

# **Good Intentions vs. Effective Outcomes: An Analysis of Selected New Mexico Tax Incentives**

**by  
Greg LeRoy, Thomas Cafcas and Philip Mattera  
of Good Jobs First**

**and by  
Lisa Christensen Gee and Dylan Grundman  
of the Institute on Taxation and Economic Policy**



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All of the findings and policy conclusions presented here are solely those of Good Jobs First.

## About the Authoring Organizations

**Good Jobs First** is a non-profit, non-partisan research organization dedicated to improving state and local economic development incentive programs. Founded in 1998, it is based in Washington DC. It is home to Subsidy Tracker, the only national database of company-specific incentive awards, which now combines data from almost 1,000 federal, state and local economic development programs. Good Jobs First has published more than 100 studies and trained for and assisted hundreds of organizations, including the Council of State Governments, the National Conference of State Legislatures, the National League of Cities, the American Planning Association, the Business Alliance for Local Living Economies, the Council of Development Finance Agencies, the International Economic Development Council, and the Local Government Commission/New Partners for Smart Growth. GJF Founder Greg LeRoy is the author of two books on incentives: *No More Candy Store: States and Cities Making Job Subsidies Accountable* (1994); and *The Great American Jobs Scam: Corporate Tax Dodging and the Myth of Job Creation* (2005). With a prior organization, he consulted for the U.S. Department of Labor and the states of Illinois, Washington and New York.

**Institute on Taxation and Economic Policy (ITEP)** is a non-profit, non-partisan 501 c (3) organization that produces timely, accessible, and sound analyses on federal, state, and local tax policy issues. ITEP's research helps inform policy makers, advocates, the media and general public about the fairness, adequacy, and sustainability of existing tax structures and how proposed tax changes would impact revenues and taxpayers across the income spectrum. ITEP's unique resources and capabilities ensure important fiscal policy decisions are not made in an informational vacuum.

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## Executive Summary

Tax incentives given in the name of economic development merit scrutiny as they are the dominant form of spending for job creation in New Mexico. These types of tax incentives are also the least transparent and most poorly monitored.<sup>1</sup> Not surprisingly, this examination of New Mexico economic development focused tax incentives finds that they are often costly and ineffective, insufficiently disclosed and poorly monitored.

New Mexico state tax incentives would be less likely to develop accountability and cost difficulties if they were originally justified on a market imperfection basis, equally transparent as appropriated budgets, sunsetted every two years, and subject to performance audits before reauthorization.<sup>2</sup>

Noting these best practices, we find that that state of New Mexico could gain at least \$206.6 million annually by enacting some common-sense tax expenditure reforms.

Specifically, we recommend the following changes:

**Building on the just-announced agreement by Amazon to collect the gross receipts tax, the state should move to ensure all other internet sales are also taxed**, if necessary by enacting a Colorado-style law requiring online retailers to collect

gross receipts tax, leveling the playing field with local and bricks-and-mortar retailers. Amazon.com, the largest internet-based retailer, will soon collect sales tax in 41 of the 45 states that have a sales tax. By completely closing this tax loophole, New Mexico and its localities could gain an estimated \$60.8 million. See Chapter 2.

**The state should adopt combined reporting—for all multistate corporate entities, as do 25 other states and the District of Columbia.** Combined reporting is a fair solution to a corporate income tax avoidance system involving the flushing of profits out of New Mexico to other states. Yet the state has only enacted a very narrow version of it that fails to cover most companies. By closing this loophole, the state could realize at least \$27 million annually in new revenue. See Chapter 3.

**The state should sunset the high-wage jobs tax credit and conduct a performance review, prior to reauthorization.** Originally price-tagged at \$1 million per year, the high-wage jobs tax credit cost the state almost \$70 million in 2015 and has clearly subsidized many companies that were not intended beneficiaries. Had this tax credit been established as an appropriations-based program, it is unlikely that the state would have incurred such an expense. By closing down this tax credit, the state could

save \$69.9 million annually. See Chapter 5.

**The state should reverse the phase-in of Single Sales Factor for manufacturers' income tax apportionment and return to mandatory, double-weighted sales factor or three-factor formula.** The single sales factor apportionment formula for corporate income taxes, though touted as a boon for factory jobs, lacks necessary accountability measures including a lack of requirements for job creation or for good wages and benefits. As a result, the state is losing *both revenue and jobs*. New Mexico's already near-last factory job base has declined—faster than the U.S. rate—since it was enacted. By closing this tax break, the state Mexico could gain an estimated \$45 million annually. See Chapter 6.

**The state should close the Locomotive Fuel Sales Tax Exemption.** This exemption is an example of a tax break given to a company to do what it evidently would have done anyway. It is also an example of the “slippery slope” problem, where one company gets a tax break and then a competitor insists, quite understandably, on equal treatment (getting a tax break to keep doing what it is already doing), making the revenue loss even greater. By closing this narrow preference, the state could gain \$23.1 million per year. See Chapter 7.

A bias against small, local and/or entrepreneurial businesses is a

recurring theme in New Mexico's major tax loopholes. The state could reduce tax incentives to large businesses by using dollar caps—by job, by deal, and/or by company and by capping aid intensity (the ratio of public subsidization to private capital investment). In addition, **the state should require the same business-size breakdown in its annual tax expenditure report.** See Chapter 4.

Finally, New Mexico suffers from a persistent lack of transparency in economic development tax breaks and an inconsistent track record on reporting of tax expenditures in general. New Mexico scored zero out of 100 in Good Jobs First's 2007 and 2010 “report card” studies on how well states disclose job subsidies online, and it scored just 7 out of 100 in 2014.<sup>3</sup> Since 2011, the Tax and Revenue Department's tax expenditure report has omitted items that had been previously reported—including four of the state's five largest tax expenditures. Those four expenses alone cost the state \$879 million, and the seventh-largest expenditure, which had also been unreported, cost another \$92.2 million. All five of these unreported tax breaks go to state's extractive industries. See Chapter 1.

In response, the state should undertake a number of measures to increase transparency of the costs and benefits of every economic development tax-break deal for every state incentive program:

- **The state should disclose online the costs and benefits of each economic development incentive deal for all of its incentive programs.**
- **The state should report annually the allocation of each economic development tax incentive program's value to small, medium-sized and large businesses.** The state should also require that every fiscal impact report for a proposed incentive include a new section that disaggregates the projected value of the program between small, medium-sized and large businesses.
- **The state should restore full accounting of all tax expenditures, including those exemptions intended to eliminate "pyramiding," to the Taxation and Revenue Department's annual tax expenditure report.**
- **The state should apply the same revenue-loss reporting requirements, including the reporting of intergovernmental revenue effects for tax expenditures beyond those covered by GASB Statement No. 77 on tax abatement disclosures.**
- **The state should require that every state incentive program, whether it is funded by tax expenditures or appropriations, be sunsetted after two years and be subject to a performance audit before reauthorization.**
- **The state should require that every fiscal impact report for a newly proposed incentive include a market analysis to determine whether the subject activity is likely to occur without the tax preference and also other, existing New Mexico employers may be affected by the tax break.**

## **Total Revenue Potential of Recommended Reforms**

Summarized here is the positive state revenue potential of reforms suggested by this study. This does not include any estimate of the fiscal benefits of increased transparency, regular sunseting and reauthorization of incentives, market-based vetting of proposed new tax breaks, or a reordering of priorities to more intentionally benefit small, local and entrepreneurial businesses.

By stabilizing and enhancing the revenue base for the public goods and services that all employers depend on; by creating systems to redirect resources to small, local and entrepreneurial businesses that hold the most promise; and by enabling all taxpayers to understand how the state funds economic development, New Mexico can chart a more prosperous future.

<b>Reform</b>	<b>State Revenue Potential (in \$ millions)</b>
<b>Collect sales tax on internet transactions (state portion)</b>	41.6
<b>Fully enact combined reporting</b>	≥27.0
<b>Sunset High Wage Jobs Tax Credit</b>	69.9
<b>Eliminate Locomotive Fuel Tax Exemption</b>	23.1
<b>Repeal Single Sales Factor Apportionment for CIT</b>	45.0
<b>TOTAL</b>	≥206.6

## **Introduction: Treating Tax Expenditures More Like Appropriations**

Despite an increasingly costly menu of dominated by various forms of tax expenditures (exemptions, credits, deductions and diversions), New Mexico's economy continues to lag that of the nation and the Southwest.<sup>4</sup> The state also gives tax preferences to some individuals and industries. Sometimes justified as pro-job incentives, these preferences reduce state revenues, generate substantial opportunity costs and put upward pressure on all others' tax rates.

There are two truisms about the two different ways states pay for economic development incentives. Tax expenditures, compared to appropriated expenditures, are both "where the money is" *and yet* they are also held the least accountable.

As has been documented in several states where non-profit groups or state agencies have published "unified economic development budgets," *tax expenditures* for economic development—as opposed to *appropriated expenditures*—are the dominant form of spending in the name of jobs, by ratios as high as 3:1 to even 9:1.<sup>5</sup> New Mexico's Legislative Finance Committee published a summary that indicated a 4:1 ratio between 2007 and 2011,<sup>6</sup> but that was before the big run-up in costs in the High Wage Jobs Tax Credit program and before Single Sales Factor

economic development incentives, apportionment was enacted.

While we did not revisit that calculation for this study, the pattern is clearly evident in New Mexico. As we testified to the Legislative Revenue Stabilization and Tax Policy Committee in July 2016, one tax break alone—the Locomotive Fuel Gross Receipts & Compensating Tax Exemption—had a cost equal to all of the state's programs directly dedicated to small businesses (about \$7.8 million each three years ago, and the Locomotive Exemption has since almost tripled in cost).<sup>7</sup>

Yet despite their dominant costs, tax expenditures are far more shielded from year-to-year budget pressures than are appropriations. This is true because many tax expenditures are structured as "as of right" tax exemptions, credits or deductions to which a company (or individual) is automatically entitled when filing its tax returns, if it has performed a specified activity.

Even if a company must file a one-time application or obtain a certification of eligibility, it often then eludes further scrutiny. Then cumulatively, as more companies qualify to claim the multi-year (or even open-ended) tax break, the expense may grow each year with little or no legislative debate, no

spending cap, and with little review or re-balancing of the costs versus competing priorities.

New Mexico's High Wage Jobs Tax Credit is a good programmatic example of this cost-creep problem. Another example is Single Sales Factor (SSF), which New Mexico is now phasing in. SSF is simply a change in the way some companies compute their New Mexico-taxable income, but with no accounting for jobs or other strings attached.

Because many of them are not really managed by a programmatic agency, tax expenditures are less likely to be audited for performance results. They are also less likely to be subject to "sunset" provisions requiring that they be periodically reauthorized (preferably after being evaluated).

As the Pew Center on the States concluded in a large national survey:

*Although no one knows the total, policy makers spend billions of dollars annually on tax incentives for economic development, and use of these investments appears to have grown substantially since the 1970s. Today, every state has at least one tax incentive program, and most have at least several...*

*But no state regularly and rigorously tests whether those investments are working and ensures lawmakers consider this*

*information when deciding whether to use them, how much to spend, and who should get them. Often, states that have conducted rigorous evaluations of some incentives virtually ignore others or assess them infrequently. Other states regularly examine these investments, but not thoroughly enough.<sup>8</sup>*

And as the United States General Accountability Office summarizes the issue in its primer on federal tax expenditures (which are especially well-documented compared to the states'):

*However, unlike federal discretionary spending, tax expenditures do not compete with other priorities in the annual appropriations process, and many are not subject to congressional reauthorization. Instead, many tax expenditures operate like mandatory spending programs (such as Medicare), with eligibility rules and formulas that provide benefits to those who wish to participate.*

The opposite is true of programs that depend on appropriated expenditures. Their funding levels are highly vulnerable to year-to-year budget pressures. If the state encounters a revenue shortfall (because of a recession or even a dip in global oil prices that depresses severance tax

revenues), program budgets may have to be cut. This is true of programs that are labeled “economic development” and of other programs that have profound impacts on the state’s ability to attract private investment, such as quality education, efficient infrastructure, accessible community colleges, sufficient water, and good public transit.

Finally, appropriation-dependent programs are more intentionally managed by, for example, an employment and training agency or a small business assistance office. Thus, they are more likely to be the subject of regular legislative oversight, and performance evaluations. They are also more likely to experience journalistic scrutiny, in part because their records are covered by open records acts and are not shielded by taxpayer-secrecy rules.

Hence a recurring emphasis of this study’s recommendations: New Mexico taxpayers would benefit greatly if policymakers treated tax expenditures more like appropriations. Tax breaks need to be fully transparent; their costs need to be readily evident (by company and by program); their benefits must be clearly defined and monitored (again, by company and by program); and if

their benefits cannot be clearly proven, they should be terminated. This is especially true because there are many competing uses for the funds to sustain public goods and services that benefit all employers, no matter their size or influence.

Some states have, because of budget pressures and/or adverse findings about program effectiveness, eliminated or curtailed major tax-based incentive programs, and others are weighing additional changes. Michigan and Louisiana are two states known to have historically large tax expenditures for economic development. The Badger State discontinued its very costly Michigan Economic Growth Authority program in 2011(although the state continues to pay out hundreds of millions of dollars per year in previously awarded commitments).<sup>9</sup> And Louisiana’s governor has issued an executive order heralding both a spending cut and governance changes to that state’s Industrial Facilities Tax Exemption Program (which costs governments a total of \$1.7 billion per year there).<sup>10</sup> California, as part of a 2011 budget-balancing package, eliminated tax increment financing; the program was by then diverting about \$6 billion annually and creating large offset-payment costs for the state.<sup>11</sup>

**Chapter 1:**  
**Transparency:**  
**The Bedrock Reform in Which New Mexico Lags Severely**

No matter which perspective or concerns one brings to the issue of tax expenditures, the one thing everyone must have first is transparency. If the costs, recipients, and benefits of each tax break program and deal are not easily visible to the taxpaying public—and to employers, elected officials, academics, journalists, non-profits, etc.—then an informed debate is impossible.

This is true whether one is trying to balance optimal budget priorities, promote small business development, ensure tax breaks are not actually windfalls, plan growth to maximize effective land use and a strong tax base, or better coordinate tax policy with workforce development or with infrastructure spending. Disclosure is the cornerstone reform that makes everything else possible.

Unfortunately, New Mexico is well behind the curve compared to most other states. It is far less transparent and has remained so even as the national trend has been towards broad improvement.

**States Increasingly Disclose Economic Development Awards**

During the past two decades, many state governments (and some cities and counties) have dramatically

improved their disclosure practices with regard to economic development incentive awards. While high-profile deals have usually been open to scrutiny after they were secretly negotiated, in years past the great bulk of tax-break awards were poorly disclosed, keeping the public in the dark about which companies were the recipients and whether the firms lived up to any job-creation or investment commitments made as part of the deals.

Under pressure from accountability groups such as Good Jobs First and state budget watchdogs, one state after another began to put data on subsidy awards online, starting with Ohio in 1999 and including remarkable websites in North Carolina in 2003 and Illinois in 2005. Although there were substantial variations in the breadth and quality of disclosure, by 2007 when we issued our first “report card” study, 23 states had put at least some recipient data on the web.<sup>12</sup> New Mexico was not among them. Three years later the number had grown to 37 states.<sup>13</sup> New Mexico was still not among them. The last time Good Jobs First graded states’ practices, in January 2014, the number of states with some online disclosure had climbed to 46 and today every state has at least some web-based transparency.<sup>14</sup>

By 2014, New Mexico had finally entered the disclosing column. The state received a score of just 7 out of 100 possible points by virtue of

posting a four-page report on the Job Training Incentive Program that included a table listing recipient firms in the most recent fiscal year with their maximum possible award and projected job and wage figures.<sup>15</sup> The four other major programs we graded—the film tax credit, the High-Wage Jobs Tax Credit, the Investment Tax Credit for Manufacturers, and the Technology Jobs Tax Credit—again received transparency scores of zero.

This leaves New Mexico, ranked in 38<sup>th</sup> place, far behind numerous states that are now providing online disclosure of recipients in multiple subsidy programs. Several other states that got zeroes in 2010 made much bigger strides by 2014. These include Oregon, which jumped to the top 10 in our ranking, and Wyoming, which reached 17<sup>th</sup> place among the states.

States that border New Mexico all do better by this measure; indeed, Texas ranked seventh overall among the states. Other states with substantial rural economies and/or large extractive sectors—including Vermont, Louisiana and Kentucky—ranked with Oregon in the top quartile.

Some states lag behind in online disclosure because they have interpreted taxpayer confidentiality laws as prohibiting the release of data on company-specific tax breaks, especially those involving corporate income tax credits. This is not the issue in New Mexico: Good Jobs First

has requested and obtained unpublished recipient data for the following programs: film production tax credit, High Wage Jobs Tax Credit, the Investment Tax Credit for Manufacturers and the technology jobs tax credit.

We have added this information to our Subsidy Tracker database and enhanced it by associating subsidiaries to their corporate parents, thereby greatly expanding the amount and quality of New Mexico subsidy information online.<sup>16</sup> It would be preferable, however, for the state itself to make this information available in one unified portal.

Reporting costs and the names of recipients is not enough: Actual benefits must also be disclosed. A growing number of states are now including not only projected jobs, wages and/or investments but also each deal's actual outcomes over time after the award has been made. Some states have taken their data and made it available through websites with advanced search functions, maps and downloading features. Among the states with the best online disclosure across the board are Illinois and Michigan.

Unfortunately, the unpublished information given to us on the four New Mexico programs includes neither projected jobs nor actual jobs created or wages and benefits actually paid. Only when each deal's benefits

are disclosed along with its costs can meaningful analysis be done.

New Mexico has taken steps to promote transparency of other aspects of state finances. The Sunshine Portal has links to the state’s comprehensive annual financial reports, reports of the state investment council, budget details, capital projects and other data.<sup>17</sup> The failure to provide economic development incentive information on this site or a dedicated web page is a glaring omission.

### **Aggregate Reporting of Tax Expenditure Costs**

Along with poor subsidy recipient online disclosure, New Mexico lags when it comes to reporting aggregate data on the revenue losses associated with special tax break policies. Until fairly recently, the state did not produce a tax expenditure budget on a regular basis, thus depriving the public of vital information about what is happening to its tax dollars.

In 2010 the Tax and Revenue Department (TRD) produced a one-time tax expenditure report that had a fairly complete list of carve-outs from the tax code that worked to the advantage of certain business sectors, especially the extractive industries—oil, gas and mining—that play a big role in the state’s economy.<sup>18</sup> The document listed dozens of provisions benefiting these industries that reduced the revenue generated by the

state’s gross receipts tax by more than \$100 million a year.

During the current gubernatorial administration, which took office in 2011, TRD began publishing an annual tax expenditure report, but most of those provisions relating to the extractive sector were excluded from the tabulations.<sup>19</sup> The Department points out that these provisions—which are mainly deductions and exemptions in the calculation of gross receipts—are so-called “anti-pyramiding” measures designed to prevent taxation in the purchase of business inputs. It thus chooses not to treat them as tax expenditures.

Anti-pyramiding provisions may legitimately be classified as a separate category of tax expenditures, especially because New Mexico’s gross receipts tax covers many business-to-business transactions. But given that these exemptions are both selective (only certain industries enjoy them) and costly, failing to publicly report the lost revenue amounts results in a seriously incomplete picture of the state’s revenue situation.

### **New Data from the State Auditor Rewrites Tax-Expenditure Rankings**

The Office of the State Auditor (OSA) recently obtained data from TRD to restore data for the missing programs. When taken in context with other major tax expenditures, the new figures completely rewrite the top

rankings of the state’s costliest tax expenditures. Specifically: the OSA requested TRD’s current estimates for the anti-pyramiding provisions and provided the resulting data to Good Jobs First. This information should be part of future tax expenditure reports, even if it is accompanied by TRD’s caveat that it does not consider the amounts to be “tax expenditures.”

The chart below presents (center column) the most recent published compilation of top state tax expenditures, as last reported by the Legislative Finance Committee<sup>20</sup> in April 2016, side-by-side (right column) with the same top-cost compilation with the TRD data restored to the analysis for those expenditures that had not been reported since 2011.

**Costliest Tax Expenditures, FY15 (in \$ millions)**

Tax Expenditure	Legislative Finance Committee Report April 2016	Updated Tax and Revenue Department Data from Office of the State Auditor
Transportation Expenses Deduction from the Oil and Gas Emergency School Tax		293.8
Transportation Expenses Deduction from the Oil and Gas Severance Tax		277.6
Sale of food and hold harmless	238.9	238.9
Oil/Gas Processing Costs Deductions from Emergency School Tax		156.9
Processing Costs Deductions from Oil and Gas Severance Tax		150.7
Medical insurance pool credit against premium tax assessments	93.2	not included
Oil/Gas Transportation Expenses Deduction against the Ad Valorem Production Tax		92.2
Nonprofits organization exemption	80.0	80.0
Sales to non-profits	76.0	76.0
Health care practitioner deduction and hold harmless	70.1	70.1
High wage jobs credit	69.9	69.9

The differences between the two lists are striking: without the restored TRD data, the 2016 LFC report omitted four of the state's five largest tax expenditures, and those four expenses alone cost \$879 million. The seventh-largest expenditure, which had also been unreported, cost another \$92.2 million.

### **New Accounting Standard Will Improve Incentive-Cost Disclosure**

A new government accounting rule now taking effect will help bring New Mexico into far better disclosure of economic development tax-break program costs.

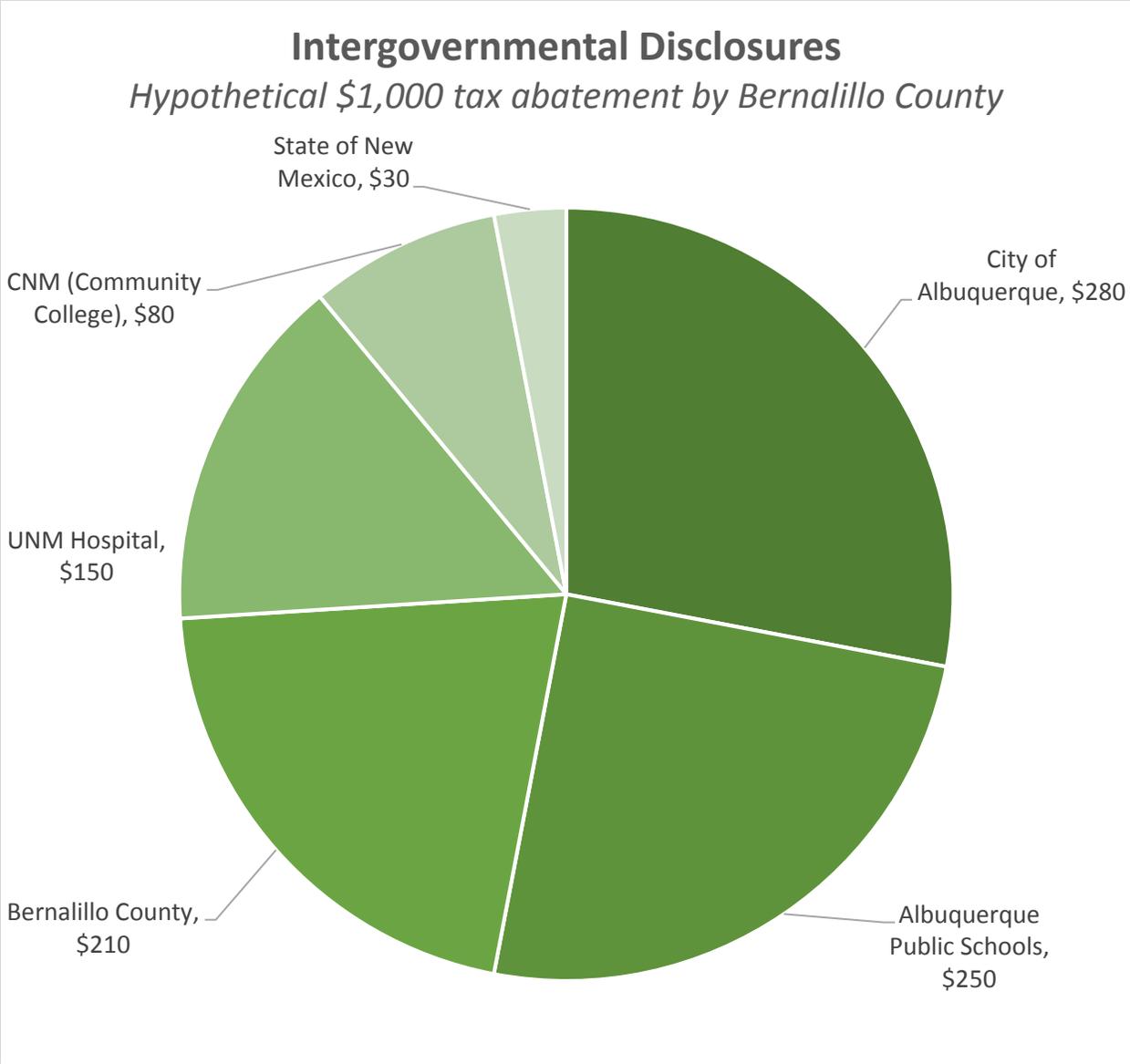
In August 2015, the Governmental Accounting Standards Board (GASB) issued an amendment to Generally Accepted Accounting Principles: GASB Statement No. 77 on Tax Abatement Disclosures. This new rule, which is enforced in New Mexico by the State Auditor, effectively requires most local and state government bodies to report how much revenue they lose each year to each economic development tax-break program.<sup>21</sup>

While the State already covers its economic development programs in the tax expenditure report, localities (including school districts that lose revenue passively) are now being instructed how to comply and will generate a whole new body of data starting in late 2017 when they file their comprehensive annual financial

reports. This is especially significant—in every state—both because local property tax abatements are often the largest dollar-value subsidy companies receive (they are bundled with Industrial Revenue Bonds in New Mexico) and because such costs have historically been widely dispersed and poorly disclosed.

Statement No. 77 also requires those bodies of government that lose revenue passively, as the result of the actions of other bodies, to compute and report those losses. This is especially important for school districts, which in most states have little if anything to say about property tax abatements or tax increment financing districts granted by cities or counties—even though schools lose the most.

In New Mexico, this intergovernmental-reporting requirement will shed a great deal of new light on how the actions of local governments affect many public services. Take, for example, a hypothetical \$1,000 property tax abatement granted by Bernalillo County. As detailed by the General Accountability Office of the State Auditor, the revenue loss of such abatement would affect the County, the City of Albuquerque and Albuquerque Public Schools, but also the University of New Mexico Hospital, Central New Mexico Community College, and the state treasury.



**Policy Conclusion**

To address these problems, we recommend four key improvements to New Mexico’s disclosure practices.

First, the state needs to emulate those many states that disclose online the corporate recipients, costs and

benefits over time of every economic development tax-break deal for major incentive programs. It is only because Good Jobs First has obtained data under open records requests that New Mexico programs beyond the Job Training Incentive Program are visible

online (and then only at our Subsidy Tracker search engine).  
Second, using the best practice from Missouri, New Mexico should calculate and report annually the allocation of each economic development tax break program's value to small, medium-sized and large businesses. (See an example of such reporting at Appendix B.)

Third, the Taxation and Revenue Department should restore full accounting of all tax expenditures, including those exemptions intended to eliminate "pyramiding," to its

annual tax expenditure report. While reasonable people may disagree about the merits of the gross receipts tax, as long as some industries are selectively exempted from it, the resulting revenue losses should be plainly visible.

Finally, for tax expenditures beyond those covered by the new GASB Statement No. 77 on Tax Abatement Disclosures, we recommend that the state apply the same revenue-loss reporting requirements, including the reporting of intergovernmental revenue effects, to them.

**Chapter 2:  
Collecting Sales Tax on Online  
Purchases:  
Amazon Has Stopped Resisting**

New Mexico was, as we completed this study, one of only five states with a sales tax in which Amazon.com, Inc., the largest internet-based retailer, did not collect sales tax. However, on March 6, 2017, it was reported that starting on April 1, 2017, Amazon would collect gross receipts tax on purchases in New Mexico. The news reports did not indicate how the change had come about, nor did they indicate whether any other online retailers besides Amazon had agreed to start collecting the tax.<sup>22</sup>

However the remedy came about, New Mexico has discovered what numerous other states have recently learned: Amazon, once a company that stood out for its resistance to collecting sales tax, is now agreeing to collect and remit such taxes almost everywhere.

The waning resistance from Amazon has to do especially with the company's evolving business model. Whereas Amazon long avoided collecting sales tax and aggressively used the price differential to gain market share, its business model has evolved, with its Amazon Prime subscription service that includes the option of same-day delivery. As Amazon has grown from having a physical warehouse presence in just a handful of states to needing fulfillment and sortation centers in most major

metro areas where Prime customers are most numerous, it has unavoidably created "nexus" (or sufficient physical presence for a state to require sales tax collection).<sup>23</sup>

As of March 1, 2017, that evolution meant that Amazon was collecting sales tax in 40 of the 45 states with such a tax. Much of this change took effect quite recently, with Amazon starting to collect sales tax in 11 other besides New Mexico states since January 1, 2017: Iowa, Louisiana, Nebraska, Utah, Mississippi, Missouri, Rhode Island, South Dakota, Vermont, Oklahoma and Wyoming.<sup>24</sup>

The revenue gain for New Mexico is likely to be very substantial, especially if other online retailers agree to follow suit or are required to do so. The Texas-based consulting firm Civic Economics, commissioned by the American Booksellers Association, estimated that as of 2015, New Mexico lost \$22.5 million a year in taxes not collected by Amazon. In New Mexico, these taxes would be in the form of gross receipts taxes, with \$15.4 million of that from the state and \$7.1 million from localities.<sup>25</sup>

With Amazon holding a market share of about 37 percent of all online sales, this implies a potential net revenue gain of about \$60.8 million (\$41.6 million for the state and \$19.2 million for localities) from collecting taxes owed on all online purchases. In practice, however, some of this amount may already be collected by

online retailers that have a physical presence in the state.

Other states' recent experiences clearly indicate Amazon's shifting posture. On January 2, 2017, an Iowa Department of Revenue spokeswoman said: "Honestly, Amazon contacted us and agreed to do this."<sup>26</sup> In Vermont, Amazon started collecting sales tax in February, five months before it was required to do so.<sup>27</sup> And Mississippi in late January announced a privately negotiated deal with Amazon to start collecting.<sup>28</sup>

These developments represent the culmination of a very long debate in which bricks and mortar retailers have demanded that online retailers be denied the unfair advantage of lower prices through sales tax avoidance. At the federal level, the U.S. Congress enacted the Internet Tax Freedom Act in 1998 and in frustration two organizations of state elected officials created the Streamlined Sales and Use Tax the following year, to simplify sales tax collections on interstate transactions for all kinds of retailers (New Mexico is not one of the 24 signatory states).<sup>29</sup> However, the states could not redefine nexus and some companies like Amazon avoided nexus and exploited the resulting price advantage. Frustrated by Washington's inaction on restoring fairness, retail chains and merchant associations began seeking state remedies that would survive legal challenges. That, together with Amazon's evolving business model,

has made taxing online sales more politically palatable than ever.

## **Policy Conclusion**

While we are not yet privy to any details of what may have been agreed upon between the State of New Mexico and Amazon, we applaud this development and hope that it will be applied to the other roughly 63 percent of internet sales. To apply the reform to all internet sales, the state could enact a so-called "click-through" nexus law where Amazon (and other e-retailers) would have to collect New Mexico's gross receipts sales tax if they partner with in-state businesses (bloggers, etc.) to advertise their products (although these laws have a mixed track record).

Even better would be the approach taken by Colorado<sup>30</sup> (with Arkansas following<sup>31</sup>), which has held up in court. It doesn't force online retailers to collect sales tax but does make them decide between collecting or facing burdensome red tape, reporting purchases to the state. Given the choice in other states, Amazon is choosing to collect the tax, effectively closing the tax loophole and leveling the playing field with bricks and mortar retailers (and those online retailers that may have already had nexus in the state).

History suggests this development will also bring more Amazon-related jobs to these new collection states since the company will no longer have any

incentive to avoid building sortation  
and fulfillment centers in states like  
Colorado.<sup>32</sup>

### **Chapter 3: Combined Reporting: Leveling the Playing Field between Small and Multistate Companies**

Part of maintaining a modern, fair tax code is keeping up with changes in corporate structures and tax avoidance strategies. As corporations become larger, more complex and operating in multiple states, many minimize their tax liabilities by taking advantage of differences in state tax codes. One tax avoidance strategy is to break the larger company into multiple subsidiaries and funnel profits to subsidiaries in no-tax or low-tax states. This strategy is a way in which larger companies can gain a tax-based advantage over smaller, in-state firms.

The solution to promote greater fairness is to adopt what most states with a corporate income tax have enacted: a simple fix called “combined reporting.” This requires a company to add together all of the profits from all of its subsidiaries and then apply a state’s apportionment rules to determine the amount that is taxable in the state. In addition to promoting fairness, this improves revenue performance and simplifies tax compliance by reducing the incentive for corporations to change their structures merely for tax avoidance.

#### **How Combined Reporting Works**

For firms that only do business in one state, paying corporate income taxes

can be pretty simple—all of their profits are taxable in the state in which they are located. For corporations with subsidiaries in multiple states, the task of determining the share of profits subject to taxation in each state is more complicated. There are broadly two ways of doing this: combined reporting, which requires a multi-state corporation to add together the profits of all of its subsidiaries, regardless of their location, into one report; and separate accounting, which allows companies to report the profit of each of its subsidiaries independently.

For example, if Acme Corporation exists as a parent company with three subsidiaries in three different states, a combined reporting state would require Acme to report the profits of all four parts of the corporation as one total, on the grounds that each part of the company contributes to its profitability. By contrast, a separate accounting state like New Mexico requires only those parts of Acme Corporation that have “nexus” in that state—that is, enough in-state economic activity to be subject to the state’s corporate income tax—to report their profits, even if Acme uses accounting devices (like the one described below) to send profits out of New Mexico to another state that doesn’t tax them.

Twenty-five states and the District of Columbia have now adopted combined reporting requirements, including most recently Rhode Island in 2014

and Connecticut in 2015. The issue has also received serious recent attention in Alabama, Indiana, and New Jersey, among others. In Rhode Island, where state GDP is about 60 percent of New Mexico's, an estimate based on 2012 data found that switching to combined reporting could bring in \$23.1 to \$44.4 million depending on the apportionment method applied.<sup>33</sup>

### **How Businesses Employ Separate Accounting**

In addition to allowing companies to structure their operations so that some subsidiaries avoid taxation, separate accounting enables corporations to use certain devices to shift their profits to lower-tax states. The most infamous example of this is the passive investment company (PIC) loophole.

Here's how the PIC loophole works: suppose Acme Corporation is based in State A, so it clearly has nexus, but State A uses separate accounting. If Acme has sales of \$100 million and expenses of \$70 million, its taxable profits ought to be \$30 million. But Acme has set up a subsidiary—commonly referred to as a passive investment company (PIC)—in a state like Delaware that does not tax intangible property such as trademarks and patents. It made that subsidiary the owner of Acme's intangible property, so the subsidiary can charge Acme in State A for the use of these trademarks. This intangible property may include things like retail

chain logos, marketing slogans, or cartoon character images. Toys-R-Us, for example, is known to have used its "Geoffrey giraffe" image this way.

Although Acme's payment to the PIC is basically a transfer of funds within the company, under separate accounting, this expense counts as a cost of doing business—and can, therefore, be subtracted from Acme's income in determining its taxable profits in a separate accounting state like New Mexico. Since the subsidiary can charge Acme whatever it wants for the use of the trademarks, Acme may actually be able to zero out its taxable profit through such an internal charge.

Although Delaware allows multistate companies to hide the identity of their PIC registrations, thousands of companies use the loophole and the identities of some have been revealed as a result of litigation. *The Wall Street Journal* in 2002 gathered a list of 50 such companies. It included ADP, Inc., American Greetings Corp., Budget Rent-A-Car Corp., Burger King, CompUSA, ConAgra Foods, Inc., Gap, Inc., Home Depot USA, J.P. Stevens and Co., Kohl's, Long John Silver's, May Department Stores, Payless Shoesource, Inc., RadioShack Corp., Sherwin Williams, Snap On Tool, Stanley Works, Staples, Syms, Tyson Foods, Inc., Urban Outfitters, and Yellow Freight System.<sup>34</sup>

## **Combined Reporting: A Simple Approach to Preventing Tax Avoidance**

In a combined reporting system, all of the income and expenses of Acme and its subsidiaries would be added together. PICs and other loopholes would have no impact at all on the company's taxable profits since they would be part of the combined totals. For example, if Acme tried to use the PIC loophole, the subsidiary's \$30 million of income flushed to Delaware would show up and then be apportioned to states with combined reporting.

Combined reporting is not the only option available to New Mexico to prevent the use of accounting devices such as the PIC loophole; the state can also close these loopholes one at a time. For example, several states have enacted legislation that specifically prohibits shifting income to tax haven states through the use of PICs. The main shortcoming of this approach is that in the absence of combined reporting, multi-state corporations will always be able to develop new methods of transferring profits to low-tax or no-tax states. The only limit to the emergence of new approaches to transferring income to tax haven states is the creativity of corporate accountants. Combined reporting is the single, comprehensive solution that eliminates all potential tax advantages that can be derived from moving corporate income between states.

Combined reporting is fairer than separate accounting because it ensures that a company's tax does not change because its organizational structure has changed. It creates a more level playing field between smaller and larger companies: small companies doing business in only one state can't use separate accounting to reduce their tax because they have no business units in other states to which they can shift their income.

## **Combined Reporting Debates in New Mexico**

The New Mexico legislature has considered adopting combined reporting in the past, and in 2013 the state enacted a provision that requires the practice for a very specific subset of businesses: retailers that have stores of at least 30,000 square feet located in New Mexico that does not employ at least 750 people in non-retail operations within the state. This very narrow requirement already exempts most businesses operating in the state and is even expected by the state fiscal office to bring in decreasing revenue over time as "corporations restructure operations to minimize their tax liability."<sup>35</sup>

## **Policy Conclusion**

Combined reporting is one way New Mexico can broaden the corporate income tax base by eliminating loopholes to ensure that profitable corporations pay their fair share for the public services they use every day. It is a reform that can level the playing field between multistate corporations and New Mexico-based companies that cannot avail themselves of such tax avoidance schemes. It can also help resolve New Mexico's revenue shortfall without requiring a tax rate increase. Requiring combined reporting is a fair, straightforward strategy available to New Mexico lawmakers to protect taxpayers from tax-avoidance strategies by profitable multistate corporations.

The revenue impact of fully adopting combined reporting in New Mexico is unknown and the state's official fiscal impact report for a recent combined reporting bill could conclude, "the long-term revenue impact is likely to be positive." One report, from a longtime expert at the Center on Budget and Policy Priorities, noted that states tend to see a 10-25 percent increase in corporate tax revenues,<sup>36</sup> and the aforementioned Rhode Island study estimated the change would increase corporate tax revenues 17-33 percent in that state. While New Mexico's economy is unique and it is not possible without additional information to know how much revenue the policy could bring in, an increase somewhere in the range of 10-30 percent would be in line with the experience of other states. If that held true in New Mexico, the state might receive roughly \$27-81 million in additional annual revenue.

**Chapter 4:**  
**Bias against Small Businesses:**  
**A Recurring Theme in New Mexico's**  
**Tax Incentives**

Despite three well-established imperatives for promoting small and entrepreneurial businesses, New Mexico's recurring pattern in creating new tax incentives for economic development has been to favor large multistate/multinational businesses and to shortchange small firms.

**Three Reasons Why Entrepreneurialism Matters**

Maintaining a vibrant, healthy small business community is critical for New Mexico's long-term job creation, for reducing inequality and promoting overall public well-being and for maximizing the state's investment "bang for the buck."

First: small, young, and entrepreneurial businesses are the cornerstone of job growth throughout the United States. These relatively small, but fast growing companies drive the overall health of our economy: Those that succeed to maturity account for significant net job creation, while older, mature firms tend to shed more jobs than they create. This is especially pronounced through the peaks and troughs of the business cycle. Net and gross job creation are closely linked to the number of firm births in a regional economy. New Mexico, like every state, derives about 86 percent of its

new jobs from start-ups and the expansion of existing in-state businesses and only a few percent from business relocations.<sup>37</sup>

Second: When entrepreneurialism suffers and monopolism grows, inequality rises and civil health declines by many measures. Studies of communities that are more or less dominated by small groups of large employers have found that those without a robust small business community suffer higher income inequality; they also have a smaller middle class, deeper recessions, less home ownership, much higher infant mortality, poorer schools and more poorly paid teachers, lower adult literacy and more extreme poverty.<sup>38</sup>

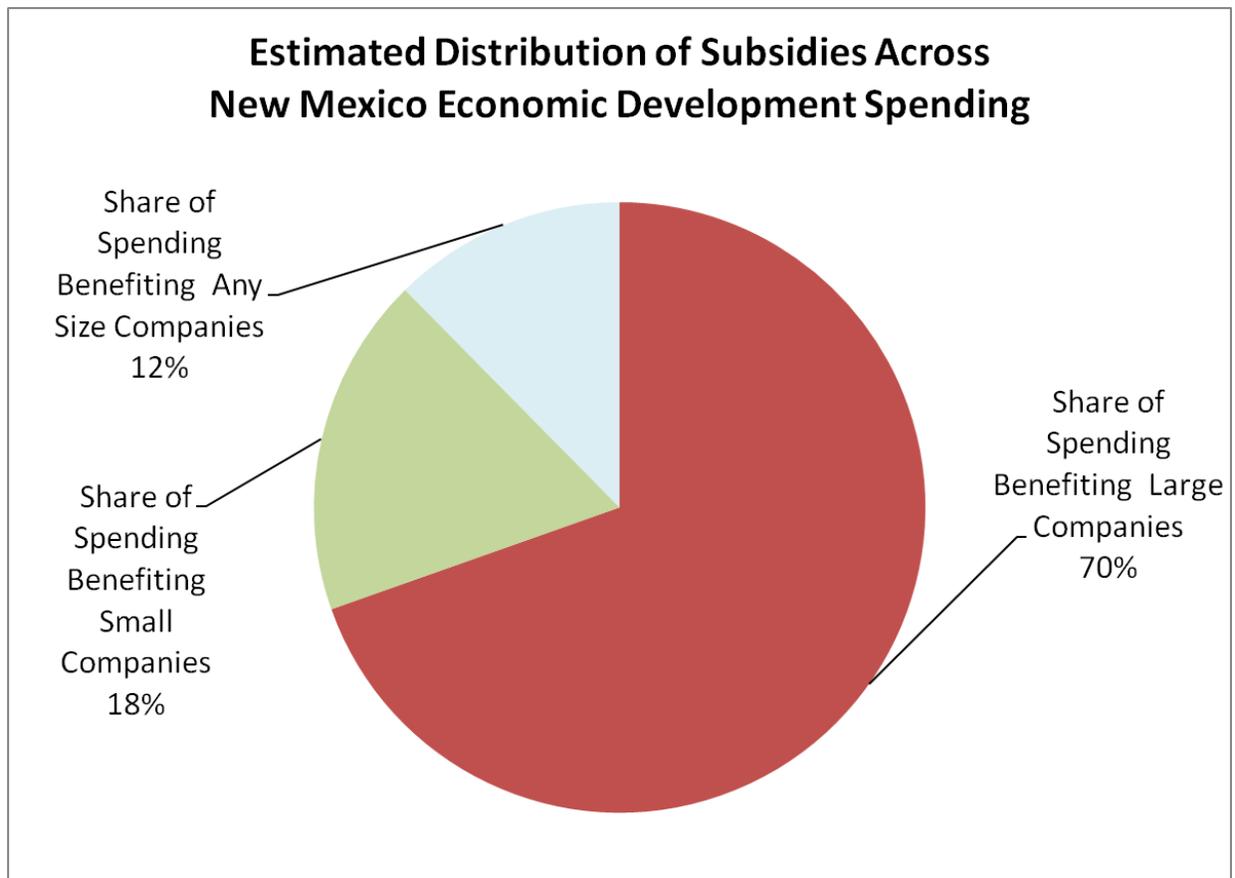
Third: Locally owned companies are less likely to leave a regional economy and in side-by-side comparisons, they have been found to generate greater economic "ripple effects" than do national firms. That's because they procure more locally, especially in business services such as banking, advertising, and accounting. They are also much more likely to hire locally than to import out of state workers and to participate in local charitable activities.<sup>39</sup>

**Shortchanging Small Businesses in New Mexico**

In 2015 and 2016, Good Jobs First issued two multi-state studies examining the question: how fair, or unfair, are state economic

development incentives to small, local and entrepreneurial firms? Both studies included New Mexico, the second in greater depth, and both studies found—in every state examined—a profound bias against small businesses. In each study, New Mexico’s bias was typical in its severity.

In *Shortchanging Small Business: How Big Businesses Dominate State Economic Development Incentives*,<sup>40</sup> we analyzed the high-wage jobs tax credit program, examining 236 deals worth \$77.7 million granted from 2011 through 2013. We found 70 percent of the deals and 93 percent of the dollars went to large businesses. (The program awards were obtained via a freedom of information request; they are not disclosed online.)



New Mexico High Wage Jobs Tax Credit, 2011-2013					
Total	Deals		Dollars		
	# Large	% Large	Total	\$ Large	% Large
<b>236</b>	166	70%	\$77,659,445	\$71,950,155	93%

In *Slicing the Budget Pie for Big Business: How Three States Allocate Economic Development Dollars, Large Companies versus Small*,<sup>41</sup> we approached the issue from a different angle. Instead of looking at an individual program, we looked at three states' entire menus of economic development incentive programs intended for job creation and sought to assign each pot of money to the benefit of either small businesses or to large firms. We looked at the allocation of tax breaks (performing the same big-versus-small sort of incentive awards that we had done in *Shortchanging*). As well, we also examined agency budgets to capture spending such as small business technical assistance.

We examined a total of 17 programs in New Mexico and used the most recent year of data available. In only two cases could we not discern a dollar cost: the New Mexico Start Up Factory and Industrial Revenue Bonds. Apportioning a total of \$63.3 million, we determined that 70 percent went to large businesses and only 18 percent went to small businesses. About an eighth of the expenditures (12 percent) could not be assigned either way. The breakouts by program are detailed in Appendix A.

Although we found that New Mexico has various programs aimed at helping small businesses, including angel investment tax credits and the New Mexico small business assistance program, a handful of programs with

much bigger budgets benefit large firms. For example, as detailed above, we had found that 93 percent of the high-wage jobs tax credit dollars go to big businesses. Even before its surge in costs in 2014 and 2015, that program alone between 2011 and 2013 accounted for almost a third of the state's economic development spending portfolio in a given year (about \$20 million out of about \$63 million).

More than three-quarters of the 2011-2013 awards from the investment tax credit for manufacturers match to large parent companies, and that program accounted for a sixth of the state's spending on job subsidies. It has a capital investment barrier to entry that effectively favors big business: a minimum capital investment requirement of at least \$500,000.

Similarly, the locomotive fuel gross receipts & compensating tax exemption has a very large capital investment requirement (at least \$50 million) and is a significant benefit to two Class I railroad companies, the Union Pacific Railroad (UP) and Burlington Northern Santa Fe (BNSF). UP is the main subsidiary of Union Pacific Corporation, a publicly traded corporation spanning 23 states with a market value of \$85 billion. BNSF is a subsidiary of Berkshire Hathaway, the multinational conglomerate with a market capitalization approaching \$400 billion (the fourth-highest of any U.S.-listed firm).

Early-year spending on the locomotive fuel exemption program for those two giants alone was about the same as spending on all of New Mexico's programs directly dedicated to small businesses (about \$7.8 million each). However, the cost of the locomotive fuel exemption has since ballooned, to \$15.2 million in 2014 and \$23.1 million in 2015—about *three times* the spending for small business aid.<sup>42</sup>

Two programs have qualification rules we called “agnostic:” the job training incentive program and the technology jobs tax credit. By processing them through our Subsidy Tracker database (at [www.goodjobsfirst.org/subsidy-tracker](http://www.goodjobsfirst.org/subsidy-tracker)), we were able to derive a reasonable estimate of the split between dollars to large and small companies, as we had done for the high-wage jobs tax credit program.

For the job training incentive program, we found that *at least* \$40.7 million out of \$65.7 million in our multi-year Subsidy Tracker sample accrued to large businesses, or about 62 percent. We applied this percentage to the \$4 million reported by the agency in its 2014 annual report on the program.

For the technology jobs tax credit, we found that *at least* \$8.98 million out of \$13.3 million in our Subsidy Tracker sample accrued to large businesses, or about 67 percent. We applied that share to the \$5.1 million reported by the agency in the 2013 tax expenditure report.

As for our expanded coverage of major tax expenditures in this study:

- As we detail in our chapter on single sales factor, the primary beneficiaries of that income tax apportionment change have consistently been shown to be large companies that sell to national markets but happen to have a large share of their employment and assets in a state that adopts SSF. When New Mexico's SSF is fully phased in, its estimated annual cost will exceed \$45 million.

When viewed in aggregate as a taxpayer investment portfolio, it is clear that New Mexico's spending priorities are biased against companies that have the most legitimate public policy rationale for government assistance.<sup>43</sup>

## Policy Conclusion

To remedy this imbalance, we recommend several reforms.

**Disaggregated Disclosure:** We recommend New Mexico emulate Missouri in creating a tax credit accountability report that discloses subsidy awards to firms grouped in three different size ranges. This allows legislators and the public to quickly and easily scan economic development budget documents and grasp the allocation of dollars to companies of all sizes. New Mexico could go further by disclosing more important details

about the types of companies receiving incentive awards, such as ownership structures. These data points should be included for each recipient of an economic development deal in a searchable and downloadable database. Disclosing the ultimate parent company is absolutely key to understanding how New Mexico is allocating economic development dollars.

**Small Business Support Budget:** We recommend that New Mexico do for itself what we did in our two studies: annually apportion deals and dollars benefiting small, local and/or entrepreneurial businesses (preferably using the definitional criteria we employed in *Shortchanging Small Business*<sup>44</sup>) and then determine what share that is of its total economic development budget.

**Reform Program Rules to Spend Less on Big Businesses by Using Caps.** To install safeguards to modulate the amount of spending on any one deal, company or industry is entirely consistent with the theory of incentives, which is to address “market imperfections,” or to “prime the pump” and then pull back and let the market’s invisible hand take over. Large companies by definition need less help: they have management depth, access to credit, and established markets for their products or services.

**Spend Less by Capping:** New Mexico can substantially reduce the total amount of subsidy dollars flowing to

big businesses by capping dollars per deal, dollars per job (to prevent the very high subsidy rates associated with capital-intensive projects like microchip fabrication plants and data centers), dollars per company (to prevent any employers from distorting spending), and public dollars as a ratio of private dollars, or on what is called “aid intensity.”

**Chapter 5:**  
**High-Wage Jobs Tax Credit:**  
**A Well-Intentioned Program Goes**  
**Astray**

New Mexico's High Wage Jobs Tax Credit (HWJTC) is a revealing case study in how much the fine print matters and in how an incentive program that is facially well-intentioned can go astray and undermine public budgets.

The fiscal note attached to the 2003 proposed version of the program, forecast a \$1 million annual loss in state revenue.<sup>45</sup> However, between 2004 and 2015, the program cost \$201 million—including \$69.9 million in 2015 alone—and much of that constituted windfalls to unintended recipients.

As originally proposed and justified, the program was intended to benefit companies that export most of their production out of the state. This “traded sector” model is a sound economic development priority because it leads to new dollars flowing into the state. The HWJTC program as actually enacted, however, failed to carefully define which industries could claim the credit or what “high wage” meant, and it failed to specify that the jobs had to be created in-state or to define what an “export” is (so that even goods produced out-of-state could count).

In a special session in fall 2016 to address a budget shortfall, the New

Mexico legislature amended the HWJTC's eligibility standards. The statute's original wording allowed a company to qualify by making a majority of its sales out of state *or* by qualifying for another incentive, the Job Training Incentive Program (JTIP). The 2016 amendment altered the statute to require that a company meet *both* criteria.

**How the Credit Works**

The HWJTC awards a dollar-for-dollar credit against the gross receipts tax, compensating tax, and withholding tax. That is, not only can companies use HWJTC against their own tax liabilities, they can also capture state personal income taxes paid by the company's workers that the employer would normally withhold and remit to the state.

The credit is equal to 10 percent of the wages paid on eligible jobs, with a cap of \$12,000 per employee per year (i.e., on annual salaries up to \$120,000) for up to four years per new job.

If a recipient company does not have a sufficient New Mexico tax liability to claim the credit, the balance will be refunded by the state automatically. Indeed, between July 2008 and July 2016, this refundable credit feature dominated the program's costs by a ratio of almost 11 to 1—\$215 million in refunds versus \$20 million in foregone revenue tied to claimed credits.<sup>46</sup>

Until 2013, the credit could be claimed retroactively without a time limit. This undermined the argument that the credit was actually causing job creation because it rewarded behavior long after the hiring occurred and the positions may no longer even have existed. As the program stands now, companies can still apply for credits 12 months following a calendar year close, so the credit can still be claimed retroactively.

This retroactivity should not be confused with a “performance-based incentive” model used by many states. There, a company proposes to create jobs (or invest capital) and a state agrees to pay a tax credit after the company delivers. Performance-based incentives normally require that the credited jobs or investments still exist; usually require an application or certification before a company hires any workers (or invests) so that a program’s intention can be enforced, and better enable a state to control a program’s costs.

### **A Controversial Program from Its Launch**

The High Wage Jobs Tax Credit was first drafted and debated in 2003, but it lapsed in committee that year.<sup>47</sup> During the following legislative session, in 2004, it was reintroduced and became law, but in a form missing many fundamental elements, as we detail below. The program was amended incrementally in 2007, 2008, 2013, and 2016.

Budget watchdogs of differing perspectives criticized the program even before it was enacted. The research director of New Mexico Voices for Children presciently worried whether the tax breaks could lead to an avoidable budget crisis, while the executive director of New Mexico Tax Research Institute lamented the lack of measurement and accountability protections.<sup>48</sup>

As enacted in 2004, the loosely worded HWJTC enabling legislation would be discovered by the oil and gas industry, retailers, and the construction industry. These sectors, which were not the intended beneficiaries,<sup>49</sup> received a decade-long windfall. Although the state finally fixed some of the most significant eligibility problems in 2013 (and 2016), costs drastically increased in 2014 and 2015, jumping from \$21.7 million in 2013 to \$49.5 million in 2014 and \$69.9 million in 2015. The rise was attributed to “a flurry of claims filed immediately before the 2013 amendments took effect.”<sup>50</sup>

Indeed, Demesia Padilla, Taxation and Revenue Department Secretary, told legislators: “Every time we had a committee hearing, we were broadcasting what was wrong with it,” and that “[t]hey were flying in staff with briefcases to file,” with 300 applications for the tax credit received in the days before changes took effect in 2013.<sup>51</sup>

While budget watchdogs had a shared skepticism of the program, the business community was divided. Amid passage in the 2004 legislative session, it received praise from The Albuquerque Hispanic Chamber of Commerce, the Greater Albuquerque Chamber of Commerce, and the New Mexico Association of Commerce and Industry.<sup>52</sup> However, the New Mexico chapter of the National Federation of Independent Business (NFIB), a conservative small-business advocacy group that favors low taxes, predicted that small businesses would pay for the subsidies without realizing much in return.

**Credits Dominated by Large and Extractive Companies**

The NFIB chapter’s prediction proved accurate: Good Jobs First, in a detailed 2016 analysis of the program, looked at 236 awards from 2011 through 2013 and found that 70 percent of the deals and 93 percent of the dollars in the program went to large businesses, including ConocoPhillips, Fidelity Investments, Hewlett-Packard, Sprint, Honeywell, Carmax, Walgreens, Verizon, SAIC, Gap, Citigroup, United

Technologies, Johnson & Johnson, and Raytheon.

The largest beneficiaries of the HWJTC program have been resource extraction companies. Using data that Good Jobs First received pursuant to an open records request, we determined that from 2011 to 2013 the largest credits were paid to ConocoPhillips, Louisiana Energy Services, and Intrepid Potash. Similarly, the Legislative Finance Committee reported that among the top 20 companies leveraging the HWJTC, 56 percent of the dollars went to extractive companies (with 92 percent of those dollars as refunds, not claimed credits).<sup>53</sup>

**Companies with Largest Total High Wage Jobs Tax Credits, 2011-2013**

This incentive to extractive industries was not intended. The original version of the bill from 2003 would have explicitly denied extractive industries eligibility by requiring recipients to also be eligible for the Job Training Incentive Program (JTIP).<sup>54</sup>

The legislative review of the 2003 bill notes how few JTIP recipients pay high

Company	2011	2012	2013	Total 2011-2013
<b>ConocoPhillips Co</b>	\$3,375,239		\$5,073,933	\$8,449,172
<b>Louisiana Energy Services</b>	\$1,813,590		\$3,365,274	\$5,178,864
<b>Intrepid Potash</b>			\$4,536,716	\$4,536,716

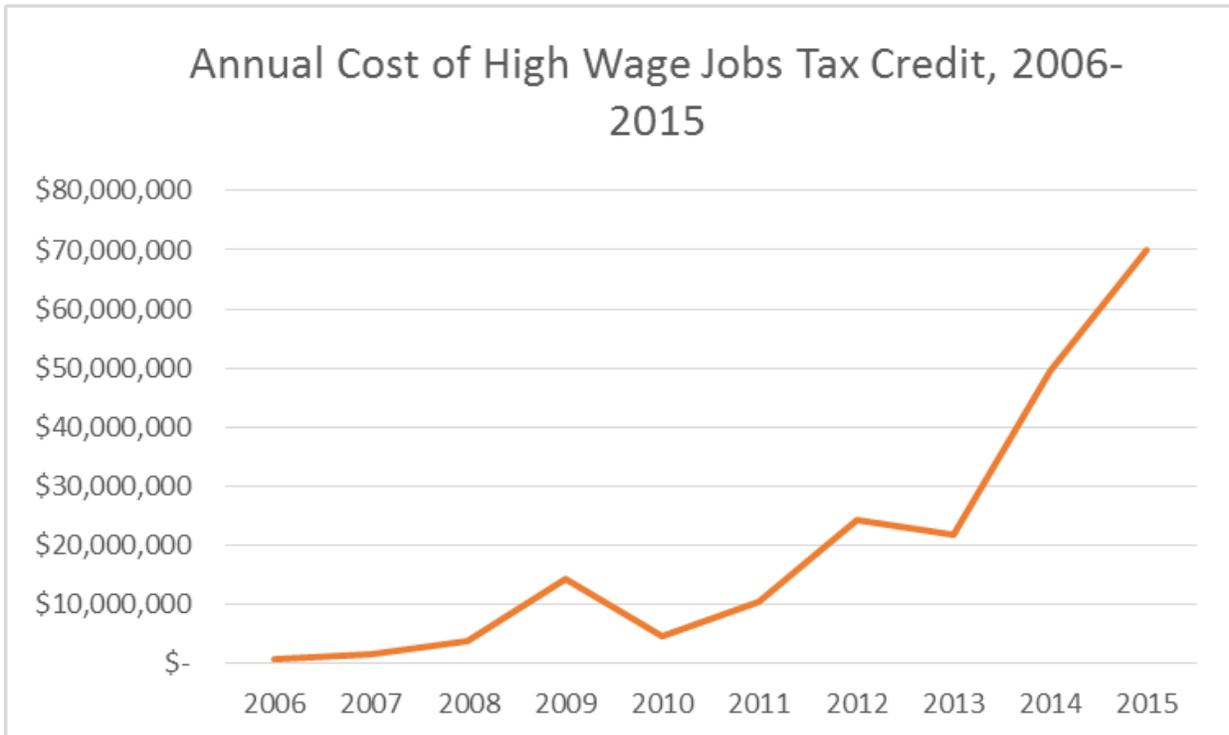
wages and that this HWJTC bill sought to serve as a means to induce more companies currently receiving training subsidies to pay their workers above market wage rates. Over time, the emergent consensus among tax and revenue officials, budget watchdogs, and officials of both major political parties, is that many of these credits benefit unintended companies, especially in the oil and gas sectors.<sup>55</sup> In particular, legislators seem to have hoped to attract companies that represent *new growth* to the state paying high wages, not to pay companies to do what they would have done regardless of a subsidy (like oil and gas companies, which invest where resources are available to extract).<sup>56</sup>

Indeed, economic literature on export-led economic development strategies advises against a focus on extractive

industries, because subsidizing them tends to create too few jobs and introduces structural economic weaknesses tied to commodity price fluctuations.<sup>57</sup>

### **Fiscal Impact: Large and Rising Until Very Recent Amendment**

The HWJTC program's costs have grown precipitously over time, jumping first in 2009 as the national economic recovery began and then again in 2012 and 2014. Whereas the original fiscal note forecast an annual cost of \$1 million, by 2015, the HWJTC cost New Mexico \$69.9 million. These costs ballooned as the state's budget situation grew more stressed.<sup>58</sup> While the HWJTC is not the only tax break hurting revenues, its upward cost trend is sharp and its annual cost is a significant figure, considering that the 2016 budget deficit was \$220 million.



The number of companies claiming the HWJTC has also risen steadily.



A 2016 legislative review of the program further noted the enormous volatility resulting from carried-forward tax breaks after another significant spike in tax credits claimed for 2015.

In a special session in fall 2016 to address a budget shortfall, the New Mexico legislature amended the HWJTC's eligibility standards. One important fix was to change just one word. The statute's flawed original wording allowed a company to qualify by making a majority of its sales out of state *or* by qualifying for another incentive, the Job Training Incentive Program (JTIP). The 2016 amendment altered the statute to require a company make both a majority of sales

out of state *and* to be eligible for the JTIP (although a company need not actually receive JTIP reimbursements).

This additional qualification screen was consistent with the original 2003 draft legislation. And because the JTIP specifically disqualifies retailing, oil and gas, agriculture, construction, healthcare, and casinos, this change substantially narrows the number of eligible companies. As a result of the change, analysts believe costs will be cut by at least half.

## How It Happened: A Litany of Structural Flaws

This incentive program has had significant gaps between facial intent and actual legislative wording.

First, in a broad structural problem: when a state creates a tax-break entitlement that revolves around filing tax forms and not building deeper linkages between employers and state assets (skilled workforce, public infrastructure, universities, existing employment clusters, etc.), it loses the safeguards normally integrated into economic development programs. The porous eligibility criteria and lack of annual evaluation meant the state could not track benefits to weigh them against costs. The lack of transparency didn't help in this regard: New Mexico like many other states has laudably disclosed which companies claimed the HWJTC and in which amounts (though only after Good Jobs First made a public records request). States frequently disclose this kind of information on public databases in conjunction with program performance data. The state of New Mexico does not conduct performance evaluations on any tax expenditures, with the exception of the Film Tax Credit. Finally, the Tax and Revenue Department, which evaluates HWJTC applicants is tasked with tax compliance, not economic development strategy and evaluation. Expecting it to flag unintended beneficiaries or other issues only delayed responses to costly problems.

More specifically, the HWJTC enabling legislation as actually enacted in 2004:

- failed to adequately define benefits and wages so that companies could count payroll taxes, the employer's Social Security match, and Medicare contributions as "wages" for purposes of the 10 percent dollar-for-dollar tax credit. Only later amendments narrowed that base to direct wages and other benefits (such as a retirement contribution) actually paid to employees.
- failed to adequately define what constituted a new job;
- failed to clearly require that the new jobs generating the credits actually be created in New Mexico;
- failed to require proof of "exporting," that is, that goods or services sold outside New Mexico were produced inside the state;
- lacked clarity on its application process and originally required no certification oversight;
- used a poorly designed wage standard. Instead of defining a "high-wage job" as 125 percent of the average county wage (as originally proposed in 2003),<sup>59</sup> which would have been a viable and dynamic market-based

structure, the enacted version set a static qualifying wage floor of \$40,000 in urban areas and \$28,000 in rural areas. If the average county wage formula had been adopted, that would have allowed for local variations and also adjusted for inflation (later revisions raised the floors to \$60,000 and \$40,000 respectively). Later revisions also required adjustment to the definition of urban and rural areas (which would also have been unnecessary under a county-based wage standard).

- allowed companies to apply for and claim credits *years after the wages were paid*. When a company receives a tax credit “incentive” long after performing an action, the credit cannot be credibly considered to have caused the action.<sup>60</sup> A later amendment shortened the retroactivity period;
- contained a loophole that allowed mergers, acquisitions, and reorganizations to benefit from the program. For example, companies that merged could “recycle jobs” and count existing New Mexico jobs as new jobs as a result of the transaction.
- failed to require online disclosure of company-specific costs and benefits within a transparency portal or even

inside Economic Development Department annual reports; and

- failed to provide funding for annual program evaluation. Early fiscal notes suggested additional staff capacity was required to administer the program. Combined with a lack of disclosure data, this meant, for example, that an evaluation of the program was submitted late to the Governor in 2012.<sup>61</sup>

Even when the state gradually addressed some of these structural flaws, it gave companies time to take advantage of the loopholes. For example, the 2013 amendments, which closed some of the most egregious drafting errors like the ill-targeting of recipients, “recycling” of existing jobs in the calculations, and the ability to count payroll taxes as if they were direct wages, did not take effect until July 1, 2015. That enabled companies to rush to file claims in 2014 through mid-2015, causing the cost of the program to more than double in a short time from to \$21.7 million in 2013 to \$69.9 million in 2015.

As a result of these structural flaws, there is little evidence to suggest the HWJTC’s \$201 million in costs have created equivalent benefits. There has been deepening skepticism from budget watchdogs on the right and left and from elected officials of both parties, yet the program was not substantially curtailed until November

2016. And agencies administering the program have still not adequately determined a way of tracking the program.

That said, the affected agencies appear to be more attentive, albeit within an awkward structure. As New Mexico's Taxation and Revenue Department continues to try to better measure the impact of the program with more stringent data collection and analysis, the Economic Development Department continues to manage eligibility for the JTIP training program and assist employers in applying for and receiving the HWJTC subsidies.

### **Policy Conclusion**

The High Wage Jobs Tax Credit story is a good example of why tax expenditures ought to be treated more like appropriations. Had the program been based on an appropriation, the legislature would more likely have prevented the overuse of the incentive, assuring it adhered to its originally intended purpose, and keeping its annual cost closer to the original \$5 million rather than allowing it balloon to \$70 million.

The latest HWJTC amendments are laudable as a budget patch. But tying a tax credit to a training program does nothing to fix the HWJTC's structural problems. And as we detail in the chapter on Single Sales Factor, the state's manufacturing jobs have continued to decline at a rate faster

than the U.S. average. While the program's costs will decline, the 2016 changes do not ensure better transparency or accountability. Nor do the amendments address the program's lack of effectiveness at doing what it was originally intended to do: bring more money into New Mexico from other states. Finally, the changes fail to resolve the big business favoritism problem: in Good Jobs First's intensive March 2016 analysis of New Mexico's economic development budget, we determined that at least 62 percent of JTIP award dollars go to large companies.<sup>62</sup>

To the extent the HWJTC has resulted in small losses in state personal income tax revenue from the workers whose withholding taxes have been credited, Good Jobs First is also strongly critical. Personal income taxes are an especially "elastic" source of revenue: that is, they most closely mirror (better than consumption or property taxes) the rise over time in the costs of providing consistent-quality public services. By denying the state treasury some elastic revenue, the HWJTC has made New Mexico's structural deficit worse, putting upward pressure on tax rates.

For all of the reasons we've outlined, we consider the High Wage Jobs Tax Credit program to be fundamentally flawed and far too costly to sustain. New Mexico would be better served by discontinuing the program.

As an additional lesson: we recommend that this program, and others, be amended to prevent the retroactive filing of claims with amended income tax returns. When a company is allowed to claim a tax benefit long after it has performed a specified activity, the incentive's credibility is eroded: the behavior cannot be said to have been caused by the tax break.

## **Chapter 6: Single Sales Factor: Costly, Ineffective and Unaccountable**

Corporations that do business in more than one state are often subject to the corporate income tax in multiple states. To avoid taxing the same corporate profits multiple times, a process called “apportionment” was developed to divide and assign that portion of a company’s profit that is taxable in each state where tax is owed.

Historically, New Mexico adopted and has used an apportionment rule that relies equally on three different factors in determining the share of a corporation’s profits that can be taxed by a state.<sup>63</sup> These factors are:

- The share of a corporation’s nationwide property located in a state.
- The share of a corporation’s nationwide sales made to residents of a state.
- The share of a corporation’s nationwide payroll paid to residents of a state.

For example, if a multi-state company is headquartered in New Mexico and has 50 percent of its property located there, makes 10 percent of its sales in the state, and pays 80 percent of its payroll to New Mexican residents, then New Mexico would tax approximately 47 percent of the

company’s nationwide income (see Table 1).

These three factors are viewed as reasonable approximations of the share of a company’s profit that arises from doing business in a state, based on both the demand for company output in the state (the sales factor) and the production activity in which it engages in that state (the property and payroll factors). These factors also take into account the various public benefits that a corporation receives in the places that it produces and sells, benefits such as a public education system that prepares the workforce, infrastructure like roads and bridges that transport employees to work and goods to market, police and fire protection, and the legal system that protects assets and shields companies from liabilities.

### **Inadvisable Emphasis on Sales**

Over the past twenty years, there has been a nationwide trend for states to reduce the importance of the property and payroll factors and increase the importance of the sales factor. This change has been advocated for as an incentive for companies to locate or expand in a state, especially manufacturers who sell to national markets.

In 2012, the majority of states with some form of a corporate income tax used an apportionment formula that gave “double weight” to the sales factor.<sup>64</sup> As of the end of 2016, twenty-

three states (half of those with a corporate income tax) had adopted or begun to phase in “single sales factor” (SSF)—an apportionment method that only uses the sales factor in determining these corporations’ income tax liabilities.

New Mexico income, they can choose the pre-2013 formula or the new formula, based on which option requires the smallest tax payment.

The schedule for the SSF phase-in follows:

### New Mexico’s Optional SSF

While New Mexico continues to weight property, payroll, and sales equally for most businesses, it has joined the trend towards giving greater weight to sales when it comes to certain types of businesses. New Mexico adopted an elective double-weighted sales factor for manufacturers in the mid-1990s, and as part of a corporate income tax law change in 2013, started phasing in an optional single sales factor apportionment formula for these same businesses. This means that when manufacturers compute their taxable

- 2014 tax year =  $(2 \times \text{sales factor} + \text{property factor} + \text{payroll factor}) \div 4$
- 2015 tax year =  $(3 \times \text{sales factor} + \text{property factor} + \text{payroll factor}) \div 5$
- 2016 tax year =  $(7 \times \text{sales factor} + 1.5 \times \text{property factor} + 1.5 \times \text{payroll factor}) \div 10$
- 2017 tax year =  $(8 \times \text{sales factor} + \text{property factor} + \text{payroll factor}) \div 10$
- 2018 tax year and thereafter = total sales in New Mexico  $\div$  total sales everywhere

Table 1. Corporate Income Tax Liability Under Different Apportionment Formulas					
Example Manufacturer with:					
Share of Property in NM:		50%			
Share of Sales in NM:		10%			
Share of Payroll in NM:		80%			
Three-Factor, Equally Weighted		Three-Factor, Double-Weighted Sales		Single Sales Factor	
Property:	50%	Property:	50%	Sales:	10%
Sales:	+ 10%	Sales:	+ (10% $\times$ 2)		
Payroll:	+ 80%	Payroll:	+ 80%		
	= 140%		= 150%	Sales is only apportioned factor:	
Divide by 3 factors:		Divide by 4 factors:			
140%/3	= 47%	150%/4	= 37.5%		= 10%
So 47% of net income from all states would be apportioned to New Mexico.		So 37.5% of net income from all states would be apportioned to New Mexico.		So only 10% of net income from all states is be apportioned to New Mexico.	

In 2015, the state also passed legislation allowing a single sales election to businesses whose principal business activity in the state is a “headquarters operation.”<sup>65</sup> That is, the state gave New Mexico-based companies an accelerated option to move to the 2018 formula (pre-Single Sales Factor) if they elect to do so.

Table 1 (following page) lays out the impact of these apportionment changes.

### **High Costs**

The shift to an elective single sales factor means that some companies have smaller tax liabilities and the state receives less revenue from its corporate income tax. Manufacturers and businesses headquartered in New Mexico that have facilities and payroll in state but “export” most (or all) of their sales to other states or outside the U.S. are the winners under these policies (e.g., producers of microchips, which are the state’s largest-value manufacturing industry).

The Fiscal Impact Report (FIR) attached to the 2013 legislation projected that the state will lose an estimated \$45.3 million a year once the SSF for manufacturers is fully phased-in.<sup>66</sup> The FIR for the headquarters election estimates an annual cost of \$20,000.<sup>67</sup>

Further, an analysis by the Bureau of Business & Economic Research at the University of New Mexico found that if

the manufacturing election was effective in creating some new jobs in New Mexico, the net revenue increases from sales and excise taxes would only total \$3.8 million, resulting in net revenue losses to the state going forward.<sup>68</sup>

### **An Unaccountable Tax Break**

SSF does not resemble economic development incentives in many critical respects and is not at all accountable for creating new economic activity. SSF has no role for the state’s Economic Development Department, nor does it have any application or certification process; it is simply a change in the way a company computes its taxable income when filing its tax return. Since tax returns remain secret, there is no way to know how much of a tax break any individual company received, unlike normal incentives that are widely disclosed. SSF has no public policy quid pro quo: that is, there is no requirement that the company create or even retain any set number of jobs, or pay good wages, or provide any benefits.

Finally, since there are no quid pro quos and the Tax and Revenue Department is not in the business of economic development evaluation, there is no monitoring of job-creation outcomes for any specific deal or for the whole program. That is, there is no tracking of benefits against which to weigh the total costs, even though the costs are known and substantial.

## Large Benefits to Mostly Large Companies with Small Results

Another recurring economic development criticism of SSF is that it greatly favors large companies that sell in many states over small companies that sell only to in-state markets. That is, if we were to compute the same tax liability chart in Table 1 for a small company under the three formulas, the result would always be the same: 100 percent of the firm's income would be taxable in New Mexico. So SSF does nothing for small businesses while greatly reducing taxes for small numbers of large businesses. For example, in Illinois, as SSF was first debated, the state's revenue department projected that just six companies would reap 60 percent of the tax-cut benefit. Several years later, actual costs were reported at \$217 million per year, with just five companies getting 28 percent of the total.<sup>69</sup>

One of the companies that has surely benefited greatly from SSF in New Mexico is Intel. Indeed, given that few if any of Intel's microchip customers are based in the state (Dell is based in Texas, HP in California, etc.), SSF likely means that Intel pays little if any income tax to New Mexico. Yet because SSF comes with no strings attached, it has not reversed the decline in employment at Intel's Rio Rancho plant. Headcount there peaked at almost 7,000 and was down to 1,900 by April 2016 when a layoff of 215 more workers was reported.<sup>70</sup>

The Intel case is unfortunately not unique. According to official notices received by the state from employers pursuant to the federal Worker Adjustment and Retraining Notification Act (WARN provides 60 days' advance notice for dislocated workers), since 2012 New Mexico has also suffered closures or large layoffs at other manufacturers, including: Boeing (thrice), Caterpillar, Schott Solar, Hewlett Packard, Materion (twice), Hostess Brands, VeraLight, DPW Solar, Lockheed Martin, Tyson Prepared Foods, and Sumitomo Electric (twice).<sup>71</sup>

Indeed, SSF has not reversed New Mexico's low standing for factory jobs: According to the National Association of Manufacturers (NAM), in 2015 it tied for 47<sup>th</sup> among states in the share of non-farm employment in manufacturing, at just 3.37 percent. NAM also reports that between 2012 and 2014, New Mexico's output of computer and electronic products (its leading product group by far) fell by almost half from \$2.8 billion to \$1.46 billion.<sup>72</sup>

Analyzed another way, New Mexico's share of U.S. factory employment has declined since it started enacting SSF. In 2007 (prior to the Great Recession), the state had 0.27 percent of total U.S. factory jobs. By 2012 (prior to SSF starting), its share was 0.25 percent and by 2015 that share had declined to 0.22 percent. In other words, both the U.S. and New Mexico have lost

manufacturing jobs during and since the recession, but New Mexico has lost proportionally more.<sup>73</sup> (The 2015 numbers, of course, do not reflect the 2016 Intel job losses.)

### **Policy Conclusion**

Because Single Sales Factor lacks the basic accountability safeguards of an economic development incentive, the only thing that can be stated with certainty about SSF is that it has cost New Mexico a great deal of revenue and will soon cost even more.

At a minimum, the state could free up some resources by making the single sales factor mandatory instead of elective. By doing so, the state will at least collect higher income taxes from those manufacturers and headquarter operations whose proportion of in-state sales results in higher income tax liability under the single sales factor than the equally-weighted formula.

Better yet, the state could reverse the SSF phase-in, repeal the headquarters election, and revert to double-weighted sales factor. Or it could revert further back to a pure three-factor formula. Either of these options would generate tens of millions of dollars annually in state revenue and restore more fairness between large and small businesses.

**Chapter 7:**  
**Locomotive Fuel Sales Tax**  
**Exemption:**  
**Unintended Consequences**

Good Jobs First defines an economic development incentive this way:

*Incentive – public support that is needed when something good should happen, but isn't happening, and won't happen until public dollars reduce private risk.*

So, for example, bringing a grocery store to a food desert or helping a felon returning to citizenship to gain new job skills—those are clearly public goods that will only come about with taxpayer investments. Sometimes incentive programs, as originally enacted, do serve intentionally to address what economists call “market imperfections.” By “priming the pump” and then letting the “invisible hand” of the market work its ways, incentives can effectively address economic and social needs.

But the history of economic development incentives in the U.S. includes many programs that fail this test. Some fail to meet the definition from their inception. Others are deregulated over time so as to stray from good intentions, or they succeed, but then but then have no form of calibration or other “safety valve” cost-control mechanism.

New Mexico’s special tax treatment of railroad fuel purchases illustrates this problem both from the outset and over time.

**Booming Border Traffic and Union Pacific’s Capacity Expansion**

Union Pacific’s decision to build its facility near Santa Teresa was not an abrupt decision prompted by New Mexico’s decision to lower the cost of locomotive fuel pumped there. It was a long-expected expansion of the railroad’s capacity to address booming traffic from the Pacific Rim and freight congestion at its big U.S.-Mexican intermodal yard at El Paso, Texas.

In 2006, UP announced plans to build the Santa Teresa facility but said the plan was contingent upon New Mexico eliminating the gross receipts and compensating taxes for locomotive fuels. The year before, UP had won \$14 million in federal surface transportation funds to relocate its El Paso facility the short distance to Santa Teresa (the two cities adjoin at the state line).<sup>74</sup>

The 2007 Fiscal Impact Report (FIR) on HB 547 projected the exemptions would cost the state \$4.2 million in 2010, all benefiting Union Pacific. It also noted that UP would be transferring 260 employees from El Paso and creating a projected 285 more jobs.<sup>75</sup>

The company stated that it planned to construct the yard no later than 2015,

but it continued to wait to acquire the necessary land until New Mexico enacted the tax breaks.<sup>76</sup> In spite of UP's demands for the exemptions, legislative analysts noted that UP did not ask for any additional tax subsidies in Arizona, where the company was planning a new switching station, suggesting the company may have been bluffing.<sup>77</sup>

When the Great Recession hurt shipping volumes, UP put off the Santa Teresa plans, saying it would complete the project when the economy rebounded, but without a timetable.<sup>78</sup> But it was no secret that UP was likely to expand at Santa Teresa. Booming cross-border traffic, especially in autos and auto parts, was creating delivery bottlenecks through El Paso. Ancillary companies had heard the rumors and started looking for land at least as early as 2007: firms that maintain, haul and store containers; truck maintenance shops; and warehouses.<sup>79</sup> Union Pacific's annual 10-K Securities and Exchange Commission filings as far back as 2008 made clear that expansion along its Los Angeles-to-El Paso "Sunset Corridor" (which includes Santa Teresa that had already received the federal dollars) was an infrastructure investment priority.<sup>80</sup> Indeed, between 2004 and 2014, the UP would spend more than \$1 billion to double-track parts of the Sunset Corridor.<sup>81</sup>

By 2011, business had recovered such that demand for border freight shipping services was straining

supply. The original New Mexico statute had expired because of the construction delay, so a new governor and legislature re-enacted the exemption. UP proceeded building out the yard at Santa Teresa, expanding its capacity where the federal funds had already prioritized border-crossing investments. Demand for ancillary services boomed: for example, warehouse square footage increased from 800,000 in 2009 to three million by mid-2014.

### **The Strauss Yard at Santa Teresa**

Santa Teresa borders El Paso immediately to El Paso's west; the two cities are in the same combined statistical area. So UP's relocation of the 260 existing El Paso jobs to the Strauss Yard merely changed the commuting routes of those incumbent workers who presumably live in both states (and may not have created much if any new personal income tax revenue for New Mexico). But the project's construction was slated to create 3,000 construction-phase jobs. UP also projected 285 additional new permanent jobs to handle traffic that could soon reach 170,000 containers annually and 700,000 in years beyond.

The Strauss Yard is for UP a so-called "inland port," so that containerized goods arriving from Asia into Los Angeles or Long Beach, California can be shipped by rail to Santa Teresa and then either trucked into Mexico<sup>82</sup> or routed into U.S. markets. UP also has six direct rail links into Mexico: four in

Texas, including El Paso, and one each in Arizona and California.

The Strauss Yard includes a crew base (transferred from El Paso), a fueling facility (with greater efficiency for long trains than UP had in El Paso), an intermodal terminal that supplanted UP's El Paso terminal (where freight containers, usually carrying goods shipped from overseas, are switched between flatbed railcars and 18-wheel highway trucks), and "a block swap yard for sorting long-haul trains arriving from Southern California and bound for Midwest, East Coast, and Gulf Coast destinations."<sup>83</sup>

The facility has benefited from the expansion of the Foreign Trade Zone areas within Doña Ana County: there had been three close to the border crossing Port of Entry, but in July 2014 the *entire county* became Foreign Trade Zone No. 197, the first such New Mexico county to be so designated, streamlining FTZ permits for factories and warehouses.<sup>84</sup>

Foxconn, the large Taiwanese electronics contractor best known for making Apple products, already had two factories in Juarez (one producing for Hewlett-Packard) and opened a third, large facility in San Jerónimo in 2009 (immediately across the border from Santa Teresa) that produces for Dell Inc.<sup>85</sup> Traffic volumes at the Santa Teresa Port of Entry grew so quickly that by mid-2015, Dell struck a deal with U.S. Customs and Border Protection in which Dell paid to have

the southbound border crossing hours extended by four hours, from 8 p.m. to midnight, on weekdays.<sup>86</sup>

The Port of Entry can also handle Mexican imports into the U.S., including auto parts and consumer goods. For example, Electrolux operates a large maquiladora in Juarez and ships refrigerators to U.S. markets via Santa Teresa. An officer of the Border Industrial Association viewed the new yard as simply an expansion of the El Paso region: "We still will use El Paso suppliers, and shop in El Paso. The whole region benefits. It grows the pie," he said.<sup>87</sup>

We recite all of these facts about the hyper-growth at Santa Teresa to say that the evidence strongly suggests UP had outgrown some of its El Paso facilities, was continuing to expand its Sunset Corridor and needed the additional capacity to serve booming markets, driven by globalization in sectors such as automobiles, consumer electronics and appliances. These business basics almost certainly drove the expansion decision, not the New Mexico fuel tax exemptions.

Of course, the way site location dynamics have evolved over many decades in the United States, the company never needed to prove that the tax breaks mattered and New Mexico officials never had the right to inspect internal company documents about the decision. Instead, two governors and two legislative sessions gained the opportunity to appear pro-

jobs and business-friendly and UP gained a lucrative tax break.

### **BNSF Asks for Equal Treatment**

Predictably, the Burlington Northern Santa Fe Railroad (BNSF) insisted on equal treatment and won it in 2013, with an amendment that granted the fuel tax exemption to any railroad that committed to at least \$50 million in infrastructure improvements in the state. That was no hurdle at all for BNSF, which operates almost 1,400 route-miles in New Mexico (more than twice UP's presence), including the state's most heavily-trafficked line, the BNSF Transcon (which carries up to 100 trains a day between Chicago and Los Angeles).

"Every year BNSF makes major investments in its facilities and infrastructure all across New Mexico, not just in its fueling facilities or in just one county," said BNSF, while also mentioning its 1,400 New Mexico employees. "By amending the underlying statute, now railroad investment will be encouraged all across New Mexico."<sup>88</sup> By asserting its position for equal treatment, BNSF was reacting the way employers in other states have occasionally responded, especially incumbent employers who see newly-arriving competitors receive incentives. It's a cautionary lesson about the need to anticipate unintended consequences when considering tax favors.

### **Cost Estimates Prove Too Low**

For reasons not entirely apparent, but partly because of the amendment to benefit BNSF, the cost of the locomotive fuel tax break has greatly exceeded original estimates. For the 2011 debate, the Fiscal Impact Report (FIR) gave a wide-ranging cost estimate: from as low as \$1.8 million to as high as \$7.8 million by 2014 and between \$1.9 million and \$7.9 million the next year.<sup>89</sup> The 2013 amendment to the program to benefit BNSF came with a projected additional revenue loss of about \$4.3 million per year for the following three years.<sup>90</sup>

BNSF argued in 2013 that adding it would only cost the state about \$3 million a year in lost revenue.<sup>91</sup> The FIR included a letter from BNSF disclosing the amount of locomotive fuel taxes it had paid to New Mexico in 2010 through 2012: \$3.2 million, \$4.8 million, and \$4.4 million, respectively.

However, these projections also underestimated the future costs. By 2014, the program resulted in \$15.2 million in lost revenues, and that loss surged to \$23.1 million in 2015.<sup>92</sup> It's another example of how risky it can be for a state to enact a tax-break entitlement with no cost cap.

### **A Strong Industry and Two Very Large Corporate Beneficiaries**

Large companies by definition seldom need incentives. They have access to capital, market shares, management

depth and competitive “moats” of various kinds—that’s what enables them to become and stay big.

America’s Class I railroads are *especially* big and strong: they were deregulated in 1980 and have been enormously successful since gaining more power to shed branch lines and adjust their freight rates. Fuel is their second-largest cost factor (18 percent of the industry’s total spending in 2013, versus 20 percent for labor)<sup>93</sup>, but with several measures (lighter cars, more efficient engines, longer trains, fewer stops, etc.) they have become substantially more fuel efficient: revenue ton-miles per gallon of fuel increased by 42 percent between 1990 and 2013.<sup>94</sup> They have also won major concessions on crew sizes, reducing their labor costs.

Retrenching to their trunk lines and playing to their greatest strengths in coal, other commodities, and chemicals, they have also benefited greatly from globalization, especially containerized intermodal shipments like those handled at Santa Teresa. Indeed, intermodal freight car loadings have been the biggest growth segment for Class I railroads for many years,<sup>95</sup> reflecting the rise in imports from China and other Asian countries, which arrive in West Coast ports to be shipped on flatbed railcars eastward to U.S. markets.

The two railroads benefiting from this exemption are enormously resourced. UP is the main subsidiary of Union

Pacific Corporation, a publicly traded corporation spanning 23 states with a market value of \$85 billion. Its share prices have more than doubled in value in the past six years. BNSF, UP’s primary competitor and the largest railroad in North America (spanning 28 states and three Canadian provinces), is a subsidiary of Berkshire Hathaway, the multinational conglomerate led by Warren Buffett with a market capitalization approaching \$400 billion (the fourth-highest of any U.S.-listed firm).

### **Policy Conclusion**

For the Locomotive Fuel Sales Tax Exemption itself, we recommend that the state consider phasing it out. Strong Class I rail corridors like BNSF’s Transcon and the UP’s Sunset Corridor are massive, efficient, high-volume sunk investments that would be little affected by a small change in their fuel costs.

To address the broader structural issue of ensuring that a proposed tax expenditure actually leverages desirable activity that would not otherwise occur, we recommend that the state require that every Fiscal Impact Report attached to a newly proposed incentive include a market-based analysis which determines whether the subject activity is likely to occur without the tax preference and also how other, existing New Mexico employers may be affected by the tax preference.

**Chapter 8:  
Policy Conclusion:  
Solutions for Transparency and  
Effectiveness**

By adopting best practices well established in other states, and by discontinuing some clearly unproductive tax giveaways, New Mexico can substantially improve its revenue base, free up resources to better sustain and improve vital public services that benefit all employers, and make its economic development spending fairer to small, local and entrepreneurial businesses.

To summarize the recommendations driven by our findings, we offer this menu of solutions.

**Consumer Internet Sales**

- Completely close the internet sales tax loophole, if necessary by enacting a Colorado-style law to encourage other online retailers besides Amazon to start collecting the Gross Receipts Tax, leveling the playing field with local and bricks-and-mortar retailers.

**Tax Expenditure Transparency**

- Disclose online the corporate recipients, costs and benefits over time of every economic development tax-break deal for every state incentive program.

- Report annually the allocation of each economic development tax break program's value to small, medium-sized and large businesses.
- Restore full accounting of all tax expenditures, including those exemptions intended to eliminate "pyramiding," to the Taxation and Revenue Department's annual Tax Expenditure Report.
- For tax expenditures beyond those covered by GASB Statement No. 77 on Tax Abatement Disclosures, apply the same revenue-loss reporting requirements, including the reporting of intergovernmental revenue effects.

**Economic Development Incentives**

- Discontinue the High Wage Jobs Tax Credit.
- Close the Locomotive Fuel Sales Tax Exemption.
- Require that every state incentive program, whether it is funded by tax expenditures or appropriations, be sunsetted every two years and subject to a performance audit before it can be reauthorized.
- Contain subsidies by using dollar caps—by job, by deal, and/or by company and by

capping aid intensity (the ratio of public subsidization to private capital investment).

- Require that every Fiscal Impact Report attached to a newly proposed incentive include a market analysis which determines whether the subject activity is likely to occur without the tax preference and also how other, existing New Mexico employers may be affected by the tax break.
- Require that every Fiscal Impact Report for a proposed incentive also include a new section that disaggregates the projected value of the program between small, medium-sized and large businesses.
- Require the same business-size breakdown in the annual Tax Expenditure Report, modeled on the Missouri example.
- Prohibit the retroactive filing of tax-credit claims with amended income tax returns.

return to double-weighted sales factor or three-factor formula; at the very least, make SSF mandatory rather than elective.

By stabilizing and enhancing the revenue base necessary for the public goods and services that all employers depend on; by creating systems to intentionally redirect resources to small, local and entrepreneurial businesses that hold the most promise; and by enabling taxpayers to better see and understand how the state funds economic development, New Mexico can chart a more prosperous future.

### **Corporate Income Tax Code**

- Adopt combined reporting—for *all* multistate corporate entities, as do 25 other states and the District of Columbia.
- Reverse the phase-in of Single Sales Factor for manufacturers' income tax apportionment and

**Appendix A:**  
**Table 8 from *Slicing the Budget Pie for Big Business***  
**(New Mexico Program Spending Analyses)**

<b>Program</b>	<b>Program Cost Year and Type</b>	<b>Cost of Subsidies to Large Companies</b>	<b>Cost of Subsidies to Small Companies</b>	<b>Cost of Subsidies to Any Size Companies</b>
<b>Angel Investment Credit</b>	FY 2014 Program Cap		\$2,000,000	
<b>High Wage Jobs Tax Credit</b> (93% of dollars went to big business per <i>Shortchanging Small Business</i> )	FY 2013 Expenditure	\$20,183,046	\$1,519,154	*
<b>Industrial Revenue Bonds</b>	Not Available			
<b>Investment Tax Credit for Manufacturers</b>	FY2013 Expenditure	\$10,147,900		
<b>Job Mentorship Tax Credit</b>	FY 2014 Expenditure			\$14,400
<b>Job Training Incentive Program</b>	FY 2014 Expenditure	\$2,492,371	\$1,533,400	*
<b>Local Economic Development Act (LEDA) Capital Outlay Funds</b>	FY 2014 Expenditure			\$3,285,000
<b>Locomotive Fuel Gross Receipts &amp; Compensating Tax Exemption</b>	FY 2014 Expenditure	\$7,800,000		
<b>New Mexico Small Business Assistance (NMSBA) Program</b>	FY 2014 Amount Invested		\$4,700,000	
<b>Rural Jobs Tax Credit</b>	FY 2013 Expenditure			\$71,400
<b>Rural Software Development Gross Receipts Tax Deduction</b>	FY 2014 Expenditure			\$1,480,000
<b>Space Gross Receipts Tax Deductions</b>	FY 2014 Expenditure			\$100,000
<b>Technology Jobs and Research and Development Tax Credit</b>	FY 2013 Expenditure	\$3,431,283	\$1,661,717	*
<b>TIDD (TIF)</b>	FY 2014 Expenditure			\$2,351,800
<b>Technology Transfer</b>	FY 2015 Budget Appropriation			\$300,000
<b>New Mexico Start Up Factory</b>	Not Available			
<b>Trade Support Company in a Border Zone</b>	FY 2014 Expenditure			\$235,000
<b>TOTAL \$</b>		<b>\$44,054,600</b>	<b>\$11,414,271</b>	<b>\$7,837,600</b>
<b>SHARES</b>		<b>70%</b>	<b>18%</b>	<b>12%</b>

## Appendix B: Missouri Department of Economic Development Tax Credit Accountability Report

### DED INCENTIVES REPORTED BY BUSINESS SIZE

January 1, 2014 to December 31, 2014

Business Size	Less than 100	100-500	>500
<b>Applicable Programs Reporting:</b>			
Amateur Sporting Contribution	\$ -	\$ -	\$ -
Amateur Sporting Ticket Sales	\$ -	\$ -	\$ -
Brownfield Demolition	\$ -	\$ -	\$ -
Brownfield Jobs and Investment	\$ 197,740.00	\$ -	\$ -
Brownfield Remediation	\$ 1,941,917.33	\$ 317,851.31	\$ -
Business Facility	\$ 81,059.00	\$ 24,233.00	\$ 5,997,366.00
Business Incubator	\$ 122,421.47	\$ -	\$ -
Capital SBIC	\$ -	\$ -	\$ -
Certified Capital Companies	\$ -	\$ -	\$ -
Charcoal Producers	\$ -	\$ -	\$ -
Community Bank	\$ -	\$ -	\$ -
Development Tax Credit	\$ 172,400.00	\$ -	\$ 1,996,841.42
Distressed Areas Land Assemblage	\$ -	\$ -	\$ -
Enhanced Enterprise Zone	\$ 3,079,833.98	\$ 2,956,497.78	\$ 1,513,754.46
Enterprise Zone	\$ -	\$ -	\$ -
Family Development Account	\$ -	\$ -	\$ -
Film Production	\$ 25,000.00	\$ 2,748,097.38	\$ -
Historic Preservation (Developers Only)	\$ 48,570,635.46	\$ -	\$ -
Loan Guarantee Fee	\$ -	\$ -	\$ -
Missouri Manufacturing Jobs*	\$ -	\$ 50,379.00	\$ 16,328,810.41
Missouri Quality Jobs	\$ 10,351,650.28	\$ 9,290,579.47	\$ 31,595,894.91
Missouri Works	\$ 579,281.00	\$ 176,872.46	\$ -
Neighborhood Assistance	\$ 9,197,427.00	\$ 1,987,909.00	\$ 412,973.00
Neighborhood Preservation (Developers Only)	\$ 2,024,312.18	\$ -	\$ -
New Enterprise Creation	\$ -	\$ -	\$ -
Rebuilding Communities	\$ 1,734,694.62	\$ -	\$ -
Research	\$ -	\$ -	\$ -
Seed Capital	\$ -	\$ -	\$ -
Transportation Development	\$ -	\$ -	\$ -
Urban Enterprise Loan	\$ 100,000.00	\$ -	\$ -
Wine and Grape (Businesses Only)	\$ 22,388.61	\$ -	\$ -
Youth Opportunities Program	\$ 3,909,441.00	\$ 2,004,865.00	\$ 148,269.00
<b>TOTAL</b>	<b>\$ 82,110,201.93</b>	<b>\$ 19,557,284.40</b>	<b>\$ 57,993,909.20</b>

*Note: Benefits issued to individuals, community colleges or units of government are not considered in this report.*

*\*These programs are not tax credit programs.*

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## Endnotes

<sup>1</sup> See Pew Center on the States, April 12, 2012. “Pew: States Rely Heavily on Tax Incentives, but Few Evaluate Whether They Work” as fully referenced in the Introduction.

<sup>2</sup> For a review of evaluation practices, see Pew Center on the States, “Tax Incentive Programs. Evaluate today, improve tomorrow,” January 2015 at: <http://www.pewtrusts.org/~media/assets/2015/01/statetaxincentivesbriefjanuary2015.pdf>

<sup>3</sup> See Good Jobs First report card studies referenced with links in the endnotes for Chapter 1: *The State of State Disclosure* (2007), *Show Us the Subsidies* (2010), and *Show Us the Subsidized Jobs* (2014).

<sup>4</sup> For example, New Mexico’s unemployment rate stood at 6.6 percent as of December 2016, compared to the national rate of 4.7 percent, Arizona’s rate of 4.6 percent and Texas’s rate of 4.6 percent. U.S. Bureau of Labor Statistics, at: <https://www.bls.gov/eag/eag.nm.htm>, <https://www.bls.gov/eag/eag.az.htm>, <https://www.bls.gov/eag/eag.tx.htm> and <https://data.bls.gov/timeseries/LNS14000000> . See also the chapter on Single Sales Factor apportionment for an analysis of New Mexico’s declining share of U.S. manufacturing employment.

<sup>5</sup> Good Jobs First acknowledges the long-standing contributions of William Schweke, formerly of the Corporation for Economic Development, in articulating the value of Unified Economic Development Budgets, or compilations of all forms of spending, both tax-based and appropriated. See for example, Frank DiSilvestro and William Schweke, “At What Cost? North Carolina’s ‘Budget’ for Economic Development,” which found that tax incentives made up 90 percent of the state’s economic development spending in 2006-2007, and trending up, Corporation for Economic Development, May 2008, at: <http://www.ncleg.net/documentsites/committees/JSCEDI/5-8-2008/EDI%20Final%20Report.pdf> . See also Mountain Association for Community Economic Development’s analysis of Kentucky’s 2004 spending, in which it found \$571 million in tax-based spending and \$237 million in appropriations, or a ratio of 2.4 to 1, at: <http://www.maced.org/spending-report-summary.htm> . See also California Budget Project, January 2002, “Maximizing Returns: A Proposal for Improving the Accountability of California’s Investments in Economic Development: at: <http://calbudgetcenter.org/wp-content/uploads/s0201edev.pdf> which found for a six-year period that tax-based or what it calls “off-budget” expenditures exceeded “on-budget” or appropriated expenditures by a ratio of more than 3 to 1 (within an

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annual total economic development budget averaging about \$6.5 billion). See also Illinois' 2012 Unified Economic Development Budget, which shows \$258.5 million in tax expenditures for economic development, compared to \$76 million in appropriations, or a ratio of 3.4 to 1. The tax expenditure compilation does not include Single Sales Factor apportionment, which at last calculation cost the state \$63 million, which would put the tax expenditure-to-appropriations ratio at 4.2 to 1. <http://www.revenue.state.il.us/AboutIdor/TaxStats/AnnualUnified/UnifiedBudget2012.pdf> .

<sup>6</sup> Report to the Legislative Finance Committee Report #12-08, dated August 23, 2012, page 6. At: <https://www.nmlegis.gov/lcs/lfc/lfcdocs/perfaudit/Job%20Creation%20Incentive.s.pdf>

<sup>7</sup> Testimony of Greg LeRoy, Good Jobs First, to the State of New Mexico Legislative Revenue Stabilization and Tax Policy Committee, Santa Fe, on July 22, 2016.

<sup>8</sup> Pew Center on the States, April 12, 2012. "Pew: States Rely Heavily on Tax Incentives, but Few Evaluate Whether They Work" at: <http://www.pewtrusts.org/en/about/news-room/press-releases/0001/01/01/pew-states-rely-heavily-on-tax-incentives-but-few-evaluate-whether-they-work>. Pew's conclusion was based on an examination of nearly 600 documents and interviews with more than 175 government officials.

<sup>9</sup> Tom Gantert, Michigan Capitol Confidential, August 9, 2016, "Snyder Orders a State Economic 20 Year Plan at: <https://www.michigancapitolconfidential.com/22679>

<sup>10</sup> Together Louisiana, Costly and Unusual," June 2, 2016, at: [http://togetherla.com/wp-content/uploads/2016/06/2\\_Appendix-A\\_Cost-to-every-parish-and-jurisdiction.pdf](http://togetherla.com/wp-content/uploads/2016/06/2_Appendix-A_Cost-to-every-parish-and-jurisdiction.pdf)

<sup>11</sup> William Fulton, "Redevelopment Financing Gets an Overhaul in California" *Governing*, March 2011, at: <http://www.governing.com/topics/finance/col-redevelopment-financing-gets-overhaul-in-california.html>

<sup>12</sup> Philip Mattera et al. *The State of State Disclosure* (Good Jobs First, November 2007); online at: <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/statedisclosure.pdf>

<sup>13</sup> Philip Mattera et al. *Show Us the Subsidies: An Evaluation of State Government Online Disclosure of Economic Development Subsidies* (Good Jobs First, December 2010); online at: <http://www.goodjobsfirst.org/showusthesubsidies>

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<sup>14</sup> Philip Mattera et al. *Show Us the Subsidized Jobs: An Evaluation of State Government Online Disclosure of Economic Development Subsidies and Outcomes* (Good Jobs First, January 2014); online at:  
<http://www.goodjobsfirst.org/showusthesubsidizedjobs>

<sup>15</sup> The JTIP disclosure is at:  
<https://gonm.biz/uploads/documents/publications/NMJTIPWEB.pdf>

<sup>16</sup> See all of the state and local New Mexico data currently available in Subsidy Tracker at:  
[http://subsidytracker.goodjobsfirst.org/prog.php?parent=&statesum=&fedsum=&company\\_op=starts&company=&major\\_industry%5B%5D=&free\\_text=&subsidy\\_level=&subsidy\\_op=%3E&subsidy=&face\\_loan\\_op=%3E&face\\_loan=&subsidy\\_type%5B%5D=&sub\\_year%5B%5D=&state=NM&mult\\_program%5B%5D=&city=&county=](http://subsidytracker.goodjobsfirst.org/prog.php?parent=&statesum=&fedsum=&company_op=starts&company=&major_industry%5B%5D=&free_text=&subsidy_level=&subsidy_op=%3E&subsidy=&face_loan_op=%3E&face_loan=&subsidy_type%5B%5D=&sub_year%5B%5D=&state=NM&mult_program%5B%5D=&city=&county=)

<sup>17</sup> The New Mexico Sunshine Portal is at:  
<http://www.sunshineportalnm.com/default.aspx>

<sup>18</sup> *Estimated Revenue Impact of New Mexico Tax Credits, Deductions, Exemptions, Rate Differentials, and Rebates for which Direct Data Exists, Third Draft, FY04 - FY10*, (New Mexico Taxation and Revenue Department, Office of Tax Analysis, Research, and Statistics, September 2010), online at  
<http://www.nmlegis.gov/lcs/handouts/Table%202%20-%20Revenue%20Impacts%202010-09-30.pdf>

<sup>19</sup> The reports can be found under Publications at  
<http://www.tax.newmexico.gov/forms-publications.aspx>

<sup>20</sup> Legislative Finance Committee Hearing Brief, April 14, 2016, page 5. Oddly, this page is not part of the online version of the same document, at:  
<https://www.nmlegis.gov/Handouts/ALFC%20041316%20Item%209%20LFC%20Tax%20Expenditure%20Brief.pdf>

<sup>21</sup> See an explanation of the Statement at [www.goodjobsfirst.org/gasb77analysis](http://www.goodjobsfirst.org/gasb77analysis)

<sup>22</sup> Andrew Oxford, "Amazon to charge gross-receipts tax on New Mexico-bound purchases," *The New Mexican*, March 6, 2017, at:  
[http://www.santafenewmexican.com/news/local\\_news/amazon-to-charge-gross-receipts-tax-on-new-mexico-bound/article\\_a6feba87-f1f0-54cb-871f-8040ed087300.html](http://www.santafenewmexican.com/news/local_news/amazon-to-charge-gross-receipts-tax-on-new-mexico-bound/article_a6feba87-f1f0-54cb-871f-8040ed087300.html) and Jessica Dyer, "Amazon to start collecting taxes in New Mexico," *Albuquerque Journal*, March 6, 2017 at:  
<https://www.abqjournal.com/962831/amazon-to-start-collecting-taxes-in-new-mexico.html> .

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<sup>23</sup> For a summary of this evolution in Amazon’s physical footprint, see Thomas Cafcas and Greg LeRoy, *Will Amazon Fool Us Twice?* Good Jobs First, December 2016, at: <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/amazon-subsidies.pdf>

<sup>24</sup> Carl Davis, “And Then There Were Six: Amazon Expands Its Sales Tax Collection,” Institute on Taxation and Economic Policy, January 30, 2017 and later updated to reflect only five states not receiving sales tax from Amazon’s transactions, at: <http://www.taxjusticeblog.org/archive/2017/01/and-then-there-were-six-amazon.php#.WJuP0vKlz-U>

<sup>25</sup> Civic Economics, “Selected Findings from Amazon and Empty Storefronts, 2015 Update,” at: <http://www.civiceconomics.com/empty-storefronts.html>

<sup>26</sup> George C. Ford, “Amazon.com Starts Collecting Sales Tax From Iowa Residents,” *Cedar Rapids Gazette*, January 20, 2017 at: <http://www.cpapracticeadvisor.com/news/12291032/amazoncom-starts-collecting-sales-tax-from-iowa-residents>

<sup>27</sup> Associated Press, “Amazon to begin collecting 6 percent sales tax in VT,” January 23, 2017 at: <http://www.burlingtonfreepress.com/story/money/2017/01/23/amazon-begin-collecting-6-percent-sales-tax-vt-vermont/96939676/>

<sup>28</sup> Steve Wilson, “Agency won’t release voluntary internet sales tax deal with Amazon,” *Mississippi Watchdog*, at: <http://watchdog.org/287772/internet-sales-tax-amazon-deal/>

<sup>29</sup> Streamlined Sales Tax Governing Board, Inc., at: <http://www.streamlinedsalestax.org/index.php?page=gen6>

<sup>30</sup> Mark K. Matthews, “Supreme Court lets Colorado’s “Amazon tax” law stand. What’s next?” *Denver Post*, December 12, 2016, at: <http://www.denverpost.com/2016/12/12/supreme-court-colorado-internet-sales-tax-law/> “By itself, the Colorado’s law doesn’t force online companies to act as the tax man. Rather, it gives them a tough choice: either collect the sales tax or deal with more red tape, including additional paperwork and the requirement they remind Coloradans that they owe sales tax to the state.”

<sup>31</sup> Associated Press, “Arkansas House passes bill aimed at collecting Amazon sales taxes,” February 7, 2017, at: <http://www.foxbusiness.com/markets/2017/02/07/arkansas-house-passes-bill-aimed-at-collecting-amazon-taxes.html> “Amazon would be required to tell Arkansas customers they owe the state sales tax under a bill approved by the House

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Tuesday, one of two efforts by lawmakers to recover millions in tax revenue from the e-commerce giant. The bill approved by the House on a 54-46 vote would also require Amazon and other out-of-state companies without a physical presence in Arkansas to provide a list to finance officials of purchases made by state residents. ... [the] bill is modeled after a Colorado law that the U.S. Supreme Court let stand last year.”

<sup>32</sup> Thomas Cafcas and Greg LeRoy, *Will Amazon Fool Us Twice?*, *op cit*.

<sup>33</sup> Rhode Island Division of Taxation, Tax Administrator’s Study of Combined Reporting, March 15, 2014,  
<http://www.tax.ri.gov/Tax%20Website/TAX/reports/Rhode%20Island%20Division%20of%20Taxation%20--%20Study%20on%20Combined%20Reporting%20--%2003-17-14%20FINAL.pdf>

<sup>34</sup> Glenn R. Simpson, “A Tax Maneuver in Delaware Puts Squeeze on Other States,” *Wall Street Journal*, August 9, 2002.

<sup>35</sup> New Mexico Legislative Finance Committee, Fiscal Impact Report for HB 641, April 15, 2013.  
<https://www.nmlegis.gov/Sessions/13%20Regular/firs/HB0641.PDF>

<sup>36</sup> Michael Mazerov. “A Majority of States Have Now Adopted a Key Corporate Tax Reform ‘Combined Reporting’.” Center on Budget and Policy Priorities, Revised April 3, 2009, at: <http://www.cbpp.org/research/a-majority-of-states-have-now-adopted-a-key-corporate-tax-reform-combined-reporting>

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<sup>37</sup> Jason Wiens and Chris Jackson, “The Importance of Young Firms for Economic Growth,” Kauffman Foundation, September 13, 2015, at: <http://www.kauffman.org/what-we-do/resources/entrepreneurship-policy-digest/the-importance-of-young-firms-for-economic-growth>. Dane Stangler, “Where Will the Jobs Come From?” Kauffman Foundation, April 30, 2011, at: <http://www.kauffman.org/what-we-do/research/firm-formation-and-growth-series/where-will-the-jobs-come-from>. John Haltiwanger, Ron S. Jarmin, and Javier Miranda, Who Creates Jobs? Small Versus Large Versus Young.” *The Review of Economics and Statistics*, May 2013, pp. 347-361, at: [http://www.mitpressjournals.org/doi/pdf/10.1162/REST\\_a\\_00288](http://www.mitpressjournals.org/doi/pdf/10.1162/REST_a_00288). Michael Mazerov and Michael Leachman, “State Job Creation Strategies Often Off Base,” Center on Budget and Policy Priorities, February 3, 2016, at: <http://www.cbpp.org/research/state-budget-and-tax/state-job-creation-strategies-often-off-base>

<sup>38</sup> See a synthesis of this academic literature by Stacy Mitchell in her book, *Big-Box Swindle; The True Cost of Mega-Retailers and the Fight for America’s Independent Businesses* (Beacon Press, 2006), at pp. 73-100.

<sup>39</sup> See summaries of and links to studies, especially those by Civic Economics, at the Institute for Local Self-Reliance website: <https://ilsr.org/key-studies-why-local-matters/#3>

<sup>40</sup> Greg LeRoy, Carolyn Fryberger, Kasia Tarczynska, Thomas Cafcas, Elizabeth Bird and Philip Mattera *Shortchanging Small Business: How Big Businesses Dominate State Economic Development Incentives*. *Good Jobs First*, October 2015, at: <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/shortchanging.pdf>

<sup>41</sup> Kasia Tarczynska and Thomas Cafcas, *Slicing the Budget Pie for Big Business: How Three States Allocate Economic Development Dollars, Large Companies versus Small*. *Good Jobs First*, March 2016, at: <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/slicingthebudget.pdf>

<sup>42</sup> Updated tax expenditure data from the New Mexico Tax and Revenue Department as tabulated by the Office of the State Auditor, December 19, 2016.

<sup>43</sup> This study does not analyze New Mexico’s film and television production tax credits. They pose an interesting challenge to this small business-fairness analysis: many production companies appear on paper to be small businesses with few employees. However, those companies are often owned by or controlled by a large Hollywood studio. For example, in New Mexico, T Salvation Productions, which received \$19 million in tax credits for a 2009 film, was actually created for the film *Terminator Salvation*, a Columbia Pictures project with a budget of over \$200

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million. Tracking down the structures of these short-lived companies isn't always easy: many appear and then disappear after films are wrapped and the names are often changed to conceal the actual name of the film being shot or the parent company. Hollywood frequently makes use of LLC legal corporate structures as part of a risk avoidance strategy. If a production goes bankrupt or loses money, a small LLC can go bankrupt without harming the finances of the larger production company backing the project. All of this creates a great deal of ambiguity in categorizing film subsidies as directed at small or large businesses. For this reason, we excluded film tax credits from this analysis. (For more on why film productions incorporate as LLCs, see: <https://www.legalzoom.com/articles/why-do-film-companies-form-an-llc-for-a-movie> and [http://www.gcglaw.com/resources/entertainment/film\\_business.html](http://www.gcglaw.com/resources/entertainment/film_business.html) )

<sup>44</sup> In *Shortchanging Small Business*, Good Jobs First used the following definition of large and small businesses, derived from a survey study we had performed of 41 small-business groups in a prior study, *In Search of a Level Playing Field*. Small business has 100 employees or fewer, is independently and locally owned, and has 9 or fewer establishments. Large business has more than 100 employees, or is a company of any size that is not independently and locally owned, or has 10 or more establishments. See page 5 at:

<http://www.goodjobsfirst.org/sites/default/files/docs/pdf/shortchanging.pdf>

<sup>45</sup> See Fiscal Impact Report of SB 849 of 2003:

<https://www.nmlegis.gov/Sessions/03%20Regular/firs/sb0849.pdf>

<sup>46</sup> Legislative Finance Committee, Report #16-07, page 28. October 16, 2016, at:

[https://www.nmlegis.gov/Entity/LFC/Documents/Program\\_Evaluation\\_Reports/Tax%20Gap,%20Audit%20and%20Compliance,%20and%20Fraud.pdf](https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Tax%20Gap,%20Audit%20and%20Compliance,%20and%20Fraud.pdf)

<sup>47</sup> See HB 14 of 2003:

<https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=14&year=03s>

<sup>48</sup> "When Duty Calls," *Albuquerque Tribune*, October 27, 2003.

<sup>49</sup> The program's original intention was verified by Good Jobs First in a background interview with one of the 2003 bill's co-authors, and by our review of the bill's original 2003 text.

<sup>50</sup> Page 90, 2015 New Mexico Tax Expenditure Report.

<sup>51</sup> Bruce Krasnow, "Tax credits hurt cash-strapped New Mexico," *The Santa Fe New Mexican*, September 16, 2016. Online at: <http://www.taosnews.com/news/tax->

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[credits-hurt-cash-strapped-new-mexico/article\\_aeed6734-7e75-11e6-8380-871787c8399c.html](http://www.taosnews.com/news/tax-credits-hurt-cash-strapped-new-mexico/article_aeed6734-7e75-11e6-8380-871787c8399c.html).

<sup>52</sup> “Tax Changes Don’t Please Small Firms,” *Albuquerque Journal* February 24, 2004, at: <https://business.highbeam.com/2872/article-1G1-113574634/tax-changes-dont-please-small-firms>

<sup>53</sup> Legislative Finance Committee, Report #16-07, op cit, page 28.

<sup>54</sup> HB 14 of 2003, op cit.

<sup>55</sup> Bruce Krasnow, “Tax credits hurt cash-strapped New Mexico,” *The Santa Fe New Mexican*, September 16, 2016. Online at: [http://www.taosnews.com/news/tax-credits-hurt-cash-strapped-new-mexico/article\\_aeed6734-7e75-11e6-8380-871787c8399c.html](http://www.taosnews.com/news/tax-credits-hurt-cash-strapped-new-mexico/article_aeed6734-7e75-11e6-8380-871787c8399c.html). Dan Boyd, “To-Do List Just Got Longer; Governor Adds Tax Credit Tweak,” *Albuquerque Journal*, August 12, 2011. NO URL. “Close Door on State’s ‘High Income’ Loophole,” *Albuquerque Journal*, May 10, 2012. Online at: <https://www.abqjournal.com/105633/close-door-on-states-high-income-loophole.html>

<sup>56</sup> Marie C. Baca, “NM May save money if wage tax credit tweaked; Word change could save state millions,” *Albuquerque Journal*, September 26, 2016.

<sup>57</sup> For more about economic development approaches to export-led strategies see: Bartik, Timothy J. 2003. “Local Economic Development Policies.” Upjohn Institute Working Paper No. 03-91. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research. Online at: <http://dx.doi.org/10.17848/wp03-91> . It states in part: “Diversification of the economy and broad-based economic development are critical for the long-term sustainable development in resource-rich developing countries (RRDCs) for two reasons. First, the high level of export concentration makes these economies vulnerable to commodity price fluctuations (figure 4.1) that can result in abrupt contraction of public resources and/or create a negative spillover effect in the rest of the economy. Second, extractive sectors are generally capital intensive, have weak links to the rest of the economy, and, as a rule, do not generate much employment. Therefore, investments in these sectors and their expansion have a low impact on the growth and productivity of other industries leading to a high concentration of gross domestic product (GDP) and a low impact on job creation.”

<sup>58</sup> <https://www.nmlegis.gov/Sessions/03%20Regular/firs/sb0849.pdf>

<sup>59</sup> See SB 849 of 2003: <https://www.nmlegis.gov/Sessions/03%20Regular/bills/senate/SB0849.html>

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<sup>60</sup> An amendment in 2013 reduced the time credits can be claimed to the end of the following calendar year.

<sup>61</sup> “Thursday Padilla: Late tax credit report on governor’s desk,” *New Mexico Business Weekly* August 30, 2012. Online at: <http://www.bizjournals.com/albuquerque/news/2012/08/30/padilla-late-trd-report-on-governors.html>

<sup>62</sup> Kasia Tarczynska and Thomas Cafcas, *Slicing the Budget Pie for Big Business*, Good Jobs First, March 2016, page 19, at: <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/slicingthebudget.pdf>

<sup>63</sup> N.M. Stat. Ann. § 7-4-10.A.

<sup>64</sup> *Corporate Income Tax Apportionment and the Single-Sales Factor*, Institute on Taxation and Economic Policy, August 2012, at: <http://itepnet.org/pdf/pb11ssf.pdf>

<sup>65</sup> See N.M. Stat. Ann. § 7-4-10.E(1)(a) for criteria, including physical employment of corporate staff employees; performance of centralized functions (administrative, planning, managerial, human resources, purchasing, information technology and accounting); purpose of operations to manage and direct most aspects and functions of the business operations within a subdivided area of the United States; and source of final authority over regional or subregional offices, operating facilities and any other offices of the business.

<sup>66</sup> University of New Mexico, Bureau of Business & Economic Research, “Estimating the Impacts of the Elective Single Sales Factor and Marginal CIT Rate Provisions of HB-641.” January 21, 2014, at: [https://www.nmlegis.gov/entity/lfc/documents/money\\_matters/bber%20report%20on%20economic%20impact%20of%20corporate%20income%20tax%20rate%20and%20apportioning%20changes%20-%20january%202014.pdf](https://www.nmlegis.gov/entity/lfc/documents/money_matters/bber%20report%20on%20economic%20impact%20of%20corporate%20income%20tax%20rate%20and%20apportioning%20changes%20-%20january%202014.pdf)

<sup>67</sup> Fiscal Impact Report, H.B. 2 SS, June 2015, at: <https://www.nmlegis.gov/Sessions/15%20Special/firs/HB0002.PDF>

<sup>68</sup> *Estimating the Impacts of Elective Single Sales Factor and Marginal CIT Rate Provisions of HB-641*, Lee A. Reynis & Michael O’Donnell, Bureau of Business & Economic Research, University of New Mexico, January 2014, at: <http://bber.unm.edu/media/publications/HB641shortfinal3.pdf>

<sup>69</sup> Jeff McCourt and Greg LeRoy, *A Better Deal for Illinois*, 2003, page 24, at: <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/il.pdf>

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<sup>70</sup> Joe Cardillo, Albuquerque Business Journal, "Intel Laying off 2015 in Rio Rancho,

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report says,” April 26, 2016, at:

<http://www.bizjournals.com/albuquerque/news/2016/04/26/intel-laying-off-215-in-rio-rancho-kob-reports.html>

<sup>71</sup> New Mexico Department of Workforce Solutions, WARN Act notices 2012-2016. The first nine months of 2016 data are online at:

<https://www.dws.state.nm.us/Portals/0/DM/Business/2016%20WARN.pdf>. The earlier years’ lists were provided to Good Jobs First by the Department.

<sup>72</sup> See the National Association of Manufacturers’ compilations at:

<http://www.nam.org/Data-and-Reports/State-Manufacturing-Data/>

<sup>73</sup> Good Jobs First analysis of manufacturing employment data from the U.S. Bureau of Labor Statistics.

<sup>74</sup> Fiscal Impact Report on HB 547 prepared for the New Mexico Legislative Finance Committee. February 20, 2007, at:

<https://www.nmlegis.gov/sessions/07%20Regular/firs/HB0547.pdf>

<sup>75</sup> Ibid.

<sup>76</sup> Fiscal Impact Report on HB 839 prepared for the New Mexico Legislative Finance Committee. March 16, 2007, at:

<https://www.nmlegis.gov/sessions/07%20Regular/firs/HB0839.pdf>

<sup>77</sup> Fiscal Impact Report on HB 547, op cit.

<sup>78</sup> Paul Davenport, “Recession derails Union Pacific projects,” The Associated Press.

December 5, 2009, at: [http://tucson.com/news/local/recession-derails-union-pacific-projects/article\\_eab80d93-037a-565f-bdd2-1587d27cbcd0.html](http://tucson.com/news/local/recession-derails-union-pacific-projects/article_eab80d93-037a-565f-bdd2-1587d27cbcd0.html)

<sup>79</sup> Association of American Railroads, “2016 State of the Industry Reports: Report 2 Economic Impact.” Page 22, at:

<https://www.aar.org/Documents/SOTI%20PDFs/AAR%20State%20of%20the%20Inudstry%20Report%202%20Final.pdf>

<sup>80</sup> Union Pacific Corporation FY 2008 Form 10-K, at:

<https://www.sec.gov/Archives/edgar/data/100885/000119312509021370/d10k.htm>

<sup>81</sup> Mark Szakonyi, “UP’s New Mexico Hub Expands Shippers’ Cross-Border Options,”

*Joc.com* (Journal of Commerce), April 21, 2014 at: [http://www.joc.com/rail-intermodal/class-i-railroads/union-pacific-railroad/up%E2%80%99s-new-mexico-hub-expands-shippers%E2%80%99-cross-border-options\\_20140421.html](http://www.joc.com/rail-intermodal/class-i-railroads/union-pacific-railroad/up%E2%80%99s-new-mexico-hub-expands-shippers%E2%80%99-cross-border-options_20140421.html)

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<sup>82</sup> Maquiladoras are manufacturing facilities created as part of an export-based industrial development policy, often owned by foreign companies, operating in special border trade zones enabling them to avoid certain taxes and duties normally levied by the Mexican government so long as the goods produced are eventually exported out of the country.

<sup>83</sup> New Mexico Department of Transportation, *New Mexico State Rail Plan*, March 2014, page 2-18, at: [http://dot.state.nm.us/content/dam/nmdot/Transit\\_Rail/NewMexicoStateRailPlan2014.pdf](http://dot.state.nm.us/content/dam/nmdot/Transit_Rail/NewMexicoStateRailPlan2014.pdf)

<sup>84</sup> Doña Ana County press release, “Doña Ana County Secures Foreign Trade Zone Status,” July 28, 2014, at: <https://donaanacounty.org/content/do%C3%B1a-ana-county-secures-foreign-trade-zone-status>

<sup>85</sup> Mark Szakonyi, op cit.

<sup>86</sup> Kevin Robinson-Avila, *Albuquerque Journal*, “Dell helps expand Santa Teresa port hours,” July 14, 2015 at: <https://www.abqjournal.com/612593/dell-helps-expand-santa-teresa-port-hours.html>

<sup>87</sup> Tim Feemster, *Area Development*, Q3 2014, “Location Notebook: Union Pacific Intermodal Opens in Santa Teresa, New Mexico” at: <http://www.areadevelopment.com/logisticsInfrastructure/Q3-2014/union-pacific-intermodal-new-mexico-investment-2288771.shtml>

<sup>88</sup> *Progressive Railroading*, “New Mexico enacts locomotive fuel tax bill,” April 4, 2013 at: <http://www.progressiverailroading.com/mechanical/article/New-Mexico-enacts-locomotive-fuel-tax-bill--35717>

<sup>89</sup> Fiscal Impact Report on HB 523 prepared for the New Mexico Legislative Finance Committee. March 8, 2011, at: <https://www.nmlegis.gov/sessions/11%20regular/firs/HB0523.pdf>

<sup>90</sup> Fiscal Impact Report on HB 120 prepared for the New Mexico Legislative Finance Committee. January 30, 2013, at: <https://www.nmlegis.gov/Sessions/13%20Regular/firs/HB0120.PDF>

<sup>91</sup> Sherry Robinson, “Bill would give BNSF a tax break,” *The Gallup Independent*. January 31, 2013. Fiscal Impact Report on HB 120, op cit.

<sup>92</sup> New Mexico Taxation and Revenue Department updated tax expenditure data provided to the Office of the State Auditor, December 19, 2016.

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<sup>93</sup> American Association of Railroads, “Total Annual Spending, 2013 Data,” at: [https://www.aar.org/Fact%20Sheets/Safety/2013-AAR\\_spending-graphic-fact-sheet.pdf](https://www.aar.org/Fact%20Sheets/Safety/2013-AAR_spending-graphic-fact-sheet.pdf)

<sup>94</sup> Office of Policy, Office of Rail Policy and Development, Federal Railroad Administration. “Freight Railroads Background,” (April 2015) at: [http://ntl.bts.gov/lib/55000/55000/55016/Freight\\_Railroads\\_Background\\_April\\_2015.pdf](http://ntl.bts.gov/lib/55000/55000/55016/Freight_Railroads_Background_April_2015.pdf)

<sup>95</sup> Paul Lewis, Eno Center for Transportation, Undated [2012] at: [http://ageconsearch.umn.edu/bitstream/207110/2/2012\\_98\\_Rail\\_Traffic\\_Factors.pdf](http://ageconsearch.umn.edu/bitstream/207110/2/2012_98_Rail_Traffic_Factors.pdf) states in part, at page 17: “Intermodal traffic has by far been the fastest growing segment of rail traffic and trends project it to continue growing into the future. In fact, in 2002 intermodal car loadings surpassed coal carloads as the largest commodity group moved by the railroad.”