



## Attorney General of New Mexico

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March 2, 2012

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Co-Chair Tobacco Revenue Settlement Oversight Committee  
1206 Las Lomas Rd. NE  
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David Abbey, Director  
Legislative Finance Committee  
325 Don Gaspar, Suite 101  
Santa Fe, NM 87501

RE: Estimated Master Settlement Agreement Payment for 2012

Ladies and Gentlemen:

We have received the estimates for the Master Settlement Agreement (MSA) payment for 2012. New Mexico will receive an MSA Payment and a Strategic Contribution Payment. Below, I have listed two figures for each. The first number represents the MSA funding received if no PMs withhold funding for future NPM Adjustments. The second set of figures is based upon the assumption that all allowable withholding will be made by all Participating Manufacturers. The estimates are as follow:

Estimate if no disputed payments for a 2010 NPM Adjustment are withheld:

Allocable Share Contribution	\$36,688,388.06
Strategic Contribution Fund	<u>\$ 7,310,822.90</u>
Total:	\$43,999,210.96

Estimate if full disputed payments for a 2010 NPM Adjustment are withheld:

Allocable Share Contribution	\$32,154,367.35
Strategic Contribution Fund	<u>\$ 6,407,156.29</u>
Total:	\$38,561,523.64

As you know, the Participating Manufacturers have, increasingly, been either placing amounts in the Disputed Payment Accounts (DPA) or withholding the DPA amount, as they are permitted to do under the MSA. In fact, in 2011, all PMs withheld the maximum amount allowable under the MSA. These projections do not consider the possibility of a default by any PM.

Please remember that the payment figures in the Final Calculation will differ, and may even be lower than projected for the "full withholding" scenario. We strongly urge that the lowest number or less be used in any budget calculations.

Also, at this time we would like to remind you of the continuing risk that New Mexico may be barred from receiving MSA payments beginning in 2013 or 2014. As you know, we are currently in arbitration with the PMs over the payment we received in 2003. In that Arbitration the PMs contend that New Mexico failed to diligently enforce the Tobacco Escrow Fund Act as against tobacco manufacturers that did not join the Master Settlement Agreement. The primary basis for that contention is that New Mexico did not collect escrow on sales that occurred on tribal property. While we are arguing fervently that New Mexico did diligently enforce, we want to advise you of the potential ramifications if New Mexico does not prevail in the Arbitration.

If the PMs prevail against the 35 states that remain in the Arbitration, New Mexico's damages assessment would likely be in the \$10 million range. However, if the PMs prevail over only a few states, New Mexico's damages assessment could be as much as \$34 million. These damages would be deducted from the MSA payment in the year following the judgment. Thus, a \$25 million dollar judgment against New Mexico in 2013 (for the 2003 Arbitration) would result in a \$25 million deduction from the April, 2014 payment. Moreover for the last three years, \$25 million of the MSA funding was contributed to the Medicaid stream, for which the state received 3/1 matching federal funds at a 3 - 1 ratio. In other words, a \$25 million reduction in MSA funding could decreased the state income by \$100 million.

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Any judgment against New Mexico for 2003 would likely result in similar, or worse, judgments for the 2004 – 2011 calendar years, which would also be removed from New Mexico's future MSA payment. New Mexico's total exposure currently exceeds \$400 million before accounting for any loss of Federal Medicaid matching funds.

We will promptly notify you when the 2012 payments are received. We typically receive the payments in two groups; one main deposit that will be posted on April 15, 2012, and another, smaller payment on April 19, 2012.

If you have any questions or need further information, do not hesitate to contact me.

Sincerely,



Nan E. Erdman  
Assistant Attorney General  
408 Galisteo St.  
Santa Fe, New Mexico 87501

cc: Secretary Tom Clifford, TRD;  
Greg Shaffer, General Counsel, DFA  
Greg Geisler, LFC  
Randy Soderquist, LFC  
Roxanne Knight, LCS  
Raul Garcia, LCS

