

MINUTES
of the
SECOND MEETING IN 2012
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

July 16-17, 2012
Room 322, State Capitol
Santa Fe

The second meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) for 2012 was called to order by Representative Edward C. Sandoval, chair, on Monday, July 16, 2012, at 9:40 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Edward C. Sandoval, Chair
Sen. Tim Eichenberg, Vice Chair
Rep. Donald E. Bratton
Sen. Carlos R. Cisneros (7/17)
Rep. Anna M. Crook
Sen. Clinton D. Harden, Jr.
Sen. Timothy M. Keller
Sen. Gay G. Kernan
Rep. Rodolpho "Rudy" S. Martinez
Sen. Howie C. Morales (7/16)
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Rep. Thomas C. Taylor
Rep. Jim R. Trujillo
Rep. Bob Wooley

Designees

Sen. William F. Burt (7/16)
Rep. Brian F. Egolf, Jr. (7/16)
Rep. Luciano "Lucky" Varela (7/17)
Sen. Peter Wirth

Absent

Sen. Mark Boitano
Sen. Timothy Z. Jennings, President Pro
Tempore
Rep. Ben Lujan, Speaker of the House

Sen. Rod Adair
Rep. Ray Begaye
Rep. Zachary J. Cook
Rep. Miguel P. Garcia
Rep. Thomas A. Garcia
Rep. Roberto "Bobby" J. Gonzales
Sen. Eric G. Griego
Sen. Phil A. Griego
Rep. Sandra D. Jeff
Rep. Antonio Lujan
Rep. Antonio "Moe" Maestas
Sen. George K. Munoz
Sen. Steven P. Neville

Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. Bernadette M. Sanchez
Sen. John M. Sapien
Sen. William E. Sharer
Rep. James R.J. Strickler
Rep. Don L. Tripp

Guest Legislators

Rep. Luciano "Lucky" Varela (7/16)
Rep. James E. Smith (7/16)

(Attendance dates are noted for those legislators present in the same capacity for the entire meeting.)

Staff

Pam Ray, Staff Attorney, Legislative Council Service (LCS)
Damian Lara, Staff Attorney, LCS
Pam Stokes, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS

Guests

The guest list is in the archives meeting file.

Handouts

Handouts and other written testimony are in the meeting file and can be accessed at www.nmlegis.gov.

Monday, July 16

Sales Tax Versus Gross Receipts Tax (GRT)

James (Jim) P. O'Neill, consultant, O'Neill Consulting, explained that the GRT is a successor to New Mexico's emergency school tax, enacted in 1934 and made permanent in 1935. A relatively new notion at the time, a tax of 2% was imposed to replace the property tax revenue that was severely diminished during the Great Depression. The emergency school tax was imposed on everyone engaged in business, including service providers, many of whom were also property owners and were not paying their property taxes. The emergency school tax is still imposed on certain activities involving oil and natural gas. In 1966, the GRT was part of a consciously designed restructuring of the state revenue system and resulted in the enactment of the Gross Receipts and Compensating Tax Act (Act). Other taxes had recently been imposed, such as the personal income tax, the resources excise tax and the severance taxes, as part of a new tax system designed by Franklin Jones, Jack Deason and Woody Woodcock, now considered the deans of New Mexico's current tax system. Tax law can be written to list every transaction subject to taxation or to broadly define the taxable activity, such as the privilege of

engaging in business. Mr. O'Neill explained that of the two approaches to developing the GRT, the state chose the latter. Mr. O'Neill focused his discussion on the following three general policies embodied in the design of the GRT: 1) employ a base that is as broad as possible; 2) impose the tax on the seller, rather than the buyer; and 3) administer the tax at the state level, controlling the option of local governments to impose or collect local taxes and imposing uniformity on the tax base and rate throughout the state. This reduces the administration costs of the tax. The legislature controls the authorization for deductions or other tax benefits if the tax is a statewide tax.

A broad base results in the state's ability to keep the tax rate low while still providing adequate revenue. Mr. O'Neill noted that the combination of a broad base and low rate introduces the least amount of interference with the marketplace. Additionally, the point of imposition of the tax is on the seller, who then generally passes on the tax to the purchaser at the point in the transaction in which the good or service leaves the stream of commerce.

Sellers are not required to separately identify the tax on an invoice as they pass it along to the next buyer. The early GRT rate was low and so a great deal of pyramiding was tolerated in the GRT system as tax was added by each seller receiving receipts in the transaction. When the tax rate increased, however, pyramiding became viewed as a negative aspect of the tax system requiring correction. There are several reasons for having the incidence of the GRT fall on the seller that benefit New Mexico. One is to capture taxes on transactions with the federal government not otherwise permitted to be taxed if the tax is imposed on the purchaser. Two court cases have upheld New Mexico's right to tax goods and services sold to the federal government: *United States v. New Mexico*, 581 F.2d 803, 10th Cir. (1978); and *United States v. New Mexico*, 455 U.S. 720 (1982). In addition, imposition of the tax on the seller allows the state to consider all receipts from construction activity to be receipts from sales of construction services.

The uniform system of the GRT, which is centrally administered, minimizes administrative costs to both the taxpayer and the tax collectors and ensures evenhandedness across the state. Moreover, tying the local governments to the GRT builds in local government resistance to pressures by special interests for special exemptions or deductions from the tax. Mr. O'Neill concluded his presentation by stating that the Act requires a reading of a number of provisions together to discern its key principles and that the tight link between local government revenues and the state GRT base is very deliberate.

Richard L. Anklam, president and executive director, New Mexico Tax Research Institute, explained that not all sales taxes are the same, but they generally are transactional taxes imposed on transactions involving tangible personal property and some services. The power of a local jurisdiction to impose a tax is authorized by the state legislature or constitution. Mr. Anklam noted that since the GRT is imposed on the seller, it is the seller who may claim any refunds, credits or deductions. Under the U.S. Constitution, in order to impose the GRT on a seller, that seller must have a nexus with the state. Constitutional nexus is generally viewed as an in-state physical presence. The lack of constitutional nexus for some electronic-based companies has

been the source of various deliberations in Congress leading to the streamlined sales tax efforts and proposed legislation such as the Mainstreet Fairness Act, an act that could have a significant impact on New Mexico. Mr. Anklam said that Congress is likely to pass a bill to address the issue this year.

Questions and Answers

In response to a question, Mr. O'Neill said that allowing a local government to impose and administer its own GRT is not as efficient or effective as the current uniform system administered centrally and might require the local government to hire a third-party contractor to impose and collect the tax, which brings added concerns. Mr. O'Neill suggested providing local governments with more flexibility to impose local option taxes as well as to allow the taxes to be spent on general purposes as an alternative.

Mr. O'Neill also confirmed that the most stable source of revenue is the property tax, and a GRT with a low rate and broad base would be a close second in terms of stability of revenue generated, especially given New Mexico's low and stable population and the progression of the national and state economy from tangible goods to services.

Mr. O'Neill also answered that, in 1966, and soon after the implementation of the GRT, the inherent pyramiding of the GRT was largely ignored because of the relatively low rate when the GRT was first imposed.

Hold Harmless Costs and Local Government Concerns

John C. Tysseling, chief economist, Taxation and Revenue Department, said the fiscal year (FY) 2012 estimated costs of the hold harmless provisions for food was \$103.1 million and for medical was \$34.5 million, for a total of \$137.6 million. The annual growth rate over four years for medical was 7.8% and for food was 3.3%, for a combined total of 4.4%. Mr. Tysseling explained that the distributions to the municipalities and counties were contingent on the food and medical deductions reported.

William F. Fulginiti, executive director, New Mexico Municipal League, stated that the restriction of state revenues should not deprive municipalities of actual revenue. The GRT constitutes up to 75% of a municipality's general funds. On average, the food and medical distributions accounts for 8% of municipal budgets, but for some municipalities, it is as high as 38%. The handout from Mr. Fulginiti has tables showing the amount of GRT attributed to each municipality and the percent of the municipality's general funds that the GRT supplies. Mr. Fulginiti said the municipalities are very concerned with the potential loss of the food and medical distributions and, as a result, have begun to look at various scenarios, including a decoupling of the state GRT from local governments. Mr. Fulginiti stated that at the municipal level, if all the deductions were repealed, municipalities would be able to cut the local option GRT rate in half.

Tito Chavez, lobbyist, New Mexico Association of Counties, said that there are 17 county option tax increments, but the revenue is restricted to certain purposes. Mr. Chavez said that for

counties, the GRT makes up as much as 50% of the county budgets. Mr. Chavez also stated that property taxes are not as stable due to foreclosure and pending lawsuits regarding county assessments of property values. Mr. Chavez noted that of the four county GRT increments allowed, the first two are enacted by all but two counties and the last two are enacted by 25 and 21 counties, respectively.

Questions and Answers

In regard to a question, Mr. Tysseling said that the local option increments are in place to keep the tax rates and differentials on the GRT from varying widely. Mr. Tysseling also said the distributions are frozen at the set rate to avoid the risk of GRT dependency.

Upon inquiry from a committee member, Mr. Fulginiti responded that the percentage of an individual municipality's budget attributable to the food and medical distribution is dependent on the presence and type of retailer and amount of commercial activity in the municipality.

Tax Expenditure Report

Thomas Clifford, secretary, Department of Finance and Administration, mentioned that Executive Order 2011-071 required a tax expenditure budget. Secretary Clifford said a tax expenditure for the purpose of the report was a special deduction rather than a general provision to address pyramiding of the tax. Similarly, exclusions from tax as a result of the coupling of the state income tax with that of the federal income tax would not be considered a tax expenditure in the report. In terms of the GRT, a similar working definition would be used to identify tax expenditures. Secretary Clifford said that general exclusions that apply to everyone, certain dual taxation provisions and differentials would not be considered tax expenditures. In evaluating and estimating the costs of the expenditures, Secretary Clifford stated that accountability should be balanced with efficiency. Specifically, Secretary Clifford said that seeking too much information in the Combined Reporting System (CRS) form would bog down the system and create too much delay in returning revenue to the local governments and might upset the fragile ability of the state to process state employee checks.

Demesia Padilla, secretary, Taxation and Revenue Department, said a draft of the report was completed and is currently being reviewed by the Office of the Governor. Secretary Padilla stated that a template was developed to evaluate each tax expenditure using economic and generally accepted tax policy principles rather than policy determinations. A tax expenditure template was developed for each expenditure to provide continuity in the current report and future reports; 400 templates were compiled. Secretary Padilla remarked that for GRT deductions and exemptions that are not reported, the value is uncertain, but that requiring additional reporting is expensive and impractical. She continued to say that the North American Industry Classification System codes allow the department to extrapolate the value of certain tax expenditures.

Questions and Answers

Secretary Padilla replied to a question by saying that since the tax expenditure report was

drafted pursuant to an executive order, the department provided a draft to the Office of the Governor for review before finalizing the report in case the office requested additional work on the report.

A committee member said that the report should be developed pursuant to state statute, and each tax expenditure authorized should include reporting requirements. Secretary Clifford said that not all tax expenditures need reporting requirements built into the language of the statute, especially if the expenditure applies to a broad or general category.

A committee member provided some background regarding Section 9-15-56 NMSA 1978 and the reporting requirements for new tax incentives. Secretary Clifford said that in terms of the GRT and the CRS, forms requiring too much reporting on a monthly basis would have an impact on the ability of the department to process the returns and, in turn, payroll for all state employees in a timely manner. He continued to say that information regarding the benefits of tax expenditures in creating jobs and economic growth in the state are best obtained by surveying sample businesses rather than reporting the information on CRS forms.

Committee Request

The committee requested that staff provide a comparison of the provisions of Executive Order 2011-071 and SB 47 from the 2011 regular session.

Act Exemptions

Ms. Ray and Mr. Lara presented the exemptions found in the Act. Ms. Ray began by pointing out that there are 46 exemptions in the Act. Ms. Ray, Mr. Lara and Ms. Stokes established five categories of exemptions, deductions and credits in the Act: 1) preemption and taxes enacted in lieu of the GRT, compensating tax or governmental GRT; 2) exemptions that help define the base on which the GRT, compensating tax or governmental GRT is imposed; 3) exemptions that reduce pyramiding; 4) exemptions that are for the public good; and 5) exemptions that appear to be policy decisions of the legislature.

Exemptions generally should be used to define the base or to reflect some area where the state either cannot tax due to federal law or is imposing a tax already and imposition of the GRT, compensating tax or governmental GRT would impose a second tax on the same transaction. There are some cases where dual taxes are considered acceptable. In New Mexico, double taxation is found on alcoholic beverages. Exemptions are inappropriate for tax benefits for a single industry or other policy purpose. An exemption is not reported, and in Subsection A of Section 7-9-5 NMSA 1978, any person who is engaged solely in transactions specifically exempt from a tax imposed by the Act "shall not be required to register or file a return under that act". As a result, the legislature can only surmise what revenue is being lost due to the 10 policy exemptions set forth in numbers 37 through 46 of the booklet.

Some exemptions are not set forth in separate sections but are found in the definitions of "engaging in business", such as the third-party web site content provider exemptions and the third-party provider of call center services if those services are located in New Mexico. These

two exclusions from the definition of "engaging in business" would be more appropriately placed as separate exemptions or deductions. The department is also barred in Section 7-9-7.1 NMSA 1978 from collecting compensating tax from nonbusiness purchasers of tangible personal property first used in New Mexico. Exemptions from GRT are provided generally for services performed out-of-state but used first in-state. For many of these transactions, the compensating tax is imposed if a deduction or exemption is not available for the transaction. There are compensating tax exemptions for the use of tangible personal property in New Mexico that is purchased out-of-state by the U.S. government, the state and political subdivisions. Personal effects that an individual moves into the state for use in an initial residence or for nonbusiness use are exempt from compensating tax. Nine anti-pyramiding exemptions exist, including exemptions for receipts from the sale of agricultural raw products or services that are required to prepare those products for market. There are compensating tax exemptions for equipment purchased out-of-state and used in-state for railroads, aircraft and spacecraft for the transport of passengers or property. There are several oil and gas equipment and services exemptions, especially when the oil or gas is consumed to process, store or transport the product, as through a pipeline. Section 7-9-41.2 NMSA 1978, an exemption for fuel for certain railroad activities, never became effective and should be repealed. Exemptions for the public good are generally those that support the efforts of certain charitable organizations. Purchases using food stamps are exempt from paying GRT. Dues and registration fees and other income of nonprofit social, fraternal, political, trade, labor or professional organizations are exempt from GRT, as long as the receipts are not from an unrelated business enterprise. Receipts of a minister from performing religious services are exempt from GRT. Also, receipts of disabled street vendors are exempt from payment of GRT.

The legislature has chosen to exempt some other activities from GRT. Many of these exemptions should be rewritten as deductions. Sales from concessions at Isotopes Park are exempt from GRT. Student books sold at university book stores are exempt from GRT. Homeowners association dues are exempt from GRT. Spacecraft fuel is exempt from GRT and compensating tax. Receipts earned from mowing lawns or yard sales are exempt from GRT, as are other receipts from isolated or occasional sales or leasing of tangible personal property or services, and like the disabled street vendor's receipts, probably are too difficult to capture and administer and so should remain exemptions. Receipts from purses from New Mexico horse racetracks are exempt for jockeys, horsemen and trainers. Another exemption that would be more difficult to administer than warranted by the amount of revenue gained is the exemption from receipts earned by an umpire, referee or scorekeeper at New Mexico Activities Association athletic events involving New Mexico schoolchildren as participants.

Some exemptions should be scrutinized; however, most of the exemptions currently in law are best left as exemptions.

The committee recessed at 2:55 p.m.

Tuesday, July 17

Act Deductions and Credits

Ms. Ray, Mr. Lara and Ms. Stokes presented the Act's deductions, and Mr. Lara presented the credits found in the Act. Ms. Ray provided an overview of the deductions. She noted that there are 81 deductions, and again they are divided in five categories, as are the exemptions. Her comments can be found in the handouts entitled "Deduction and Credit Script". She noted the differences among exemptions, deductions and credits. Exemptions are tax relief that makes the tax nonpayable, requiring no reporting of gross receipts, no calculation of compensating tax or no reporting of governmental gross receipts, depending on the tax to which the exemption applies. Deductions require reporting of gross receipts acquired and then subtraction of the amount of receipts that are deductible; the tax rate is then applied to the difference to determine the tax liability. Credits are amounts that are subtracted from the taxpayer's tax liability and generally have reporting requirements so that at the very least the department can determine the amount of revenue foregone due to each credit. Tax benefits provided by the Act are generally in the form of deductions.

The breakdown of the deductions in the categories is as follows:

- A. deductions due to preemption or taxes imposed in lieu of a tax in the Act;
- B. deductions that constitute the base on which the GRT, the compensating tax or the governmental GRT is calculated;
- C. deductions to reduce pyramiding;
- D. deductions that promote the public good; and
- E. deductions that have been adopted for policy reasons by the legislature.

Again, the deductions that appear to exist for policy reasons are those that should be most closely scrutinized to determine if they remain necessary, effective and beneficial to the state.

Mr. Lara discussed anti-pyramiding deductions. These include several that were adopted during the 2012 legislative session, such as the deduction for consumables used in the manufacturing process. Deductions for receipts that are from a sale for resale are found in Sections 7-9-47 and 7-9-48 NMSA 1978; provided that an appropriate nontaxable transaction certificate (NTTC) is provided to the seller (taxpayer) by the purchaser who will resell the tangible personal property or service. Sections 7-9-51 and 7-9-52 NMSA 1978 are deductions for construction materials or services that are sold or leased, again with the provision of an appropriate NTTC. The deductions reinforce that it is necessary for the vendor to obtain an NTTC in order to take an exemption and that deductions are generally available only if the service or tangible personal property is to be resold to a consumer who will be paying GRT. Most deductions are for the entire amount of receipts from a transaction; however, Section 7-9-77 NMSA 1978 provides a deduction for 50% of the value on which compensating tax is calculated for agricultural implements, farm tractors, aircraft or vehicles not required to be registered for on-road driving purposes. Other deductions are for receipts from the sale to a farmer or rancher of feed and accessories or other inputs.

Deductions classified for the public good include those to encourage low-cost housing and loan costs, the sale of state-approved lottery tickets and donations of tangible personal property

to charitable organizations. State credit unions are put on similar footing to federal credit unions by the deduction provided in Section 7-9-61.2 NMSA 1978.

There are 44 deductions that have been classified as "policy" deductions. Several deal with aerospace services. Wind and solar generation equipment receipts may be deducted pursuant to Section 7-9-54.3 NMSA 1978. Other deductions for solar energy and electric generating facilities can be found in Sections 7-9-112 and 7-9-114 NMSA 1978. Receipts from warehousing, threshing, harvesting, growing, cultivating, transporting and processing agricultural products are deductible pursuant to Section 7-9-59 NMSA 1978. Section 7-9-57.2 NMSA 1978 allows a deduction for receipts of a software development company located in rural New Mexico. Receipts from provision of logistics services provided by companies along the international border to support border trade initiatives also are deductible from gross receipts. There are several deductions that apply to newspapers and magazines. Almost all of the receipts of hospitals may be deducted from gross receipts, as are receipts from selling prosthetic devices, prescription drugs and oxygen. Several more agricultural deductions exist: one, in Section 7-9-62 NMSA 1978, is for 50% of the receipts from sales of agricultural equipment to be deducted from gross receipts similar to the compensating tax exemption found in Section 7-9-77 NMSA 1978. Another partial exemption is for 55% of the receipts from selling jet fuel or the value of jet fuel first used in New Mexico in Sections 7-9-83 and 7-9-84 NMSA 1978. Section 7-9-76 NMSA 1978 sets forth a deduction for receipts of a travel agent for commissions paid by maritime transport companies, interstate airlines, railroads and passenger buses for booking, referral, reservation or ticketing service rendered. The value of equipment used to enrich uranium is deductible pursuant to Section 7-9-78.1 NMSA 1978, and receipts from selling uranium hexafluoride and enriching uranium are also deductible under Section 7-9-90 NMSA 1978. Sections 7-9-92 and 7-9-93 NMSA 1978 are the food and medical deductions that require the state to reimburse the local governments for the various gross receipts distributions the local governments forego as a result of these deductions. A deduction for property sold or leased to or other services performed for a film production is found in Section 7-9-86 NMSA 1978.

Other deductions are for receipts from biomass equipment sales and biodiesel fuel equipment sales and for construction equipment used in a building project for a nonprofit organization or foundation. Receipts from nonathletic events on the New Mexico State University campus are also deductible from gross receipts. Receipts from staging professional boxing, wrestling or martial arts contests are also deductible from gross receipts. Section 7-9-109 NMSA 1978 authorizes a deduction from gross receipts of receipts from veterinary services or supplies provided by a veterinarian.

The deductions from receipts of the sale of fuel for locomotives or from the value of fuel used for locomotives on which compensating tax would be based can be found in Sections 7-9-110.1 and 7-9-110.2 NMSA 1978. Receipts from selling or leasing services or tangible personal property used to develop or construct an electric generating facility or a recycled energy project are also authorized. Deductions for transmission of electricity using electric conversion technology or for receipts from services provided by a market exchange dealing in the transmission of electricity are found in Sections 7-9-103.1 and 7-9-103.2 NMSA 1978. These deductions were adopted during the 2012 legislative session.

Mr. Lara presented eight tax credits that are found in the Act. The first several credits are offsets for similar taxes paid to another state for goods and services. Section 7-9-88.2 NMSA 1978 authorizes a credit against GRT liability for receipts from the sale of coal severed from Navajo Nation land in an amount equal to 75% of the Navajo Nation tax liability. The other five credits are for installation of biodiesel equipment, selling a service for resale, hospital receipts and certain unpaid health care services provided by a medical doctor or osteopathic physician.

Modified Combined Tax Liability Credits

Finally, Mr. O'Neill and Ms. Ray presented information on modified combined tax liability credits, which are reported on the CRS form used for reporting GRT, compensating tax, withholding tax and other monthly reported tax liabilities. Mr. O'Neill discussed some changes in the wording of the definition of "modified combined tax liability" that would make the definitions in the eight credits discussed:

1. more uniform;
2. easier to administer; and
3. less confusing.

Mr. O'Neill presented a bill draft with the changes necessary to amend the definition appropriately. The following are the credits in which the definition of "modified combined tax liability" may be found:

1. rural job tax credit;
2. investment credit;
3. technology jobs tax credit;
4. high-wage jobs tax credit;
5. advanced energy combined reporting tax credit;
6. research and development small business tax credit;
7. affordable housing tax credit; and
8. alternative energy product manufacturers tax credit.

The final tax credit mentioned should be in the Act, but was drafted as a separate article, Sections 7-9E-1 through 7-9E-11 NMSA 1978. This is the Laboratory Partnership with Small Business Tax Credit Act. It provides that a tax credit may be claimed only against a taxpayer's GRT liability.

Premium Tax Update

John Franchini, superintendent of insurance, and Jolene Gonzales, deputy superintendent, Insurance Division, Public Regulation Commission, provided a handout giving current information about the collection of premium tax by that division. Superintendent Franchini began by saying that premium taxes are applicable to insurance companies, health maintenance organizations, New Mexico casualty companies, nonprofit health care plans, prepaid dental plans, property bail bonds agents, purchasing groups, risk retention groups, self-insureds and title insurance companies. The rate paid by nonhealth insurers is 3.003% of gross premiums. Health insurers pay a surtax of 1% of gross premiums, or 4.003% in total. Premiums include any additional amount charged the insured, including policy fees, risk purchasing group fees and inspection fees. The health care surtax is not charged on dental or vision insurance sold pursuant to contracts. Insurance plans sold to the state or its subdivisions to cover retired or active employees are not subject to premium tax. Businesses that are self-insured for workers' compensation are not considered insurance companies transacting insurance business for purposes of the premium tax.

Premium tax is paid in lieu of all other taxes (*see* Section 59A-6-6 NMSA 1978). This is interpreted very broadly and allows insurance companies to avoid paying corporate income tax, personal income tax, GRT and other taxes other than property tax on property located in New Mexico. Premium taxes are paid quarterly on the fifteenth day of each month following the close of the calendar quarter. Payments are in April, July, October and January.

There are deductions and credits that may be taken against premiums and premium taxes due. There is a 50% credit for health alliance pool payments, a 75% credit for payments by medical insurance pool policyholders if they receive payments in whole or in part from the federal Ryan White CARE Act, the Ted R. Montoya Hemophilia Program of the University of New Mexico Health Sciences Center, the Children's Medical Services Bureau of the Public Health Division of the Department of Health or any other program receiving state funding or assistance. There is also a 50% tax credit for medical insurance pool payments made.

Erroneous payments may be claimed within three years of the date the erroneous payment is made, which the superintendent of insurance may authorize. Premium taxes erroneously paid or overpaid may either be refunded or credited against the tax due.

Page 15 of the handout was discussed by Ms. Gonzales. She noted that the Insurance Department Suspense Fund balance in FY 2011 was about \$223.6 million after reductions from charge-backs, refunds and the transfer of \$192,000 to the secretary of state. The suspense fund includes premium taxes paid totaling \$109.8 million, surtaxes paid totaling \$36 million, \$60 million from the Premium Tax Fire Fund, fees, penalties and other deposits. Distributions were then made to:

- A. the Insurance Operations Fund in the amount of \$8.9 million;
- B. the Fire Protection Fund in the amount of \$67.5 million; and
- C. Carrie Tingley Children's Hospital in the amount of \$25,700.

Of the remaining \$147.2 million, 10%, or \$14.7 million, was distributed to the Law Enforcement Protection Fund. The final balance of \$132.5 million was deposited in the general

fund.

Page 16 of the handout describes suggestions that might be introduced as legislation.

The committee adjourned at 11:55 a.m.

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