal income tax liability and has not filed a petition for redetermination; (2) a taxpayer receives a federal refund; (3) a taxpayer signs Form 870; (4) the time period for filing a federal petition for redetermination has expired; (5) the taxpayer enters into a closing agreement with the IRS; or (6) a decision from the US tax court, US district court, US court of appeals, US court of claims, or US Supreme becomes final.

- **90 day protest period.** Current law provides that a taxpayer has 30 days to protest a tax assessment after the date of assessment or demand for payment. Effective July 1, 2013, the protest period is extended from 30 days to 90 days.
- **Interest on overpayments accrues beginning on date of overpayment.** Current law provides that interest on an overpayment is paid from the date of the claim for refund. For claims

made on or after July 1, 2013, interest is paid from the later of: (1) the date of overpayment; or (2) the due date of the tax to which the overpayment related.

The takeaway

Referred to by Governor Martinez as a ‘jobs bill,’ H.B. 641 includes a number of provisions the governor championed as being necessary reforms for New Mexico to compete effectively with neighboring states, including a corporate income tax rate reduction and single weighted sales factor tax policy. H.B. 641 also tightens the requirements of the high wage jobs tax credit, which was perceived as granting significant credits to unintended beneficiaries.

This legislation was finalized on the last day of a 60-day legislative session and there remain a number of open questions and ambiguities regarding whether certain provisions will be interpreted as law changes or ‘clarifications’ of existing law, the proper treatment of separate return year tax attributes in a mandatory unitary combined return filing, and the proper effective date of various sections of the bill.

Let’s talk

If you have any questions regarding H.B. 641 or H.B. 299, please contact:

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