ALBUQUERQUE JOURNAL

Business Outlook

MONEY RATES ♦ PAGE 17

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NEW PARENTS OPEN BREW PUB

Jeff and Laura Erway open La Cumbre Brewing Co. on Girard NE

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Legislative objectives

No tax increases, eased regulations lead off some business wish lists

By Winthrop Quigley
Journal Staff Writer

Several business associations hope to escape the legislative session that begins Jan. 18 with no increase in taxes and an improved regulatory environment.

With the state facing a budget deficit estimated by the Legislative Finance Committee to be $215 million — and about double that by the governor's office — businesses know some legislators will look to them to foot the bill, speakers at a recent Economic Forum meeting in Albuquerque said.

"We might not have new taxes, but we may raise some old taxes," said Association of Commerce and Industry president Beverlee McClure. ACI is a state-wide chamber of commerce.

"Tax increases are likely, but they won't be called that," said Richard Anklam, president of the New Mexico Tax Research Institute, a non-partisan tax policy research

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Business groups are gearing up for the next legislative session beginning in Santa Fe on Jan. 18 with a host of issues on the front burner. The Roundhouse chambers are empty in this photo from last week, but preparations soon will be under way to get down to work.

Lightning flip-flop aids some landlords

▪ *Multifamily rentals get same tax treatment as single-family homes*

By Richard Metcalf
Journal Staff Writer

Some landlords fighting big jumps in their real estate taxes will get a reprieve as the result of a recent flip-flop on policy at the Bernalillo County Assessor's Office.

MONTOYA: Bernalillo County assessor

In an agreement – officially called a stipulation – forged earlier this month, County Assessor Karen L. Montoya said she will treat apartments, mobile-home parks and other types of multifamily rental housing in the same way she treats detached single-family houses. In other words, there will be no tax lightning on eligible multifamily properties.

The hitch is that not all landlords will be eligible.

If an apartment owner has already negotiated and

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Tax lightning flip-flop relief for landlords

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finalized a settlement on the contested value of its property for tax purposes, then that settlement will stand, according to Montoya, who spoke to the **Journal** while on vacation. Only owners with an active protest of a property's taxable value will be eligible.

"Everything pending will get the stipulation," she said. "I only have the authority to address the protests before me."

Earlier this year, Montoya changed an established policy by removing a 3 percent cap on annual increases in taxable value for all types of multifamily properties. The change was done without any hearings or public announcement.

The result was an average increase of 40 percent in the taxable value for 4,804 multifamily properties in the county, an independent analysis found. Just more than 2,000 of those properties saw little or no increase, while about 280 properties saw increases of 100 percent or more.

The increases in taxable value triggered a wave of 1,996 protests earlier this year, or just over a third of the total of 5,334 multifamily properties in the county, according to the assessor's office. As of Thursday, 1,853 had been resolved while the remaining 143 were still pending, the office reported.

Most of the protests are settled through informal negotiations between property owners or their agents and the staff at the assessor office, said Todd Clarke of Cantera Consultants & Advisors Inc. For example, Clarke represented the owners of 309 properties with protests, with all but 30 settled with staff.

Clarke's appeal of the 30 unresolved properties led to Montoya's game-changing stipulation that eligible multifamily properties would be treated the same as single-family houses.

Tax lightning

Statewide since 2002, all residential property has been subject to a 3 percent cap or limit on annual increases in taxable value. When a property changed hands, however, the new owner took the full tax hit — tax lightning — often paying dramatically higher tax bills than the owners of comparable properties next door or down the street.

In 2009, Montoya stopped tax lightning on single-family houses, rolling back taxable values across the board to their 2002 levels plus a 3 percent increase each year since then. The move was hailed by many as removing unequal tax treatment of properties in the same neighborhood.

Owner occupancy then emerged as the criterion for a residence, regardless of whether it's a house or an apartment, to qualify for the 3 percent cap. The criterion was based on Montoya's interpretation of the state tax code and a brief passage in the state constitution. Her conclusion was the owner must live in a residence in order for the residence to qualify for the 3 percent cap.

JOURNAL FILE

The Westpark Apartments at 9251 Eagle Ranch Road NW were among hundreds of complexes in recent months hit with large increases in property valuations because of a change in policy by the county assessor.

Montoya is the only county assessor in New Mexico enforcing such an interpretation of state law. Statewide, the status quo remains the 3 percent cap on all residential properties, with tax lightning striking when properties change hands.

In a Nov. 30 ruling that upheld the status quo, the three-member Bernalillo County Valuation Protest Review Board determined that the 3 percent cap applied to all single-family houses, regardless of whether they are owner occupied or rented out. In what's been dubbed the Ostrowski decision, the review board called Montoya's legal interpretation a "discriminatory scheme."

During a Dec. 9 hearing on a protest by Double Eagle Property Tax Consultants, the Ostrowski decision was cited as setting a precedent for a ruling that the 3 percent cap applies to apartments and other multifamily rental properties as well. The protest involved the taxable value of 44 multifamily properties.

As of last week, the review board had not issued a decision on Double Eagle's protest.

More legal action likely

Montoya said she plans to appeal one or two decisions by the review board on the owner occupancy issue to Bernalillo County District Court, which is the next step in the appeals process.

"I truly believe I'm right on this," she told the **Journal**.

As outlined in the Clarke stipulation, the goal of such an appeal would be to gain "the 'safe harbor' of a district court opinion to authorize her actions" regarding the owner occupancy criterion. By the same token, the district court could throw out the criterion.

In the meantime, treating only a portion of the multifamily properties in the same way as single-family houses will likely do little to calm down the controversy caused by Montoya's legal interpretations and policies.

Many apartment owners paid fees to companies like Cantera and Double Eagle to negotiate settlements on the taxable value of those properties.

"Several owners who have paid substantial protest fees have contacted me saying they are considering a suit to recover the fees from the county," said David Eagle, an apartment broker at CB Richard Ellis who has not been involved in any protests.

"They don't blame the people who did the appeals," he said. "It's the fault of the way this was done with a massive run-up in values."

Montoya's opponent in her November re-election to office, Christine Humphrey, said, "What a mess she has created. I wonder how she will read, change or interpret the laws from here on."

Taxes, regulations are top targets for business

Beverlee McClure

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organization.

While only $105 million of the $941.1 million in tax breaks the state allowed last year were designed to spur economic development, McClure said, "I can't imagine going through a 60-day legislative session without every tax incentive being on the table. We as the business community are going to have to justify them."

The biggest tax break is $217 million the state does not collect on the sale of food. The state compensates municipalities and counties for the share of the tax they would have collected on food sales, which is a further drain on the budget. What to do about that break "is a policy discussion that will have to continue," McClure said.

Another hefty tax break — about $70 million a year — goes to the film industry.

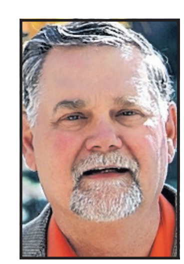
The Greater Albuquerque Chamber of Commerce and the Albuquerque Hispano Chamber are still working on their legislative agendas.

Unemployment taxes

The state's unemployment insurance fund is operating at a deficit and will require an increase in collections on businesses, McClure said. "You can say there will be no new taxes, but (an unemployment insurance assessment increase) is coming. There is nothing we can do about it."

Anklam said business can expect another effort to force multi-state companies to report income from out-of-state activities for purposes of calculating New Mexico corporate income taxes. In the last legislative session, when the bill was introduced but not enacted, Legislative Finance Committee analysts estimated what is known as mandatory combined reporting would increase tax collections by $4.8 million in fiscal year 2011 and $27 million in 2012.

The New Mexico Oil and Gas Association expects a bill to be introduced that would raise taxes on gas



Steve Henke

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