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

October 13-14, 2004
Room 307
State Capitol

The fifth meeting of the Revenue Stabilization and Tax Policy Committee (RSTPC) for the 2004 interim was called to order by Senator John Arthur Smith, acting chair, on Wednesday, October 13, 2004, at 8:20 a.m. at the State Capitol.

PRESENT

Sen. John Arthur Smith, vice chair
Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Roberto "Bobby" J. Gonzales
Sen. John Grubesic
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Daniel P. Silva
Sen. H. Diane Snyder
Rep. Thomas C. Taylor
Rep. Luciano "Lucky" Varela

ABSENT

Rep. Donald. L. Whitaker, chair
Sen. Joseph A. Fidel
Rep. George J. Hanosh
Sen. William E. Sharer

Designees
Rep. Irvin Harrison (*designee for Rep. Donald L. Whitaker*)
Sen. Phil A. Griego (*designee for Sen. Joseph A. Fidel*)
Rep. Joe M Stell (*designee for Rep. George J. Hanosh*)

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.

Wednesday, October 13

APPROVAL OF MINUTES

The committee unanimously approved the minutes of its fourth meeting held on September 13 in Silver City and on September 14-15 in Deming.

NEW MEXICO TAXPAYER BILL OF RIGHTS AND TAXATION AND REVENUE DEPARTMENT ENHANCED AUDIT INITIATIVE

Jan Goodwin, secretary of taxation and revenue, discussed the implementation of the New Mexico Taxpayer Bill of Rights enacted in Sections 7-1-4.1 through 7-1-4.3 NMSA 1978. The purpose of the Taxpayer Bill of Rights is to ensure that the rights of New Mexico taxpayers are adequately safeguarded during the assessment, collection and enforcement of taxes administered by the Taxation and Revenue Department (TRD) and to explain the rights of taxpayers.

Secretary Goodwin explained that the TRD has made several administrative changes to implement the provisions of the Taxpayer Bill of Rights. First, to support impartiality in tax hearings, TRD administrative hearing officers have been physically separated from the secretary's office and from the Audit and Compliance Division of the TRD. The offices of the TRD hearing officers are currently located in the Wendell Chino Building while the secretary's office and the Audit and Compliance Division are located in the Montoya Building at the South Capitol Complex. Also, to improve the TRD hearing process, the TRD hearing officers have developed for taxpayer use a list of frequently asked questions about administrative hearing procedures. The TRD sends the document to anyone whose protest is scheduled for a hearing. The document informs the taxpayer of what to expect at the hearing. The taxpayer's responsibility to gather evidence and witnesses to support the protest, and the decision of whether the taxpayer will represent himself or herself or hire a professional representative to act on the taxpayer's behalf, are also covered.

The Audit and Compliance Division has also made several changes to improve internal and taxpayer understanding of the Taxpayer Bill of Rights. The division has conducted an intensive two-day workshop for auditors to explain and discuss the Taxpayer Bill of Rights. Committee members suggested that the division continue to hold such workshops on a frequent basis. To facilitate taxpayer audits, the division developed an "audit setup" letter for taxpayers. The division also created a chart of audit time lines to help taxpayers identify important dates throughout the audit process.

Additionally, the TRD has enhanced its data collection procedures to improve service to taxpayers. For example, the TRD established new indicators in the GenTax program for better service to taxpayers who request additional information on certain notices or assessments. To reduce the number of invalid inquiries, the TRD has also implemented additional manual reviews of data before beginning limited-scope audits. To improve the administration of nontaxable transactions, the TRD has reduced the number of nontaxable transaction certificate (NTTC) categories in the gross receipts tax program. The TRD also plans to test an online system to track the issuance and use of NTTCs. The TRD has finally issued a publication explaining the provisions of the Taxpayer Bill of Rights and changed several existing publications to reflect the Taxpayer Bill of Rights.

Secretary Goodwin also discussed the TRD's expansion of the managed audit program to include all tax programs under the Tax Administration Act. Secretary Goodwin stated that the procedure has enhanced tax collection and identified potentially delinquent taxpayers. In the fiscal year ending June 30, 2004, the managed audit program collected over $4.2 million. Through the third week of September 2004, 66 managed audit taxpayers had been assessed a total of $2 million. Secretary Goodwin stated that the procedure encourages voluntary payments because it permits coverage by managed audits to avoid penalties and interest.

In response to the Legislative Finance Committee (LFC) review of a $5 million appropriation to the TRD to enhance tax collections, Secretary Goodwin updated the committee on the TRD's continuing efforts with respect to the initiative. During the 2003 legislative session, the TRD received a $5 million special appropriation to enhance the general fund by collecting outstanding taxes owed to the TRD. Secretary Goodwin stated that the TRD collected $75 million last year as a result of the initiative, amounting to an 11 to one return on the original $5 million appropriated to the TRD. The TRD is continuing its collection efforts and has collected an additional $12.3 million this year as a result of improved tax collections. The improved collections are attributable to the establishment of call centers for delinquent taxpayers, the addition of term collectors in field offices and more frequent collection of taxes from business taxpayers. Treasury offset programs to intercept taxpayer's federal tax refunds have also been established. The Tax Fraud Unit of the TRD has additionally modified its policies to provide more consistent investigations of delinquencies and will soon establish measures to provide accountability for the recommendations it makes to district attorneys for prosecutions. The department has additionally hired a designated prosecutor to work with the district attorney's office to pursue tax fraud cases. Committee members raised the issue of whether a tax fraud prosecutorial unit should be established within the Attorney General's Office.

The LFC's audit of the TRD's enhanced audit efforts raised a concern that the initiative lacked staffing depth. To respond to this concern, the TRD hired an additional staff person to maintain managed audits. However, Secretary Goodwin stated that the TRD should continue to limit the size of its staff to maintain consistency among managed audits.

NORTH AMERICAN OIL AND GAS DEMAND

John Rigg and Greg Beilstein of British Petroleum Energy Company (BP) discussed demand in the oil and gas markets of North America within the context of business conducted in these markets by BP. BP is an oil, gas, petrochemicals and renewables company. It produces those natural resources in Alaska, the Mackenzie Delta, Canada, the Rocky Mountains, the San

Juan Basin, the Permian Basin, the Gulf Coast, in Trinidad and in other locations throughout North America. Mr. Rigg and Mr. Beilstein discussed the market demand cycles for natural gas in North America. Since 1990, the market has experienced five distinct increases and decreases, or demand cycles, for North American natural gas. Despite these cycles, the demand for gas has increased overall during the last 15 years. Production of natural gas has increased slightly since 1999 in the continental United States, but has decreased significantly in offshore production. On the other hand, liquified natural gas demand has risen sharply since 1998. Several regasification terminals to convert the liquified natural gas to a gaseous phase are proposed or planned to be constructed along the southern and eastern coasts of the United States within the next 10 years.

According to Mr. Rigg and Mr. Beilstein, the demand for North American natural gas is expected to grow at a rate of one percent per year and gas from traditional North American basins will not meet the demand. Incremental sources of supply might thus be needed. Mr. Maerz and Mr. Rigg stated that infrastructure investment to enable new supply sources would additionally be required to reach growing markets. Without additional investment, Mr. Rigg and Mr. Beilstein stated that supply and market misalignment and infrastructure bottlenecks might occur. They also predicted that higher prices, negative economic impacts and undesirable political intervention might occur without additional infrastructure investment. To ensure that the required infrastructure is built, Mr. Maerz and Mr. Rigg suggested that gas producers should commit to develop and exploit the natural resources and seek government regulatory clarity and certainty. They also suggested that pipeline companies provide capital commitment and technical expertise for project development; build low-cost efficient infrastructure responsive to customer needs and share investment risk. They further suggested that state policymakers provide a stable, predictable regulatory regime and allow regulated entities to support supply and infrastructure development that facilitates market growth.

NEW MEXICO NATURAL GAS AND OIL PRODUCTION

Mark Fesmire, director of the Oil Conservation Division of the Energy, Minerals and Natural Resources Department, discussed the demand for natural gas and oil produced in New Mexico. In 2003, a total of 1,589,698,011 natural gas wells were permitted and drilled in New Mexico. During the same year, 66,531,336 oil wells were drilled. Production of both natural gas and oil has decreased slightly during the past three years.

CONVENTION CENTER FEE UPDATE

Bill Fulginiti, executive director of the New Mexico Municipal League, provided an explanation of convention center financing. Mr. Fulginiti stated that the legislature recently passed three bills to help finance convention centers in Albuquerque, Las Cruces and Santa Fe.

The passage of one of those bills authorized the city of Albuquerque to impose a one percent hospitality fee on gross room revenue per day. Fifty percent of the proceeds from the fee is used to finance improvements to the Albuquerque Convention Center, while the remaining 50 percent is used for advertising to promote tourist attractions, facilities and events in the municipality. The act permits revenue bonds to be issued using the fee as the source of repayment. The fee raised $1.7 million in Albuquerque as of July 1, 2004.

The Convention Center Financing Act authorizes the city of Las Cruces to impose up to $2.50 per day for vendees using lodging facilities. The use of the funds is for land acquisition and construction of a convention facility. The city of Las Cruces, Dona Ana County and other incorporated municipalities within 20 miles of Las Cruces are authorized to levy the fee. To date, those entities have not enacted the fee. The fee could raise up to $1.133 million.

The Civic and Convention Center Funding Act authorizes the city of Santa Fe to impose up to a two percent fee on room rentals. The fee shall be used for the construction and operation of a convention facility and may also be used for a parking facility associated with the convention center. The act also allows revenue bonds to be used. A one percent fee could yield approximately $1.158 million annually, while the two percent fee would generate about $2.317 million. As of June 30, 2004, the city of Santa Fe had collected $1.078 million in revenue from the fee.

Carol Robertson-Lopez, mayor pro-tem, Michael Duran, city manager, and Katherine Raveling, city finance director of the city of Santa Fe, discussed the impact of the fee imposed pursuant to the Civic and Convention Center Funding Act. In addition to the revenue from the lodger's tax, revenue from the convention center fee imposed pursuant to the act has been dedicated to improvement of the Sweeney Convention Center in Santa Fe and to a feasibility study for a new convention center in Santa Fe. Mayor Pro-Tem Robertson-Lopez stated that the additional funding raised by the convention center fee is necessary to continue the convention center projects. The mayor has issued requests for proposal for a project manager, for archaeological studies and for design of the new convention center. City of Santa Fe officials hope that the new convention center will be open for business in July 2008. The seating capacity for the new facility will be approximately 1,800 people. Additional space will also be available to provide meals to convention attendants and for exhibition spaces for local artists. Committee members stated that construction of the new facility should begin as soon as possible to minimize the financing expenses of the project.

NEW MEXICO OIL AND GAS REVENUE COLLECTIONS

Thomas Clifford, PhD, chief economist, TRD, and Kirk Muncrief, senior economist, TRD, elaborated on the state and local revenues that stem from oil and natural gas production in the state. During fiscal year 2003, approximately $1.07 billion in tax, royalty and rent revenues stemming from oil and gas production were collected. Total state and local collections from taxes, royalties and rents were approximately $1.3 billion in fiscal year 2004, a 22 percent increase from the previous year. $1.17 billion of that amount included state revenues, while $92 billion included local revenues. State land beneficiaries received about $40 million. Those amounts do not include gross receipts tax, personal income tax and corporate income tax liabilities incurred by oil and gas companies.

Dr. Clifford outlined recent trends in state oil and gas revenues and production. Revenues reached their peak in fiscal year 2001, the year of the California energy crisis. After falling by one-third in 2002, revenues increased by a total of 38 percent over the last two years. Fiscal year 2004 was the second-highest revenue year on record. Natural gas production has stabilized in fiscal year 2004, after declining in the previous two years. The average New Mexico gas price increased by $1.04, or 25 percent, during 2004. Crude oil production declined by four percent in fiscal year 2004. The average price of crude oil in New Mexico increased by $3.11 per barrel to $30.83, the highest average price reported in New Mexico since 1983. Revenues from oil production in 2004 were $152 million, an increase of eight percent.

Dr. Clifford discussed the impact of demand and production of natural gas on regional natural gas prices. He noted that regional prices fluctuate widely due to fluctuating demand and pipeline capacity conditions. The gap between average New Mexico prices and those at the Henry Hub Trading Center in Louisiana has widened to an average of $0.84 over the last two years. Permian Basin prices have remained closer to the Henry Hub prices.

GASOLINE AND SPECIAL FUEL TAX REPORTING REQUIREMENT PROPOSAL

Dr. Clifford and Linda Palmer, audit supervisor, TRD, proposed a bill for adoption by the committee. The proposed legislation creates new reporting requirements for gasoline retailers and special fuels wholesalers and penalties for failure to comply with those requirements. Pursuant to the proposed legislation, gasoline retailers and special fuels wholesalers would be required to file monthly information returns with the TRD. Other suggested changes include technical changes to conform state law to the International Fuel Tax Agreement.

The committee recessed at 4:30 p.m.

Thursday, October 14

GOVERNMENTAL GROSS RECEIPTS TAX COLLECTIONS UPDATE

Dr. Clifford discussed the impact of the passage of Senate Bill 23 during the 2004 legislative session. The bill amended Section 7-9-3.2 NMSA 1978 to expand the definition of "governmental gross receipts" to include receipts from renting or granting permission to use parking, docking or aircraft tie-down spaces. Dr. Clifford stated that although it is too early to surmise the impact of the legislation, a large increase in governmental gross receipts tax collections occurred between May and July of 2004. However, a significant portion of this increase might be attributable to seasonal revenues from local water utilities, which pay a significant portion of the governmental gross receipts tax.

DEPARTMENT OF FINANCE AND ADMINISTRATION DYNAMIC SCORING PILOT PROJECT

Melissa Vigil, chief economist of the Department of Finance and Administration (DFA), and Billy Leung from REMI discussed the implementation of a legislatively mandated pilot project to provide dynamic scoring fiscal analysis services for legislative proposals during the 2004 and 2005 legislative sessions for bills that have a static impact in excess of $10 million. The DFA has worked with the staff of REMI to conduct and implement its dynamic scoring model and to perform dynamic scoring analyses.

Ms. Vigil discussed the difference between dynamic scoring and static scoring. Static scoring estimates the gain or loss associated with the existing level of taxable income or other tax bases. Dynamic scoring estimates static impacts, but allows taxable income to vary, enabling estimation of the full impact of a policy change. For instance, a tax change might create an economic shock that has a ripple effect on business activity, consumer spending and population. Those factors affect the tax base. While dynamic scoring takes the ripple effect into consideration in fiscal impact estimates, static analysis excludes the ripple effect from consideration. Moreover, dynamic scoring analysis includes long-term employment and output impacts resulting from policy changes as factors affecting fiscal impact figures.

GOVERNOR RICHARDSON'S INVESTMENT PARTNERSHIP (GRIP) UPDATE

Rhonda Faught, secretary of transportation, and Robert Olcott, chief economist, Department of Transportation (DOT), provided the committee with an update of the economic impacts and highway projects funded resulting from House Taxation and Revenue Committee Substitute for House Bill 15, which passed during the 2003 special session, also known as Governor Richardson's Investment Partnership (GRIP). Pursuant to the legislation, the special fuels tax was raised by $.03, the weight distance tax was raised by 38 percent and vehicle registration fees were raised by an average of $12.50 per year. Some transportation projects funded by GRIP included the widening of United States Highway 491, improvement of Interstate 40 between Grants and Thoreau, improvement of Interstate 10 in Lordsburg and improvement of the Coors Boulevard-Interstate 40 interchange in Albuquerque. An amendment requiring the DOT to hire a workforce comprised of a minimum of 70 percent in-state residents for 100 percent state-funded projects also passed. The legislation expressed the intent of the legislature to authorize the issuance of approximately $1.6 billion in state transportation bonds in annual increments of $350 million.

According to Secretary Faught, GRIP will create 8,000 jobs per year and will create an $8.4 billion positive impact on the economy. She additionally stated that $342.4 million in savings would be generated by reduced commuting times, and $49.5 million would be saved in reduced vehicle maintenance costs. Secretary Faught predicted that GRIP will generate approximately $90 million in gross receipts tax revenues.

Secretary Faught discussed the new money that would be raised from the issuance of bonds and how that money would be refinanced throughout the year. Forty-five million dollars of the funding sources for the debt service for GRIP during 2004 will be comprised of state funds, and $112.3 million will be comprised of federal funds.

Currently, all of the 40 projects authorized pursuant to GRIP are in some stage of development from design to bidding for construction. Schedules for those projects were set by the degree of design and complexity. Secretary Faught assured the committee members that DOT is committed to completing all of the projects authorized pursuant to GRIP.

Mr. Olcott briefed the committee members on the implementation of weight distance tax identification permits, which were created pursuant to GRIP to identify vehicles that are subject to the tax. To defray the costs of issuance and administration of the permits, TRD has established a $2.00 administrative fee. DOT anticipates that several weight distance identification permits will be issued on January 1. The issuance of the permits is expected to improve enforcement of the weight distance tax and the trip tax.

INTERAGENCY INFORMATION SHARING FOR TAX ENFORCEMENT

Colonel Matt Murray, chief, and Ron Cordova, deputy chief, both of the Motor Transportation Division (MTD) of the Department of Public Safety (DPS), discussed the manner in which the MTD shares information with the Motor Vehicle Division of TRD and other divisions of the TRD for the purpose of tracking information used to enforce the weight distance tax and the use of oversize and overweight permits. Colonel Murray and Mr. Cordova provided the committee with a visual presentation of the interface containing information entered by TRD that helps MTD identify delinquent or non-filing taxpayers. They also explained how the interface assists the MTD in providing data to the TRD for audit purposes. Since the passage of GRIP, which created the weight distance tax identification permits, permit revenues have increased dramatically. Revenues from issuance of the permits is expected to reach $2,943,822. Since July 2004, the MTD has issued 444,529 tax identification permits.

LIQUOR EXCISE TAX INCREASE PROPOSAL

Santa Fe County Commissioner Harry Montoya and James Gilson, Santa Fe County Family Services director, proposed that the committee support legislation to authorize all counties to impose local liquor excise taxes of 10 percent. Commissioner Montoya and Mr. Gilson suggested that imposition of the tax could help counties defray the costs of housing prisoners that have been incarcerated as the result of alcohol-related offenses. McKinley County, which currently has the authority to impose the tax pursuant to the Local Liquor Excise Tax Act, has experienced decreases in detoxification center admissions, alcohol-related automobile accidents, cirrhosis mortality rates and suicide rates after enactment of the tax. Commissioner Montoya stated that the tax could provide similar benefits to the rest of the counties in the state if they are permitted to impose the tax.

During a public comment period, Ed Mahr, a lobbyist for the New Mexico Alcohol Beverage Wholesalers Association, expressed opposition to a local option local liquor excise tax. Mr. Mahr contended that the tax would unduly transfer legislative power to local governments. He stated that distributions to the Local DWI Grant Fund have effectively addressed local alcohol-related issues. He suggested that greater distributions might be permitted for counties with the most serious alcohol-related issues. Fred O' Cheskey, also a lobbyist for the New Mexico Alcohol Beverage Wholesale Association, stated that a local option liquor tax should not be permitted because New Mexico has one of the highest taxes on liquor in the country. He also stated that placing an additional tax on liquor would have a regressive effect and could ultimately negatively impact tourism. He further stated that imposition of an additional tax on liquor might ultimately promote bootlegging and illegal sales of alcohol to minors.

LOCAL DWI GRANT FUND PROGRAM AUDIT UPDATE

Manu Patel, deputy director, and Scott Roybal, performance auditor, both with the LFC, presented their findings of a review of the Local DWI Grant Fund Program's responses to the LFC's audit of the program in 2003. Mr. Roybal stated that the program made significant improvements subsequent to the audit and implemented several of the recommendations made by the LFC in its 2003 audit report. The LFC concluded that the program appears to be gaining momentum and that program accountability appears to be improving. However, the LFC found that the program continues to need a strategic plan that clearly identifies milestones and measures program success. Mr. Roybal also suggested that training and technical assistance to local DWI programs could be more effective by increasing site visits by staff from the Local Government Division of the DFA. The LFC also found that fiscal and programmatic deficiencies continue to affect some local programs. Finally, the LFC found that issues such as the improvement of the reversal of driver license revocations and single repositories for interlock data need to be addressed. The LFC concluded that once the DWI czar and other affected entities address those issues and when cross-agency coordination improves, the Local DWI Grant Fund Program will be an effective and accountable program.

STATUS REPORT OF THE GENTAX APPLICATION SYSTEM

Mr. Patel and Ed Paz, computer system auditor, LFC, discussed the LFC's review of the implementation of the GenTax Computer Application System for integrated tax processing. The LFC conducted the review to gain an understanding of how GenTax calculates distributions of state-shared taxes collected for counties and municipalities. It also conducted the review to determine if the GenTax system accurately calculates distributions of state-shared taxes collected for counties, municipalities and the state general fund. Another objective of the audit was to determine if controls are in place and operating effectively to ensure all Combined Revenue System (CRS) tax receipts deposited to a bank are processed by GenTax in a timely manner. Finally, the audit also was conducted to determine the status of the GenTax Computer Application System project implementation.

The LFC found that the GenTax Computer Application System adequately accounts for all tax receipts submitted for processing. However, the LFC concluded that a significant volume of transactions with insufficient taxpayer information needs to be handled manually through the GenTax system. The TRD does not perform daily cash receipts reconciliations between revenue processed in GenTax and cash deposited to a bank. Thus, the LFC found that it is difficult to determine whether all bank deposits were processed by GenTax in a timely manner.

Based upon its review of the GenTax system, the LFC formed recommendations for the TRD. First, the LFC suggested that receipts processed by GenTax should be reconciled with bank deposits on a daily basis. The LFC also suggested that plans to transfer knowledge of the GenTax Computer Application System to internal technology staff should be formulated. Mr. Paz stated that knowledge transfer will reduce reliance on more expensive vendor support. The LFC made other suggestions, including the implementation of plans to implement a data warehouse and to automate revenue processing for taxes and fees received through the mail. The LFC finally suggested that the TRD work with the legislature to amend Section 7-1-8 NMSA 1978 to permit the LFC to access electronic information in the GenTax system for audit purposes, as the LFC was unable to obtain all of the information it needed during the current audit to determine whether the distributions in the GenTax system were correctly calculated.

The committee adjourned at 4:00 p.m.