MINUTES
of the
SEVENTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

December 6-7
Room 322
State Capitol

The seventh meeting of the Revenue Stabilization and Tax Policy Committee (RSTPC) for the 2004 interim was called to order by Representative Donald L. Whitaker, chair, on Monday, December 6, at 9:30 a.m. at the State Capitol.

PRESENT
Rep. Donald L. Whitaker, chair
Sen. John Arthur Smith, vice chair
Sen. Sue Wilson Beffort
Rep. Anna M. Crook
Rep. Roberto "Bobby" J. Gonzales
Sen. John T.L. Grubesic
Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Sen. William E. Sharer
Rep. Daniel P. Silva
Sen. H. Diane Snyder (12/6)
Rep. Thomas C. Taylor
Rep. Luciano "Lucky" Varela

ABSENT
Rep. Janice Arnold-Jones
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Sen. Joseph A. Fidel

(Attendance dates are noted for members not present for the entire meeting.)

Staff
Amy Chavez, Pam Ray and Tim Crawford

Guests
The guest list is in the meeting file.

Copies of all written testimony are in the meeting file.

Monday, December 6

The committee unanimously approved the minutes of its sixth meeting held on November 8-10 at the State Capitol.

GENERAL FUND CONSENSUS REVENUE ESTIMATES

James Jimenez, secretary of the Department of Finance and Administration (DFA), and Jan Goodwin, secretary of the Taxation and Revenue Department (TRD), provided the RSTPC with consensus revenue estimates for the general fund for the next fiscal year. Secretary Jimenez and Secretary Goodwin began their presentation to the committee with an overview of the national economy. They stated that 337,000 new jobs were created nationwide in October and that the third quarter gross domestic product grew by 3.9 percent. They further stated that consumer spending grew by over 4 percent and that the construction sector has posted gains.

The New Mexico economy was compared to the performance of the national economy. Secretary Goodwin stated that the state's unemployment rate dropped to 5.2 percent in October from 5.4 percent a month earlier. The national unemployment rate increased slightly, to 5.5 percent in October. Two-thirds of all jobs created in New Mexico were created in Albuquerque, Las Cruces and Santa Fe, with the remaining third created in the state's rural areas. Revised personal income for the state increased by 6.5 percent in the second quarter of 2004, compared with national growth of 5.2 percent during the same period.

Secretary Jimenez provided a general fund outlook for fiscal years 2005 and 2006. Total recurring revenue of $32.4 million is expected to accrue in the fund in fiscal year 2005 and $9.4 million is expected to accrue in 2006. Gross receipts tax revenue is expected to increase by $11 million, both in the current fiscal year and in the budget year. During the first four months of the fiscal year, taxable gross receipts grew by almost 6 percent. Through October, taxable gross receipts in manufacturing grew by 16.5 percent, in mining by 13.3 percent, in construction by 6.8 percent and in retail trade by 3.1 percent.

General fund balances at the end of fiscal year 2004 were 12.2 percent of recurring appropriations. Fiscal year 2005 recurring revenues are expected to exceed recurring appropriations by $255.8 million, resulting in balances of 17.2 percent of recurring appropriations at the end of fiscal year 2005. Because the state changed its accounting policy to recognize revenues on a full accrual basis, the executive recommends maintaining reserves at 10 percent of recurring appropriations.

NEW MEXICO MUNICIPAL LEAGUE PROPOSALS

Bill Fulginiti, executive director of the New Mexico Municipal League (NMML), presented five discussion drafts to the committee for its endorsement for the upcoming legislative session.

Draft #1 allows county and municipal governments to impose a local option compensating tax. The local option compensating tax is imposed in addition to local option gross receipts taxes. The bill requires the TRD to administer the tax and to transfer payments to local governments. The bill has an effective date of July 1, 2005. Draft #1 was not adopted by the committee.

Draft #2 permits municipalities to trade a part of the municipal distribution of the gross receipts tax for a distribution of the personal income tax. Draft #2 received no recommendation.

Draft #3 repeals the prohibition on the collection of compensating taxes on the use of property for nonbusiness purposes. Draft #3 was adopted by the committee with no negative votes.

Draft #4 extends the time during which a local government may enact a municipal or county option capital outlay gross receipts tax. Draft #4 was adopted by the committee with no negative votes.

Draft #5 permits municipalities to access information on gross receipts taxes and gross receipts taxes paid. Mr. Fulginiti suggested this proposal as a means of assessing the accuracy of distributions from the TRD in light of wide fluctuations in distributions to municipalities. Draft #5 was adopted by the committee with no negative votes.

NEW MEXICO ASSOCIATION OF COUNTIES PROPOSAL

Tasia Young, legislative liaison for the New Mexico Association of Counties, proposed for committee adoption Draft #6, which amends the Small Counties Assistance Act to increase base distributions from the small counties assistance fund. Draft #6 was adopted by the committee with no negative votes.

ECONOMIC DEVELOPMENT DEPARTMENT (EDD) PROPOSALS

Rick Homans, secretary, EDD, presented six discussion drafts to the committee for its endorsement for the upcoming legislative session.

Draft #7 creates a tax credit in an amount equal to the sum of all gross receipts taxes, compensating taxes or withholding taxes for which a qualified research and development small business is liable. Qualified research and development small businesses include those that employ 25 or fewer employees and that have revenues of $10 million or less. A business must also spend at least 20 percent of its total revenues for qualified research expenditures to qualify for the credit. A qualified research and development small business can claim the credit for up to three years. Draft #7 was adopted by the committee, with 11 committee members voting in favor of adoption and one voting against adoption.

Draft #8 permits a compensating tax deduction for entities that perform research or testing on test articles pursuant to a contract with the United States government or any of its agencies or instrumentalities. It also expands the scope of the definition of "test articles" for which the deduction may be taken. The draft further permits a gross receipts tax deduction for receipts from the sale of research and development (R & D) services pursuant to a contract with the United States government or any of its agencies or instrumentalities. Receipts of contractors and subcontractors working under contractors that perform research and development services for national laboratories are not deductible. Receipts from selling tangible personal property used to perform R & D services for the United States government are made deductible pursuant to this discussion draft. Draft #8 was adopted by the committee with no negative votes.

Draft #9 expands the gross receipts tax deduction for aircraft services pursuant to Section 7-9-62.1 NMSA 1978 in two ways. First, the deduction is expanded to cover aircraft maintenance services. Second, the types of aircraft upon which the services are provided is expanded to any aircraft weighing more than 10,000 pounds. Draft #9 was adopted by the committee with no negative votes.

Draft #10 puts a restriction on current provisions in law that permit the state investment officer to make loans to film production companies in an amount of up to 80 percent of the estimated film production tax credits available to those companies. An amendment to existing law requires that to receive such loans, the film production companies must agree to name the state investment officer as its agent for the purpose of filing an application for the film production tax credit. The discussion draft also permits film production tax credit amounts due to a taxpayer to be intercepted to pay amounts owed by that taxpayer to the state investment officer. Draft #10 was adopted by the committee with no negative votes.

Draft #11 creates the "angel investment tax credit", which is a tax credit of 5 percent of each investment up to $500,000 for each investment made in start-up high-tech, biotechnology and manufacturing businesses that have revenues of not more than $5 million. Draft #11 was adopted by the committee, including amendments to that draft which will be provided by the EDD. Ten committee members voted for adoption of the draft, while one voted against adoption.

Draft #12 expands the film production tax credit to apply to 15 percent of technology expenditures attributable to the production of commercial audiovisual products and creates additional requirements for eligibility for the tax credit. The taxpayer must agree to pay all obligations the film company has incurred in New Mexico, notify the public of its need to file creditor claims against the film company and delay filing of a claim for the film production tax credit until the New Mexico Film Division delivers written notification to the TRD that the film production company has fulfilled all of the requirements for the credit. Draft #12 was adopted by the committee with no negative votes.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT (EMNRD) PROPOSALS

Craig O'Hare, special assistant for renewable energy, EMNRD, made two tax-related proposals to the committee.

Draft #13 makes three changes to the existing renewable energy production tax credit. The renewable energy production tax credit is a corporate income tax credit for the production of electricity by the use of a qualified energy generator that uses solar, wind or biomass energy. This draft increases the tax credit rate for the production of energy by solar energy-derived qualified energy generators from $.01 per kilowatt-hour of electricity produced for the first 100,000 megawatt hours of electricity produced to $.04 per kilowatt-hour of electricity produced for the first 100,000 megawatt hours of electricity produced. The draft also expands the definition of "qualified energy generator" to include any facility that has at least one megawatt of energy generating capacity. The definition previously required at least 10 megawatts of energy generating capacity. The draft also makes the tax credit refundable.

RSTPC members suggested that the draft be changed to increase the tax credit rate from the production of energy by solar energy-derived qualified energy generators from $.01 per kilowatt-hour of electricity produced for the first 100,000 megawatt hours of electricity produced to $.02 per kilowatt-hour of electricity produced for the first 200,000 megawatt hours of electricity produced. Another proposed change would leave unchanged the definition of "qualified energy generator" as it currently exists in law. The committee unanimously voted to adopt Draft #13 with the proposed changes.

Draft #14 enacts the Energy Efficiency and Renewable Energy Bonding Act. The act requires the EMNRD to develop a state plan for the installation of energy efficiency measures to reduce energy consumption in state buildings and school district buildings. The department would enter into contracts for the installation of those measures pursuant to the Procurement Code. This draft also creates the energy efficiency and renewable energy bonding fund, which consists of a portion of gross receipts tax revenues and revenues from bonds issued by the New Mexico Finance Authority (NMFA). The NMFA is authorized to issue up to $20 million in revenue bonds pursuant to this act. The bond debt is proposed to be paid from the operating cost savings realized by public school districts and state agencies as a result of the installation of energy efficiency measures. An amount of 90 percent of the cost savings realized by school districts and state agencies as the result of the installation of energy efficiency measures in their respective buildings are deducted pursuant to the state equalization guarantee distribution and of a state agency's operation budget would cease when the school district's or state agency's cumulative reductions equal the school district's or state agency's proportional share of the debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act. Draft #14 was adopted by the committee with no negative votes.

DEPARTMENT OF TRANSPORTATION (DOT) PROPOSAL

Robert Olcott, chief economist, DOT, presented Draft #15 for adoption by the RSTPC. The draft closes two loopholes and alters the administration of the overweight tax. The draft also eliminates the 125-mile radius that was intended to clarify the meaning of what constitutes an area that is "within the vicinity of a municipality" in regard to purchase of an annual overweight permit for vehicles carrying extra-heavy loads. Draft #15 was adopted by the committee with one vote against adoption.

HOSPITALITY TRAINING TAX CREDIT ACT PROPOSAL

Pam Ray, staff attorney with the Legislative Council Service (LCS), summarized the provisions of draft #16, which was introduced to the committee during the RSTPC meeting in November by Marianne Joyce of the Gallup/McKinley Chamber of Commerce. The draft enacts the Hospitality Training Tax Credit Act. The act provides for credits that may be taken against a retail business's gross receipts tax or corporate income tax or against the owner's personal income tax. The credit is in the amount that is paid by the retailer for training of staff who work with tourists. The maximum credit that can be taken in one year is $3,000. The Governor's Office of Workforce Development and Training will provide oversight and program parameters for the training programs pursuant to the act. Draft #16 received no recommendation.

PRODUCED WATER TAX CREDIT PROPOSAL

John Gillis, from the Public Service Company of New Mexico, presented Draft #17 for endorsement by the RSTPC. The draft provides for a tax credit against a taxpayer's corporate income tax for gathering, transporting or treating produced water that is then used in the process of generating electricity. Pursuant to the draft, the Oil Conservation Division of the EMNRD will adopt the rules necessary to qualify a taxpayer for the tax credit. The TRD will administer the tax credit. The tax credit may be carried forward if it exceeds the taxpayer's liability in any year. The total tax credits that may be claimed by all of the credit claimants is $3 million. Draft #17 was adopted by the committee with no negative votes.

NET METERING

Keven Groenewold, executive vice president of the New Mexico Rural Cooperative Association, presented Draft #18 to the committee for endorsement. The proposal applies only to net metering in rural electrical cooperative systems. The bill limits net metering to excess electricity produced only by renewable sources. In addition, the net metering system is limited to a generating capacity of no more than 25 kilowatts, unless the cooperative agrees to a greater capacity or has a contract with the customer-generator that limits the power that will be purchased by the cooperative. The bill also limits the total net metering resources that must be purchased by the cooperative to one percent of the annual peak demand of the residential and commercial consumers of the cooperative in the previous year. Draft #18 was adopted by the committee with one vote in opposition to adoption.

OFFER IN COMPROMISE CONSTITUTIONAL AMENDMENT PROPOSAL

Amy Chavez, staff attorney, LCS, summarized the provisions of Draft #19, a committee proposal to amend the Anti-Donation Clause of the Constitution of New Mexico to permit the TRD to enter into agreements with certain taxpayers to forgive tax liabilities. Such a constitutional amendment would permit the legislature to adopt legislation to create an offer in compromise program for the state, similar to the offer in compromise program that the Internal Revenue Service conducts on a federal level. Draft #19 was adopted by the committee with no negative votes.

The committee recessed for the day at approximately 5:15 p.m.

Tuesday, December 7

SUNSET CLAUSE ADDITIONS

Senator John Arthur Smith made a motion to add five-year sunset clauses to new tax incentives proposed by the EDD and the EMNRD. Representative Whitaker seconded the motion. The motion passed by a vote of nine in favor of the motion and three opposed to it.

TAXATION AND REVENUE DEPARTMENT PROPOSALS

Kelly O'Donnell, assistant secretary and tax policy director, TRD, discussed the TRD bill drafts for which the TRD seeks committee endorsement.

Draft #20 permits the TRD secretary to enter into negotiations with respect to the Streamlined Sales and Use Tax Agreement. The draft also contains several administrative reform proposals that were raised by the Blue Ribbon Tax Reform Commission and that were introduced during the last legislative session. Draft #20 was adopted by the committee with no negative votes.

Draft #21 includes helium and non-hydrocarbon gases in the definition of products subject to taxes pursuant to the Oil and Gas Severance Tax Act and the Oil and Gas Emergency School Tax Act. Draft #21 was adopted by the committee with no negative votes.

Draft #22 requires all vehicles to display front and rear registration plates. A fee of $3.00 would be charged for vehicles not previously registered with the department, and a fee of $4.50 would be charged for vehicles registered with the department before January 1, 2006. The committee unanimously voted not to endorse Draft #22.

Draft #23 changes the threshold for imposing penalties for tax underpayments from $500 to $1,000. It also specifies the due date for the first quarter estimated corporate income tax payment as the fifteenth day of the fourth month of the taxable year. The draft additionally

makes taxes deducted and withheld with respect to a taxpayer by remitter under the Oil and Gas Proceeds Withholding Tax Act subject to estimated tax requirements.

The draft also contains new proposed changes. It adds language to allow oil and gas remitters to enter into agreements with nonresident recipients of oil and gas proceeds that would remove the remitter's obligation to withhold the oil and gas withholding tax and obligate the recipient to file a personal income tax return. The draft would also require oil and gas remitters to provide taxpayer names and federal tax identification numbers of the nonresidents who elect to avoid having taxes withheld. Draft #23 was adopted by the committee with no negative votes.

Draft #24 provides technical cleanup of the Property Tax Code. The RSTPC endorsed a similar bill, House Bill 576, last year. This year's proposal is substantially the same, but contains provisions for the valuation of omitted property. It also permits a property owner to waive a right to a hearing with respect to a limitation on an increase in property value for low-income single family dwellings and for those owned by property owners over 65 years of age, and to instead claim a refund for an amount that the property owner claims with respect to that limitation. The committee unanimously voted not to endorse Draft #24.

Draft #25 requires a holder of more than 25 properties presumed abandoned to file an electronic report of the properties with the TRD. The draft also permits the TRD to sell abandoned property by any reasonable method. Currently, the TRD can only sell such property to the highest bidder at public auction. The bill also extends the time during which an owner may enter into an agreement to recover or locate property that is presumed abandoned. Draft #25 was adopted by the committee with three RSTPC members voting in opposition to adoption.

Draft #26 increases administrative fees charged on all driver's license and vehicle registration transactions from $.50 to $2.00. Increased funds would be distributed to the Motor Vehicle Division (MVD) of the TRD and to municipal governments that operate satellite MVD offices to defray administrative expenses of operating the offices. The draft would also reappropriate cash balances from registration fee revenues earmarked for enforcement of the Mandatory Financial Responsibility Act to cover unanticipated shortfalls in the MVD's operating budget. The cash balances from royalties paid by commercial users of MVD databases would also be reappropriated to the MVD for the same purpose. Draft #26 was adopted by the committee with two RSTPC members voting in opposition to adoption.

Draft #27 includes several changes to the commercial driver's license provisions that are needed for the state to be in compliance with mandates from the Federal Motor Carrier Safety Administration (FMCSA). Compliance issues refer to such items as:

- minimum time to post and pass conviction information to driver records;
- commercial driver record information exchange between states; and
- statute violations committed by a commercial driver in a private vehicle.

Draft #27 was adopted by the committee with no negative votes.

Draft #28 includes provisions requiring special fuels retailers and wholesalers to file information returns with the TRD. Draft #28 was adopted by the committee with no negative votes.

Draft #29 imposes a new misdemeanor penalty on TRD personnel who disclose trade secrets, customer information, proprietary information or commercial and financial information that is not disclosed by a public entity and that is acquired by the TRD from a person who has contracted with the TRD for electronic access to MVD records. The penalty might include imprisonment for no more than one year and a fine of not more than $1,000. Draft #29 was adopted by the committee with no negative votes.

Draft #30 creates a tax fraud investigation division within the TRD. This proposal was introduced to the legislature as House Bill 360 during the 2004 legislative session. In addition to the provisions of last year's bill, this proposal provides penalties for failure to collect, account for and pay over a tax. Draft #30 was adopted by the committee with no negative votes.

Draft #31 requires a person who has been gainfully employed in New Mexico to register that person's vehicles with the state after 30 days of that person's initial date of employment. The draft also imposes a misdemeanor penalty of not more than $300 and not more than 90 days of imprisonment for failure to meet that requirement. Draft #31 was adopted with six voting in favor of adoption and five in opposition to adoption.

Draft #32 clarifies time requirements for nonresidents to register their vehicles in New Mexico and imposes a penalty for failure to meet those requirements. The committee unanimously voted not to adopt Draft #32.

Draft #33 enhances the ability of the TRD to enforce provisions of the Cigarette Tax Act. It adds stamping requirements, including required use of stamps on nontaxable cigarettes. It also increases reporting and record-keeping requirements. Both civil and criminal penalties are provided for violations of the stamp requirements and for selling contraband cigarettes or counterfeit stamps. Since Draft #33 was endorsed by the Tobacco Settlement Revenue Oversight Committee, the RSTPC voted unanimously against adoption of the draft.

The committee adjourned at approximately 12:15 p.m.