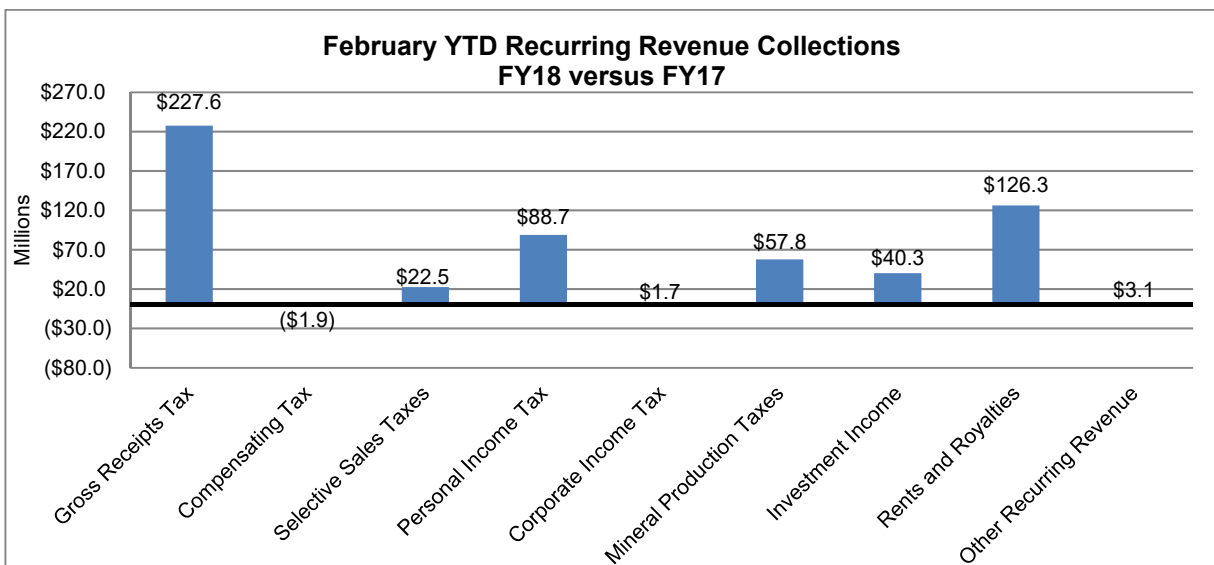
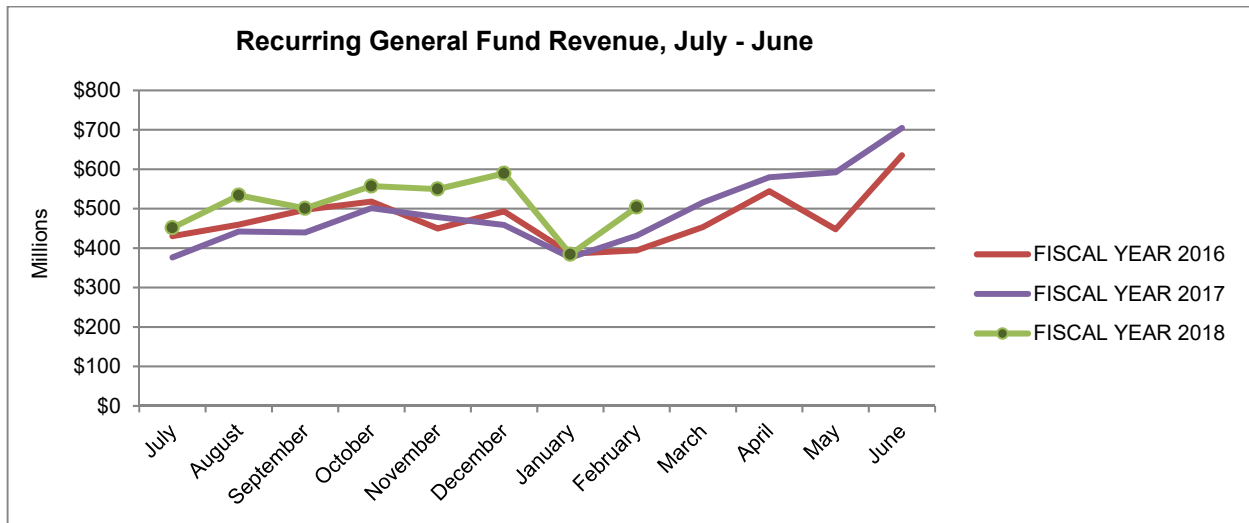


John Monforte, Acting Secretary, Taxation and Revenue Department
 Brian VanDenzen, Chief Hearing Officer, Administrative Hearings Office

ISSUES FOR HEARING

Tax Refund Claims and Protests

- Recurring general fund revenues through February are tracking up \$187.6 million, using monthly revenue data from the Department of Finance and Administration. The majority of the increase, \$133.6 million, is in gross receipts tax (GRT) revenues. Appendix 1 shows the tracking by revenue source and month.
- Below is a graph of monthly recurring revenues by fiscal year, including revenues for February 2018.



- The graph above and table below show fiscal-year-to-date revenues by source through February.

Table 1. General Fund Revenue Accruals: FY18 vs. FY17							
Revenue Category	February Revenue	February Revenue	Fiscal Year-to-Date Through February		Year-over-Year Amount Change	Year-over-Year Growth	Projected Full-Year Growth: Jan. 2018 Forecast
	FY17	FY18	FY17	FY18			
Gross Receipts Tax	\$ 165.1	\$ 190.2	\$1,318.9	\$1,546.5	\$227.6	17.3%	6.2%
Compensating Tax	\$ 5.7	\$ 6.4	\$34.3	\$32.4	(\$1.9)	-5.5%	10.2%
Selective Sales Taxes *	\$ 85.5	\$ 92.0	\$363.9	\$386.4	\$22.5	6.2%	5.0%
Personal Income Tax	\$ 44.5	\$ 59.0	\$683.8	\$772.5	\$88.7	13.0%	0.0%
Corporate Income Tax	\$ 1.0	\$ 6.0	\$23.5	\$25.2	\$1.7	7.2%	49.7%
Mineral Production Taxes *	\$ 29.6	\$ 30.4	\$222.2	\$280.0	\$57.8	26.0%	14.3%
License Fees	\$ 3.5	\$ 4.5	\$26.9	\$30.5	\$3.7	13.7%	1.6%
Investment Income	\$ 62.6	\$ 66.7	\$489.5	\$529.8	\$40.3	8.2%	7.7%
Rents and Royalties	\$ 31.7	\$ 47.6	\$279.6	\$405.8	\$126.3	45.2%	19.3%
Tribal Revenue Sharing	\$ 0.0	\$ 0.1	\$31.9	\$32.3	\$0.4	1.3%	3.3%
Miscellaneous Receipts	\$ 1.4	\$ 0.9	\$22.6	\$25.1	\$2.5	10.9%	2.5%
Reversions	\$ 0.6	\$ (0.1)	\$7.7	\$4.3	(\$3.5)	-44.9%	-47.7%
Subtotal Recurring Rev.	\$ 431.4	\$ 503.8	\$3,504.8	\$4,070.8	\$566.0	16.2%	6.2%
Nonrecurring Revenue	\$ 30.7	\$ 0.4	\$181.0	\$43.6	(\$137.4)	-75.9%	-88.2%
Total Revenue	\$ 462.2	\$ 504.2	\$3,752.8	\$4,114.4	\$361.6	9.6%	-2.2%

*Includes estimates for Insurance, Oil and Gas School Tax, and Oil Conservation Tax

- Revenues are tracking up for two primary reasons:
 - The first is the oil and gas industry is growing much faster than many industry analysts and other experts predicted, adding revenue to GRT, mineral production taxes, and rents and royalties.
 - The second is the consensus revenue estimating group accounted for significant risks in the January mid-session forecast update. These risks still exist but have not yet affected general fund revenues, reducing the likelihood of FY18 impacts but increasing the chance of FY19 impacts. One of the largest risks is from tax refund claims and protests.
- During the 2018 legislative session, the Taxation and Revenue Department (TRD) testified that tax protests for 2017 through November reached a total of \$458 million, including \$291 million of denied tax refund claims. This is more than twice the value of refund protests in 2016 and nearly six times the value in 2015.
- The sudden increase in tax refund protests creates a significant risk to the revenue forecast. While the forecast was cautious, losing a significant protest could result in a flurry of refund claims and the loss of possibly hundreds of millions of dollars in revenue from filings of amended returns.

- This illustrates the need for detailed data on tax refund protests for revenue forecasting.
- This risk also significantly increases the need to continue to build general fund reserves; unless these protests are resolved in favor of the state and outstanding protest levels drop, reserves should be kept at elevated levels, reducing funding available for operating budgets.
- In the fall of 2017, LFC staff requested detailed tax protest data from TRD staff and the acting secretary. In January 2018, TRD provided annual data from 2012 or 2014 (varying by item) through November 2017 broken down into two categories: assessments and refunds.
 - The data from TRD provided historical context and separated out tax refund claim protests, the \$291 million figure provided during the legislative session, which is the focus of risk concerns.
- LFC staff met with TRD and Administrative Hearings Office (AHO) leadership in advance of this hearing to discuss follow-up data requests to improve the understanding of the risks the state faces and what tax issues are prompting the most significant tax refund claim protests.
- Appendix 2, provided to the agencies during the meeting, is the template for data LFC staff would ideally like to receive. It includes:
 - Data by fiscal year on number and value of protests filed, protests resolved, and cumulative protests outstanding at the end of the fiscal year;
 - Data by fiscal year on value of protests resolved in favor of state and in favor of taxpayers; and
 - Top five protest issues and the magnitude of the protest value for each issue.
- TRD should determine by the time of the hearing what data requested in the template is available and in what timeframe it can provide that data.
- Additional information from TRD and AHO that would help economists and policymakers understand the issues and address them include:
 - Detailed information on how refund claims and protests are administered and how they affect GenTax reporting;

- Whether any changes occurred in agency policy or practice that contributed to the increase in protests; and
- Recommendations for improvements in policy, regulation, or statute to:
 - Protect the state’s revenues and defend against attempts to exploit the tax code, and
 - Improve consistent tax interpretation and coordination with industry.
- Other TRD issues:
 - The Motor Vehicle Division ran out of the special paper required to print new vehicle registration stickers on April 9 because the contract with the supplier expired. TRD does not know how many motorists were affected; however, the contract was renewed, and the department will send new stickers to those affected.
 - LFC staff are engaged in discussions with TRD regarding safeguards to prevent an employee from erroneously changing a taxpayer’s liability. The information under discussion includes:
 - Circumstances that allow an employee to change a taxpayer’s liability;
 - Policies, processes, and internal controls for abatements, refunds, credits, and changes in liabilities;
 - Any internal audits or other investigations conducted regarding revenue collections within the last three years; and
 - Information from each of the past three years of dollar amount assesses by tax program including abatements, refunds, and credits.
 - LFC staff will be performing an evaluation of TRD’s GenTax upgrades, maintenance, and security. The evaluation is tentatively set for completion in August 2018 and includes the following objectives:
 - Determine the impact of GenTax upgrades to TRD’s processes,
 - Determine the status of GenTax maintenance and support, and
 - Assess GenTax access controls.

Appendix 1

FISCAL YEAR 2018 GENERAL FUND MONTHLY REVENUE TRACKING

(dollars in millions; italics indicate preliminary actual revenue; bold indicates actual revenue)

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	ESTIMATED REVENUE ACCRUALS												FY18		TRACKING CHANGE	
	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Actual + Estimate	FY18 Jan. Forecast	%Δ	\$Δ
	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Est.	Est.	Est.	Est.				
Gross Receipts Tax	189.5	195.6	182.7	188.5	209.8	195.4	194.9	190.2	168.8	181.6	170.5	204.1	2,271.5	2,137.9	6.3%	133.6
Compensating Tax	4.5	4.9	6.7	5.6	(8.5)	6.6	6.1	6.4	4.8	4.2	4.2	5.2	50.7	53.5	-5.2%	(2.8)
TOTAL GENERAL SALES TAXES	194.0	200.5	189.4	194.1	201.3	202.0	201.0	196.7	173.6	185.8	174.7	209.4	2,322.3	2,191.4	6.0%	130.9
Tobacco Products & Cigarette Taxes	7.5	7.4	6.2	6.3	5.6	6.1	5.1	8.9	6.5	6.6	6.3	8.4	80.9	79.4	1.9%	1.5
Liquor Excise Tax	1.1	2.2	1.9	2.2	2.2	2.3	1.6	1.7	1.9	1.9	1.9	2.4	23.3	23.5	-0.8%	(0.2)
Insurance Premiums Tax	0.4	53.2	0.3	0.5	54.6	0.8	0.2	63.4	0.7	0.7	55.1	0.7	230.6	232.4	-0.8%	(1.8)
Fire Protection Fund Reversion	-	-	-	-	-	-	-	-	-	-	-	18.7	18.7	17.8	4.9%	0.9
Motor Vehicle Excise Tax	12.4	14.1	12.9	12.1	11.5	11.8	12.6	11.1	13.9	13.6	13.8	13.2	153.1	150.3	1.9%	2.8
Gaming Excise Tax	5.2	5.0	5.1	4.8	4.7	5.1	4.8	5.0	5.0	5.0	5.0	5.0	59.6	59.6	0.0%	(0.0)
Leased Vehicle Surcharge & Other	0.6	1.5	0.1	0.7	0.3	0.4	1.0	0.6	0.6	0.6	0.7	0.7	9.0	7.6	18.0%	1.4
TOTAL SELECTIVE SALES TAXES	27.3	83.5	26.5	26.6	78.8	26.5	25.2	92.0	28.6	28.4	82.8	49.0	575.1	570.6	0.8%	4.5
Withholding	94.5	95.5	107.6	91.1	98.7	148.2	97.0	103.5	112.7	99.5	101.1	109.9	1,259.4	1,265.3	-0.5%	(5.9)
Final Settlements	-	12.1	47.0	24.6	9.7	60.8	32.2	13.9	36.2	148.8	26.2	64.9	476.3	469.7	1.4%	6.6
Oil and Gas Withholding Tax	-	0.4	3.8	12.0	3.3	1.8	8.9	15.9	5.0	6.0	5.1	13.5	75.8	60.5	25.2%	15.3
Fiduciary Tax	(0.7)	0.7	(1.1)	(0.1)	1.6	1.5	0.1	0.3	3.0	0.2	1.6	(0.1)	7.0	6.1	15.3%	0.9
Gross Personal Income Tax	93.8	108.7	157.3	127.6	113.3	212.3	138.2	133.7	156.9	254.4	134.0	188.1	1,818.5	1,801.5	0.9%	17.0
Transfer to PIT Suspense	(8.6)	(7.8)	(11.7)	(9.4)	(8.5)	(11.1)	(165.3)	(72.6)	(46.7)	(19.6)	(12.9)	(8.4)	(382.6)	(393.4)	-2.7%	10.8
Retiree Health Care	(2.2)	(2.2)	(2.2)	(2.2)	(2.2)	(2.2)	(2.2)	(2.2)	(2.2)	(2.2)	(2.2)	(2.5)	(26.7)	(27.1)	-1.4%	0.4
Less: Refunds, distributions to other funds	(10.8)	(10.0)	(13.8)	(11.6)	(10.7)	(13.3)	(167.5)	(74.7)	(48.9)	(21.8)	(15.1)	(10.9)	(409.3)	(420.4)	-2.7%	11.2
NET PERSONAL INCOME TAX	83.0	98.7	143.5	116.0	102.5	199.1	(29.2)	59.0	108.0	232.6	118.9	177.2	1,409.2	1,381.1	2.0%	28.1
CORPORATE INCOME TAX	-	3.8	0.5	25.3	(8.5)	(11.0)	9.1	6.0	13.8	8.1	9.3	24.4	81.0	105.0	-22.9%	(24.0)
TOTAL INCOME TAXES	83.0	102.5	144.0	141.3	94.0	188.1	(20.1)	65.0	121.9	240.7	128.2	201.7	1,490.2	1,486.1	0.3%	4.1
Oil and Gas School Tax	25.2	26.6	27.7	31.4	35.3	35.5	45.1	28.0	31.7	31.3	30.5	27.0	375.2	352.7	6.4%	22.5
Oil Conservation Tax	1.3	1.4	1.4	1.6	1.8	1.8	2.2	1.5	1.7	1.6	1.8	1.4	19.5	18.3	6.7%	1.2
Resources Excise Tax	0.7	0.8	0.7	0.7	0.9	0.7	0.7	0.3	0.8	0.7	0.7	0.8	8.6	9.3	-7.0%	(0.7)
Natural Gas Processors Tax	1.0	0.8	0.9	0.9	0.8	0.8	0.8	0.6	0.9	0.8	0.9	0.8	10.1	10.2	-1.1%	(0.1)
TOTAL MINERAL PROD. TAXES	28.3	29.5	30.8	34.6	38.8	38.8	48.8	30.4	35.1	34.5	33.9	30.0	413.5	390.5	5.9%	23.0
LICENSE FEES	2.3	2.5	2.2	3.9	2.4	10.7	2.0	4.5	3.2	3.0	3.3	3.2	43.2	54.2	-20.3%	(11.0)
Land Grant Perm. Fund Distributions	48.8	48.8	48.8	48.9	48.9	48.9	48.9	48.9	48.7	48.7	48.7	48.7	585.8	584.9	0.2%	0.9
State Treasurer's Earnings	1.5	2.3	(2.0)	(0.3)	(1.6)	0.5	(2.0)	0.3	-	-	-	-	(1.3)	-	0.0%	(1.3)
Severance Tax Perm. Fund Distributions	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	210.4	210.4	0.0%	(0.0)
TOTAL INVESTMENT EARNINGS	67.8	68.7	64.3	66.1	64.8	66.9	64.4	66.7	66.3	66.3	66.3	66.3	794.9	795.3	-0.1%	(0.4)
Federal Mineral Leasing Royalties	33.0	33.8	29.4	66.4	32.2	36.2	44.6	39.2	43.1	36.2	115.0	36.2	545.5	510.0	7.0%	35.5
State Land Office Bonuses, Rents	14.9	12.1	13.2	7.7	15.9	3.0	15.6	8.4	3.4	2.5	2.5	2.5	101.7	95.0	7.1%	6.7
TOTAL RENTS & ROYALTIES	47.9	45.9	42.6	74.2	48.2	39.3	60.2	47.6	46.5	38.7	117.5	38.7	647.3	605.0	7.0%	42.3
TRIBAL REVENUE SHARING	0.1	0.0	0.1	15.5	-	16.1	0.4	0.1	15.9	0.4	0.4	15.9	64.8	64.8	0.0%	(0.0)
MISCELLANEOUS RECEIPTS	0.9	0.9	0.8	0.8	17.8	1.1	1.9	0.9	1.0	1.1	1.1	20.4	48.7	50.7	-4.0%	(2.0)
REVERSIONS	0.0	0.0	0.0	0.1	3.6	0.0	0.6	(0.1)	5.2	1.8	2.5	22.6	36.3	40.0	-9.2%	(3.7)
TOTAL RECURRING REVENUE	451.5	534.0	500.8	557.2	549.8	589.5	384.3	503.8	497.2	600.7	610.5	657.1	6,436.2	6,248.6	3.0%	187.6
Non-Recurring Additional Transfers	0.0	13.5	0.5	2.5	15.5	11.2	0.0	0.4	-	-	-	-	43.6	68.2	-	24.6
TOTAL NON-RECURRING REVENUE	0.0	13.5	0.5	2.5	15.5	11.2	0.0	0.4	-	-	-	8.0	51.6	68.2	-	(16.6)
GRAND TOTAL REVENUE	451.5	547.5	501.3	559.7	565.3	600.6	384.3	504.2	497.2	600.7	610.5	665.1	6,487.8	6,316.8	2.7%	171.0

Estimates are developed by LFC and based on the consensus revenue estimate and historical monthly patterns; the non-recurring additional transfers amount for June includes amounts expected due to solvency legislation

Tax Refund Protests						
	FY13	FY14	FY15	FY16	FY17	FY18 YTD
Number of Protests Filed						
Number of Protests Resolved						
Cumulative Number of Protests Outstanding at End of FY						
Top Five Protest Issues by FY (identify issues and magnitude of protest value for each issue)						
Issue 1						
Issue 2						
Issue 3						
Issue 4						
Issue 5						
Value of Protests Filed						
Value of Protests Resolved (absolute values)						
Cumulative Value of Protests Outstanding at End of FY						
Value of Protests Resolved in Favor of State (explanatory)*						
Value of Protests Resolved in Favor of Taxpayer (explanatory)*						

Comments to explain data anomalies or significant changes:

* Note: these explanatory measures would not have associated targets; the Administrative Hearings Office must decide cases on merits without bias

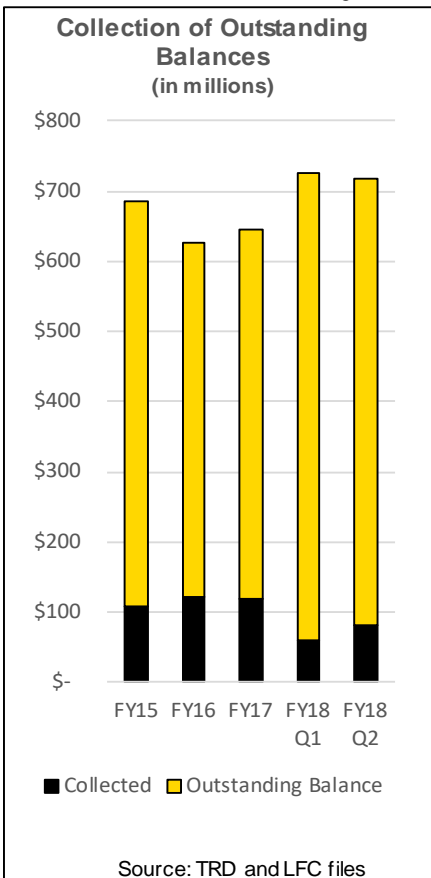


ACTION PLAN

Submitted by agency? Yes
Timeline assigned? Yes
Responsibility assigned? Yes

TRD Administration		
Position	Acting	Vacant
Cabinet Secretary	X	
General Counsel	X	
Tax Policy Director		X
Chief Economist		X
MVD Director	X	
Audit and Compliance Director		X
Tax Fraud Investigations Director	X	
ASD Director	X	

Source: TRD Org. Chart



Source: TRD and LFC files

Taxation and Revenue Department

There are notable concerns about the agency, including the experience and qualifications of leadership staff as well as a lack of data and poor data quality. Data challenges include an inability to consistently report credits and exemptions and explain changes in unreconciled receipts. In addition, some local government entities have questioned TRD's ability to correctly assess property taxes and distribute gross receipt taxes, threatening to pursue litigation.

Current performance measures do not provide a full picture of TRD services nor the challenges facing the department. The Legislature approved more than a dozen new performance measures and targets as a part of the 2018 GAA to improve accountability; however the governor vetoed all new performance measures.

Despite these concerns, TRD recently made efforts to address LFC staff information requests. TRD and LFC economists worked together to create a gross receipts tax (GRT) database to improve revenue tracking, forecasting, and other analysis of GRT revenues. The agency is working to provide LFC with monthly updates to keep the database current and accurate over time.

Tax Administration

The Tax Administration Program is on track to meet its annual performance targets. New measures adopted by the Legislature will improve revenue tracking and collection oversight. New measures include tracking the number of returns flagged as questionable, returns processed and stopped, and collection of outstanding balances from two-years prior. The program collected \$80.8 million, or 11.3 percent, of the \$716.8 million collectible-outstanding balance in the second quarter. Additionally, the program collected \$15.3 million, or 46 percent, of \$33.3 million in collectible audit assessments.

Tax Administration		FY16 Actual	FY17 Actual	FY18 Target	Q1	Q2	Q3	Rating
Budget: \$29.8 million FTE: 495.8								
1	Collections as a percent of collectible outstanding balances from the end of the prior fiscal year	19%	18%	18%	8%	11.3%		G
2	Collections as a percent of collectible audit assessments generated in the current fiscal year plus assessments generated in the last quarter of the prior fiscal year	43%	58%	60%	33%	46%		G
Program Rating		Y	Y					G

Compliance Enforcement

The number of tax investigations referred to prosecutors annually is typically fewer than 10, causing significant year-over-year changes in this measure.

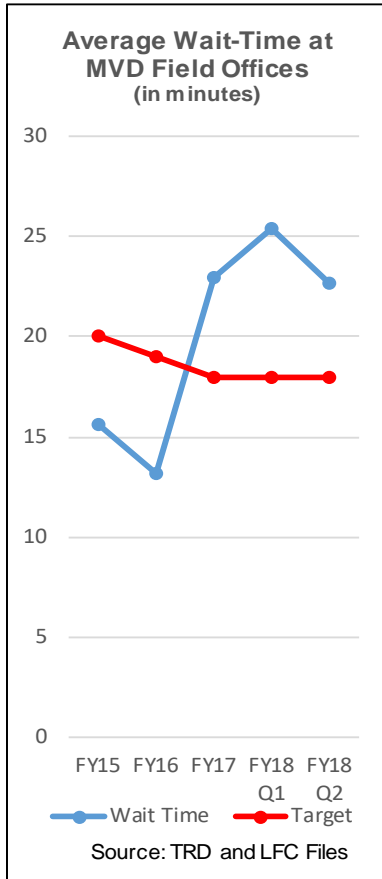
Compliance Enforcement		FY16 Actual	FY17 Actual	FY18 Target	Q1	Q2	Q3	Rating
Budget: \$1.6 million FTE: 21								
3*	Tax investigations referred to prosecutors as a percent of total investigations assigned during the year	88%	67%	85%	N/A	N/A		

*Measure reported annually



PERFORMANCE REPORT CARD

Taxation and Revenue Department
Second Quarter, Fiscal Year 2018



Property Tax

After two and a half years of non-payment, delinquent property tax accounts are transferred to the Property Tax Division for collection pursuant to Section 7-38-62 NMSA 1978. The agency noted there were a few late reporting counties in the first quarter, which are now accurately reflected in the second quarter report. The agency appears to be on track to meet its annual performance target.

Property Tax		FY16 Actual	FY17 Actual	FY18 Target	Q1	Q2	Q3	Rating
Budget: \$3.8 million FTE: 39								
4	Delinquent property tax collected and distributed to counties, in millions	\$11.6	\$11.5	\$11	\$3.7	\$2.4		G
Program Rating		G	G					G

Motor Vehicle

Of the nearly 70 MVD field offices, 38 are equipped with “q-matic” systems, measuring wait-times for all transaction types. The MVD program served 401 thousand customers in the second quarter, and while performance improved from the first quarter, service times were 4:40 slower than the 18-minute target. MVD did outperform its target for call center wait times, answering 65.6 thousand calls with an average wait time of 3:39. The Legislature adopted a new performance measure to track unexpected MVD system interruptions.

Motor Vehicle		FY16 Actual	FY17 Actual	FY18 Target	Q1	Q2	Q3	Rating
Budget: \$26.7 million FTE: 340								
5	Registered vehicles with liability insurance	92%	90%	93%	91%	90%		Y
6	Average wait time in “q-matic” equipped offices, in minutes	13:08	22:56	18:00	25:24	22:40		Y
7	Average call center wait time to reach an agent, in minutes	6:07	4:33	<6:00	4:11	3:39		G
Program Rating		G	Y					Y

Last year, a TRD employee pled guilty to felony charges for reducing taxpayer liability in exchange for cash payments. LFC staff recently sent a letter to TRD requesting information regarding policies, processes, and internal controls changed by the agency to prevent future incidents of this nature.

Program Support

Though the department is on track to meet its performance target for the number of tax protest cases resolved, TRD has provided limited tax protest data to the LFC since first requested in July, 2017. The agency provided the LFC with number of cases and total assessments and refunds; however, this information does not adequately contribute to revenue forecasts. The LFC requested the number of tax protests cases by tax program and associated dollar amounts. To address the lack of information, the Legislature approved a new measure to capture the amount of general fund revenue pending from unresolved tax protest cases.

Program Support		FY16 Actual	FY17 Actual	FY18 Target	Q1	Q2	Q3	Rating
Budget: \$19.6 million FTE: 182								
8	Tax protest cases resolved	1897	1524	1400	433	345		G
g*	Internal audit recommendations implemented	93%	91%	90%	N/A	N/A		
Program Rating		G	G					G

*Measure reported annually