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

September 26-27, 2007
Hubbard Museum of the American West
Ruidoso Downs, New Mexico

The fourth meeting of the Revenue Stabilization and Tax Policy Committee was called to order by Senator Timothy Z. Jennings, chair, at 9:16 a.m. at the Hubbard Museum of the American West in Ruidoso Downs, New Mexico.

Present
Sen. Timothy Z. Jennings, Chair
Rep. Edward C. Sandoval, Vice Chair
Sen. Kent L. Cravens (9/26)
Rep. Anna M. Crook
Sen. Dianna J. Duran (9/26)
Rep. Keith J. Gardner
Rep. William J. Gray (9/26)
Rep. Ben Lujan, Speaker of the House
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva (9/26)
Sen. John Arthur Smith
Sen. James G. Taylor
Rep. Thomas C. Taylor

Absent
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Rep. Roberto "Bobby" J. Gonzales
Rep. George J. Hanosh
Sen. H. Diane Snyder

Designees
Rep. Nathan P. Cote (9/27)
Rep. Andy Nuñez
Rep. John Pena
Rep. Henry Kiki Saavedra (9/26)

Sen. Ben D. Altamirano
Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. Donald E. Bratton
Sen. Phil A. Griego
Sen. John T.L. Grubesic
Rep. Manuel G. Herrera
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville
Sen. Leonard Lee Rawson
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez

Sen. John C. Ryan
Sen. William E. Sharer
Rep. Don L. Tripp

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

Staff
Tim Crawford
Doris Faust
Cleo Griffith
Pam Ray

Guests
The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Wednesday, September 26

Welcome and Local Issues

John Waters, city manager, Ruidoso Downs, and Tom Battin, chair, Lincoln County Commission, presented local issues of concern to the town of Ruidoso Downs and Lincoln County. Mr. Waters gave the committee Mayor Miller's regrets for not being able to be present to welcome them and discuss Ruidoso Downs issues. Mr. Battin discussed problems associated with the growth of the county, focusing mainly on infrastructure issues. He noted that the Department of Finance and Administration published "Growth in New Mexico — Impacts and Options", in which it was clearly stated that revenues of local governments are not keeping pace with needs presented by increased population growth in those areas. There is always pressure to expand services currently funded. Lincoln County will be asking for an increased mill levy for expansion of the county hospital. Currently, there are two rural clinics, and the increased millage will allow development of more. The court complex also will be expanded. Currently, there is $1 million set aside for this expansion, but another $3.8 million is needed. The complex will house the district attorney's office and the probation and parole offices. Two hundred fifty thousand dollars is needed to purchase a fire truck for Hondo, $100,000 is needed to expand county offices and $120,000 is needed for the Glencoe fire station. The land in Glencoe has already been donated for the fire station. The county has been unable to participate in GRIP II because the local match required is too high for Lincoln County to meet.

When questioned about outstanding capital projects, Mr. Battin noted that in Lincoln County, capital funding appropriated by the state is used in a timely manner, and there are really no outstanding unused capital appropriations.

Senator Jennings acknowledged the service of the Ruidoso Downs mayor to the state as a state police officer.

Mr. Waters discussed the issues surrounding the wastewater treatment plant being built by Ruidoso Downs and the Town of Ruidoso. There are serious financial concerns that have been raised due to the $35 million cost of the plant. The cost is high because of the phosphorus and nitrate standards that the communities are required to meet. Much of the development money has already been identified. The remaining cost of the facility will be approximately $13 million, provided that the federal funds continue to be allocated. Ruidoso is providing 85% of the cost of the plant, and Ruidoso Downs is providing the remaining 15%. It appears that the federal government will not be able to appropriate adequate funding to help complete construction of the plant. Mr. Waters supplied several handouts, one of which provides a breakdown of the money already allocated to the plant. Ruidoso Downs is hoping to be classified by the federal government as a "colonia", which would then allow it to access additional federal funding for the wastewater treatment plant. Mr. Waters' concern about the Department of Environment is that the standards for phosphorus and nitrogen adopted by the state are the most stringent in the nation. The federal government adopted the water quality standards of the Department of Environment. Right now, about 15% of Ruidoso Downs residential customers are not able to pay their water bills and are in default. Mr. Waters noted that Cuba and Chama will also be facing the same water quality issues now faced by Ruidoso Downs. The state will be asked to help to build the wastewater treatment plants that will be required by all of these communities.

Mr. Waters replied in response to committee comments that Ruidoso Downs had imposed the greatest amount of local gross receipts tax that it could to provide needed services. The community had asked Representative W.C. "Dub" Williams to introduce a bill in the last session that would allow the community to receive a portion of the gaming tax that is paid by Ruidoso Downs and the Billy the Kid Casino. In response to a committee question, Mr. Waters noted that if Ruidoso Downs does not build its wastewater treatment plant in a timely manner, it will be fined by the federal government. The communities had already begun plans for the plant that were sufficient to meet the phosphorus standards, but when the nitrogen standards were adopted, they had to change the plans to incorporate the new nitrogen standards. This substantially increased the cost and complexity of the plant.

Speaker Lujan suggested that there may be money left over from an appropriation made for a landfill in Lincoln County. The appropriation should be checked for a balance. The committee generally agreed that, because the state set the water quality standards that have increased the cost of the wastewater treatment facility, it is incumbent upon the state to help provide the funding for the project. In response to a committee question, Mr. Waters noted that the initial wastewater treatment facility as planned would have cost $35 million to provide water that met the phosphorus standard. When the nitrogen standard was adopted several years later, the planned treatment facility was not going to be able to meet that standard. Ruidoso Downs and Ruidoso agreed to build the plant to standards needed to remove phosphorus, but in the five-year period beginning in 2006, they would have to add to the plant to meet the nitrogen standards. They are now seeking the money needed to meet the nitrogen standards.

Taxpayer Protection Act and Fair Tax Burden Proposals

Senator Cravens introduced the speakers for the Taxpayer Protection Act (TPA) proposal. Paul Gessing, executive director, Rio Grande Foundation, and Michael J. New, Ph.D., a consultant for several think tanks and an assistant professor at the University of Alabama, spoke about fiscal limits states have placed on tax revenues they have received.

Mr. Gessing presented information about the Rio Grande Foundation, New Mexico's free market think tank, to the committee. He introduced the concept of revenue and spending limits. He discussed his organization's support of the TPA as a means to keep money in the hands of the most efficient spender, the one that generates revenue. Mr. Gessing noted that only 40% of the state's excess revenue would be returned to the taxpayers, and 60% would be deposited in the Severance Tax Permanent Fund. He then turned the discussion over to Dr. New for the details of revenue and spending limits and a comparison of the TPA with other states' revenue and spending limit schemes.

Dr. New noted that 30 states have enacted some kind of revenue or spending limit. New Jersey adopted its limit first, in 1976. During the tax revolt of the 1970s, 17 states enacted some form of revenue or spending limits. Few states adopted revenue or spending limits during the 1980s, but in the 1990s, states again began to look at the concepts, and some states considered and enacted revenue and spending limits. Maine adopted a revenue or spending limit as recently as 2005. Colorado's TABOR (taxpayer bill of rights), possibly the best known of any of the revenue and spending limits, was enacted in 1992.

Colorado's TABOR allows revenues for state and local governments to increase by no more than the inflation rate plus population growth every year. It also requires that all surpluses be returned to the taxpayers in the form of rebates. In 1997, state revenues began to exceed TABOR, and a total of $3.2 billion was returned in rebates to the taxpayers.

The TPA differs from Colorado's TABOR in several important ways. The TPA sets higher limits for revenue growth than TABOR or any other revenue limitation in any of the 30 states with those limits. In addition, there is no "ratchet back" effect in the TPA. Therefore, when revenue drops for one year, it can climb back to prior levels as revenue sources gain strength again.

Dr. New stated that New Mexico is said to have the highest tax burden in the southwest and one of the highest tax burdens in the country. According to the U.S. Census Bureau, New Mexico's combined state and federal tax burden places it at tenth highest in the nation. Dr. New suggested that this tax burden might be hampering economic growth and discouraging businesses from locating in New Mexico.

Dr. New concluded that he believes other states have shown that well-designed revenue and spending limits are able to limit government growth. The TPA would also accomplish this goal. In addition to limiting the rate of government growth, it would promote tax relief, strengthen the economy and provide a more lean and efficient government for New Mexico taxpayers.

Property Tax Disclosure — House Bill 1087

Karen Montoya, assessor, Bernalillo County; Leo Barraza, deputy assessor, Los Alamos County; and Tim Eichenberg, director, Property Tax Division, Taxation and Revenue Department (TRD), asked the committee to support a change in Section 7-38-12.1 NMSA 1978 to allow assessors to release to protestors appearing at a county valuation protest board hearing information from affidavits filed with the county clerk regarding details of the sale or transfer of real property. Currently, the only use permitted for information in the affidavits is for analytical and statistical purposes in the application of appraisal methods. For the release of information in the affidavits, it must be determined that the information is material to resolving the dispute before the board. Mr. Barraza noted that this change would benefit the protestors more than the assessors. The committee did not discuss the disclosure of sale values of residential property to aid assessors in setting values for residential housing, except to ascertain that the bill would not allow that to occur.

New Mexico Soil and Water Conservation Levy Duration Change

Debbie Hughes, executive director, New Mexico Association of Conservation Districts (NMACD), noted that soil and water conservation districts were initially created without a revenue stream. They are political subdivisions of the state and were given the authority by statute to impose a mill levy within their districts by resolution following a referendum approving the imposition of not more than one mill on real property within the district. The real property within an incorporated municipality may be excluded from the assessment. Supervisors (the elected governing officials of the district) must adopt a resolution each year after the imposition that continues the imposition. A new resolution and another referendum is necessary to extend the levy beyond its original 10-year period. The amendment language would allow the levy to be extended beyond the 10-year limit by a resolution of the supervisors. Ms. Hughes asked that an emergency clause be included in the bill.

Ms. Hughes also provided the committee with a list of all 47 soil and water conservation districts and their budgets for the last two years. In addition, she provided the committee with a list of the districts that have imposed a mill levy, the percent of a mill imposed and the amount of revenue generated by the imposition. Also included as part of the NMACD information packet was information about the many projects currently being implemented by the various districts.

TRD — Legislative Proposals

Jan Goodwin, secretary of taxation and revenue, and Jim Nunns, tax policy director, TRD, presented several proposals that the department is considering for introduction in the upcoming legislative session.

However, prior to presenting the TRD's legislative proposals, Ms. Goodwin spoke about the quarterly reporting issue that had arisen due to the state beginning to charge interest and penalties on taxpayers who are required but failed to make quarterly reports of their income. Penalties charged for not filing quarterly reports in 2006 were abated. Two letters will be sent to taxpayers by the TRD, one dealing with those who already paid penalties and the second reminding taxpayers that, beginning in 2008, they are expected to report quarterly according to statute. Ten years ago, the penalties were enacted; prior to that, reporting quarterly was required, but there was no penalty. Some people who owe as little as $10.00 in taxes may not realize that they also must report quarterly. In response to committee questioning, Ms. Goodwin noted that quarterly reporting helps the state to have a year-round revenue stream and enables the state to have reliable revenues. In response to a question from the audience, Ms. Goodwin assured the committee and audience that the farm and ranch exemptions from quarterly reporting are still in effect.

All of the TRD proposals first have to be approved by the Governor's Office before they can be introduced on behalf of the department. Proposals are in four categories: Motor Vehicle Code changes; changes in requirements for electronic filing and administration; revenue distribution procedure changes; and administrative and technical changes.

Motor Vehicle Code Changes

In the Motor Vehicle Code, there are several proposals. The federal government is requesting further changes to the Commercial Driver's License Act. Not making these changes could expose the state to various onerous sanctions by the federal government whereby New Mexico's federal highway funds would be decreased by a greater amount each year until compliance occurs.

The Driver License Compact needs to be updated. The 1987 version does not reflect many of the changes in technology and communications that have become commonplace since the 1990s.

The Motor Vehicle Code needs to be updated so that enforcement and administration are made easier. Inconsistencies need to be addressed and reconciled. A major area of concern is the inability of the Motor Vehicle Division of the TRD to obtain updated address information for registration, license and identification card holders.

The TRD also wants to increase the registration reinstatement penalties from $25.00 to $100 to enforce the Mandatory Financial Responsibility Act.

Electronic Filing and Administration

The TRD would like to introduce a bill that would require more businesses to file tax returns electronically. This has been introduced in the past. In this version, the TRD is considering phasing in compliance of businesses with tax liabilities of less than $25,000 but more than $10,000. Also, tax returns filed pursuant to the Cigarette Tax Act and the Alternative Fuel Tax Act would be included among the returns required to be filed electronically.

Distribution Clarification

Rules in statute for distribution of revenues to local governments and special funds are sometimes unclear or silent on the specific rules governing the distributions. Computer systems can be used more effectively if these distribution rules are clarified. There are a number of areas that need to be clarified for more accurate distributions. They include:

- the revenue source of the distribution;
- the stacking order for multiple revenue sources or from one revenue source;
- the exact base for the distribution from gross receipts tax revenues;
- more specificity regarding the treatment of the food and medical gross receipts tax hold-harmless provisions;
- more specificity in the order in which tax credits may be applied;
- the payment source for refund interest;
- consistent imposition of administrative fees;
- clarification of the TRD's authority to make a distribution to any party other than the named beneficiary;
- clarification of the TRD's authority to correct all distributions to all beneficiaries; and
- more specificity regarding effective dates of distributions to identify clearly the first distribution that will be made or affected.

Adjustments that need to be made to distributions to local governments should not have a time limit, as time limits cause the TRD's information technology (IT) systems to have complications. Time limits can provide an unintended hold-harmless provision for local governments.

Technical and Tax Administration Changes

The TRD included in its presentation innumerable ideas for administrative and technical changes that it would like to make. (See handout for details.)

State Racing Commission and Gaming Control Board — Status Report

Julian Luna, executive director, State Racing Commission (SRC); Frank Sena, chair, SRC; and David Norvell, chair, Gaming Control Board (GCB), discussed the implementation of the Horse Racing Act enacted in the 2007 legislative session. The GCB and the SRC are now housed in the same building and are able to work together as necessary. The main change in the Horse Racing Act that requires greater coordination between the two agencies is a requirement that the SRC have the GCB conduct its background investigations. The change requested by the Federal Bureau of Investigation (FBI) regarding gathering of fingerprint cards was approved by the FBI.

Racetrack Status and Concerns

Bruce Rimbo, general manager, Ruidoso Downs and Billy the Kid Casino, noted that his operation is a casino, but is also a thriving racetrack. He suggested that the GCB needs additional IT support personnel to help facilitate the changes needed in computer systems linking the racetrack gaming machines to the GCB. He noted that the overlap in racing days found among the tracks shortens the live racing in the state and provides less time for fans and customers to spend at the races. These overlapping race days also are difficult to accommodate for the racers.

Bill Hayles, general manager, Zia Race Track and Black Gold Casino, noted that finding competent employees is one of his greatest concerns. Few people living in the Hobbs area have experience with either horse racing or casinos. He added that IT people are needed for staff positions also. He is especially concerned that when power outages occur in Hobbs, the casino is out of operation for several days until the IT people of the GCB can get the systems operating again.

Don Cook, general manager, The Downs at Albuquerque, stated that this year's attendance was up 20%. The handle was up 15%. There was a 100% increase in purses. The main concern of The Downs at Albuquerque is the condition of the facility. It is owned by the State Fair and needs to be upgraded for the safety of the horses and the customers. The electrical system needs upgrading and the stands are not in good shape.

Byron Campbell, general manager, SunRay Track and Casino, San Juan County, reported that SunRay is growing. Farmington is expanding the track. Horse racing is growing also. The casino is using all of the expanded hours allowed. There will be demand for 1,000 machines by 2010. The business needs to grow as the population increases, because demand increases. The hours allotted are too confining, as is the limit on machines. San Juan County has increased the rent, so the business has to grow to cover those increased costs. SunRay is adding 17,000 square feet of space for gaming and other activities. The high school rodeo finals will be held at SunRay's track in 2008-09.

Scott Scanland spoke on behalf of Sunland Park Racetrack and Casino, which went into business in 1999. Now the Tiguas reopened their casino in El Paso. They offer only 8-line bingo machines, which are Class 2 gaming. Sunland Park believes that Texas law is being bent a bit by the Tigua operation. Mr. Scanland also reminded the committee that there still could be another tribal casino in the area if the Pueblo of Jemez and Gerald Peters are able to complete their purchase of land in Dona Ana County, have it placed in trust and then have it approved by the state governor and the federal Department of the Interior. Mr. Scanland noted that the legislature has very little control over the establishment of that casino.

There followed a discussion of the reasons why The Downs at Albuquerque believes it needs to relocate to Moriarty. This is mainly because the opportunities to expand the services offered by the casino are limited on the fairgrounds and because the facility is not being properly maintained. Reasons noted by Gino Zamora were:

- new facilities are needed that offer more family-oriented entertainment;
- the grandstands need renovation; and
- equestrian facilities need upgrading because they can be dangerous to horses, riders or others, such as grooms.

Moving the racetrack/casino would not require the state to continue to expend money to maintain the track and its facilities.

Hobbs, according to Mr. Hayles, is faced with a great economic development opportunity. More lodging, restaurants and other amenities are required to keep out-of-state visitors to the Black Gold Casino and Race Track in Hobbs staying longer. Mr. Hayles is planning year-round events, such as concerts and upscale food and beverage facilities, to keep people coming back and playing longer.

Byron Campbell, SunRay Track and Casino, noted that to keep players interested in gaming machines, the machines need to be changed every five to six years. SunRay has just completed a renovation that includes a new restaurant and new simulcast facilities. He lamented that keeping the track and casino in acceptable condition is a capital-intensive process.

Committee members expressed their ongoing concern that horse racing operations are still bringing in a small percentage at most of the tracks. All of the general managers were reminded that gaming was provided to help reinvigorate horse racing because it provides many agricultural jobs and keeps money in rural areas of the state. Ruidoso Downs and The Downs at Albuquerque show that racing provides a double-digit percent of overall receipts (32% and 34%, respectively). Most other tracks show that the percent of overall receipts generated by racing is under 10%. (See attached chart.) Ruidoso Downs has decreasing gross revenue. It has the fewest gaming machines, but has strong attendance at live races. Its gaming revenue is still the greater portion of its total revenue. Ruidoso Downs showed a 41.2% decrease in gaming revenue between 2002 and 2007. This includes the period when Zia opened near the Texas line in Hobbs and also reflects the opening of the new casino at the Inn of the Mountain Gods.

It was noted that the approval process for the Hobbs track and casino was expedited. Race days were assigned before the track opened. The casino was able to begin operation before the first races were held.

There are two license applications pending: Raton and Santa Fe. There is tentatively a racetrack planned for Tucumcari. Only one license can be issued pursuant to the compacts adopted in 2007.

Mr. Cook, The Downs at Albuquerque, noted that it takes 90 to 120 days to get background investigation reports back on an employee. He stated that there needs to be a temporary work permit that will allow an employee to work on a conditional basis until the background information comes in.

Mr. Norvell and Mr. Luna noted that Georgene Lewis is now the state gaming representative. There are 3,500 to 3,600 nontribal gaming machines in the state. Three hundred nineteen gaming machines are located at The Downs at Albuquerque. They would like to increase that number to 500. There are 14,000 gaming machines within a 45-mile radius from Albuquerque. Indian gaming operations now have about 17,000 gaming machines statewide. The northern part of the state can absorb more racing days. There are five "racino" licenses, with six racing licenses active. The sixth is the State Fair horse race. It is the only racing license that does not also have a casino license. The Downs at Albuquerque and SunRay Park run an average of 8.5 horses per race. SunRay has a 10-horse track. There are two to three times as many horses available to race as there are stalls to house them in the state.

Mr. Scanland noted that overlap of seasons hurts all of the tracks. In the summer, Ruidoso Downs and the northern tracks run. Racing is only possible in the north in the summer months.

Speaker Lujan reminded all present that when Governor Gary Johnson allowed gaming machines to be placed at tracks, the tracks were virtually dying. Gaming was allowed at the tracks for the sole purpose of infusing money into horse racing so it would not die. Mr. Luna noted that when purses were down, licensing was down. In the 1998-99 race season, total purses were down to $30,000 per day; now total purses are up to $250,000 per day. Total purses for the state were at $6.5 million in 1998-99 and are now at $50 million for the season. There are new breeding farms in the state, and the quality of the horses is much greater than in the 1990s.

Ruidoso Downs still loses money on horse racing each year. It must supplement its revenue with revenue from its gaming machines. Sunland Park lost $1,000,000 on live racing last season. SunRay lost $1.5 million, or $35,000 per day. Senator Jennings noted that it was all right for the tracks to be subsidized by gaming machine revenue in the beginning because it was expected that horse racing would require subsidization to keep it going. Otherwise, there would never have been gaming machines allowed at the tracks. The demand on local infrastructure with increased traffic to casinos and racetracks must also be recognized and taken into consideration. Services such as expanded fire protection and law enforcement are needed.

The meeting recessed at 6:16 p.m.

Thursday, September 27

The meeting was reconvened at 9:11 a.m. by Senator Jennings.

Small Winery Issues

Dan Weaks, representing the New Mexico Winegrowers Association, introduced the small wineries discussion by describing two bills that he would be presenting. The first provides a regulatory framework for tracking direct sales of wine to consumers, and the second increases the amount of wine that can be sold by a "small winery" for tax calculation purposes. With him were Katy McCoy, Wine Institute of California, Beal Gomez and Florent Lescombes, owner, St. Clair Winery, Deming.

Ms. McCoy spoke about the direct wine shipment issue. The bill creates a permitting system for in-state and out-of-state wineries that allows a winery to sell up to 24 cases of wine to an individual in New Mexico and provides for tax to be paid on the wine. The bill proposed is essentially the same as bills introduced in 2006 (HB 1018 sponsored by Representative Silva and SB 1047 sponsored by Senator Taylor).

Mr. Gomez compared tax rates between New Mexico and other states. He discussed the growth of the wine industry in New Mexico and how small wineries in New Mexico have grown, but they are still small by industry standards.

Mr. Lescombes discussed how the wine business requires a commitment to a long-term business. It can take seven years to create a product, even longer if grapes are just beginning to be planted. He requested the committee to consider the investment required to enter the winemaking business and asked that members do whatever they can to help the industry to prosper.

Mr. Nunns spoke directly about the bill. He noted that the cap should be such that an entire operation can come under it, so that a winery with several labels or winemaking locations does not have to split its operation into separate entities to avail itself of the lower tax rate. He discussed a tax credit that might be more effective in providing New Mexico's small wineries with the tax break desired.

There also was a discussion among the panelists about the difference between the scrutiny received by out-of-state, and possibly foreign, wineries as compared to the scrutiny that occurs with local wineries. They suggested that more attention be paid to out-of-state wineries seeking to claim the tax status of a small winery. Mr. Lescombes also noted that there are only two distributors that carry and distribute New Mexico wines. These distributors only carry Gruet, St. Clair and Santa Fe Vineyards products. All of the other 42 wineries in the state must distribute their own products. He is interested in the legislature looking at a way to get greater access to markets through a more balanced and receptive distribution system.

The committee questioned the impact on the state's economy of wineries in New Mexico. No information was available on the overall revenue generated by New Mexico wineries. There was concern that the direct shipment bill might be limiting marketing strategies of local wineries by limiting the number of cases to 24. In addition, the constitutionality of a credit was discussed. Finally, a question arose as to the reasons it took so much longer to get a winery license than a racetrack license.

Streamlined Sales and Use Tax Update

Mr. Nunns gave an update on the streamlined sales and use tax effort taking place. He said it is estimated that there is possibly a $34 billion loss in revenue nationwide because internet and catalogue sales are not taxed. New Mexico is following the streamlined sales and use tax negotiations as an "advisor" state. The streamlined sales and use tax initiative will require that definitions nationally be uniform so that it can be determined whether a product is or is not to be taxed. Sourcing, whether the tax is imposed at the destination of a transaction or origin-based, is still a problem among the states, the effects of which still need to be understood. Along with changes in the law that will be required, there will be some fees included in the streamlined sales and use tax process that the state will be required to pay. The state will have to develop rate and boundary tables and make them available for publication throughout the nation. Ohio will not join the initiative unless the sourcing rule is resolved to its satisfaction. Amnesty is also an issue with Ohio. In this case, "amnesty" deals with sellers who voluntarily enter into the streamlined sales and use tax process, but who may not be registered with the state at the time the seller joins the initiative. Kansas has adopted an "affiliated nexus" rule stating that if a business operates within the state, it has a nexus with the state, and any affiliate has automatic nexus. In summary, the major issues remaining are:

- sourcing;
- amnesty and anti-donation issues;
- whether to keep a gross-receipts-based tax or change to a sales tax;
- programming and computer systems changes, as well as process changes needed to implement the changes the state adopts;
- funding streamlined sales and use tax agreement (SSUTA) costs; and
- determining the net revenue anticipated.

To make an informed decision about whether New Mexico should join the SSUTA, an assessment of the additional revenue that will come to the state, the costs of compliance and membership and any revenue losses that will occur in the state must be completed.

Blue Ribbon Tax Reform Task Force Review and Update

Jim O'Neill reviewed the background and findings of the Blue Ribbon Tax Reform Task Force. The composition of the task force and the subcommittees formed by the task force are described in Mr. O'Neill's handout. The task force adopted 71 recommendations, only two of which were to study the issues further. Further study was suggested in the areas of property tax administration and effectiveness of economic development incentives. Mr. O'Neill characterized most of the recommendations as "adjustments" to the current tax system rather than tax reform. The following recommendations have not as yet been implemented:

1. to become a full participant in the streamlined sales and use tax initiative;

2. to repeal the "next sale taxable" requirement of Section 7-9-48 NMSA 1978, except for sales to government and nonprofits;

3. to implement an independent hearing process;

4. to expand local revenue options; and

5. to change the role of the corporate income tax.

Two items that were discussed, but were not included in the recommendations, were to remove the gross receipts tax from food consumed at home and to tax the commercial activities of nonprofit organizations. In 2004, the legislature did adopt a provision (Section 7-9-92 NMSA 1978) that removed the gross receipts tax from food items that are considered food for food stamp purposes.

Mr. O'Neill noted that the legislature since 2003 has adopted 136 tax measures, not including changes in distributions. Of those, 62 were adopted in 2007 alone. Some of those proposals reflected sound tax policy; however, many were economic development incentives that were not necessarily based on sound tax policy. He noted that there are no uniform standards used to determine the benefit to the state of adopting a tax incentive. There is also very limited follow-up and tracking once an incentive becomes law to determine its value to the state or target of the incentive. Mr. O'Neill suggested that tracking and evaluating tax incentives would benefit the legislative process. Finally, Mr. O'Neill suggested that many items that were recommended by the task force are still being discussed and presented to the legislature for approval. He noted that it may be time to review the entire Gross Receipts and Compensating Tax Act to determine if its effectiveness as the mainstay of New Mexico's tax system has been damaged by the amendments that have been adopted over the years. He wondered if these taxes still provide the bulk of the revenue for the state or have the recent changes structurally damaged the system the state relies on for much of its revenue.

Hold-Harmless Provisions

Bill Fulginiti, executive director, New Mexico Municipal League; Mr. Nunns; and Richard Anklam, executive director, New Mexico Tax Research Institute (NMTRI), reviewed the current hold-harmless provisions of various tax laws and discussed the need for these provisions, the effect of enacting these provisions and the relative ease of administering these provisions.

Mr. Fulginiti noted that municipalities and counties need hold-harmless provisions when their taxing authority or the amount of revenue will be affected by the tax provision to be implemented. However, if a hold-harmless provision is created, it should provide adequate lead time before implementation to allow the budgeting process of the municipalities and counties to account for changes in revenue that will occur. Gross receipts tax changes should begin in July rather than January because budgets have been set for the fiscal year. He noted that the hold-harmless provision in the food and medical gross receipts deductions is effective in keeping revenue stable in cities. He suggested that new enactments should contain provisions that will allow future reductions at the state level in rates or future credits, deductions or exemptions to be implemented without effect on the revenue stream of the municipalities or counties.

Mr. Anklam noted that hold-harmless provisions have an effect on three areas of the NMTRI's policy principles:

- state and local tax policy should not be costly to administer and should be easily understood by taxpayers to minimize compliance costs;
- state and local tax policy should do the least harm to the *private economy* and thus should consist of the broadest possible tax base to promote the lowest possible tax rates; and
- state and local taxes should be adequate to provide appropriate levels of services or goods best provided by the public sector (i.e., education, public safety and law enforcement, public thoroughfares and courts).

Gross receipts tax (GRT) sharing between the state and local govenments at one time had no exceptions, i.e., no credits or deductions and few exemptions. If the GRT were increased or decreased, everyone's share to be paid would increase or both the state and local government would see decreased distributions if the rate or base were narrowed. There was a balance between proponents and opponents of changes in the GRT that caused considerable debate when changes were proposed. New exemptions, deductions and credits were difficult to get adopted. Although the base GRT rate is 5%, the state receives only an amount equal to 3.775% of gross receipts within a municipal boundary. The difference, or an amount equal to 1.225% of gross receipts, is distributed to municipalities. The GRT makes up 35% of the general fund. However, GRTs, including local GRTs, make up 75% of municipal governments' revenues. County governments depend less on the GRT because they also have property tax as a revenue source. The average GRT contribution to county budgets is 10% to 20% of total revenue.

Mr. Anklam said hold-harmless provisions simply shift the distribution to local governments from the revenue percentage coming in from the GRT collections to the general fund. Because the exemption, deduction or credit is eliminating the revenue coming into the general fund, revenue from other collections must be used to keep the distribution back to the local government at the same level it was prior to the change in the GRT that prompted the need for a hold-harmless provision. In actuality, the percentage of the GRT returned to the local government increases to account for the decrease in the overall GRT revenue collected in the municipality.

Alternative ways of devising hold-harmless provisions include:

1. increasing the distribution to municipalities and counties while providing an across-the-board credit against GRTs; this method does not have a uniform effect on all local governments;

2. diversifying the sources of revenue to allow one revenue source to remain strong, although this method puts pressure on rates, tending to make them increase;

3. allowing a credit against the state portion of the GRT only; and

4. specifying a distribution formula that builds in a hold-harmless effect to local governments.

The hold-harmless provisions of the food and medical deductions are burdensome on both the vendor and the TRD. It should not be replicated due to these problems. Using the type of hold-harmless provision in the phase-in of the for-profit hospital credit provides language that explicitly directs that the credit be netted against the general fund distributions. This is probably the best language so far developed. It provides for ease of administration and compliance, without excessive additional cost or difficulty.

Regional Water and Wastewater Authority

John Underwood, an attorney representing the communities of Ruidoso Downs and Ruidoso, noted that there is a joint powers agreement between those two communities to fund water and wastewater facilities. Right now, both communities are bonded to capacity, with no additional capacity soon to become free. One of the problems in small communities that have high tourist populations is that water and wastewater facilities must be constructed to accommodate peak tourist populations. Small municipalities need help dealing with standards for water and wastewater. The legislation being drafted will most likely look like the authorities permitted in the Solid Waste Act. They can cross county lines as needed and also include multiple municipalities. Arsenic is not a problem in the area. The nitrogen and phosphorus standards are causing this fiscal problem. It is possible that lodger's taxes can be used to help ease the financial shortfall. The committee suggested that a check-off box should be put on all registration forms for lodging that allows an amount to be added to the bill and be dedicated to water and wastewater facility construction and clean water initiatives.

New Mexico Horsemen's Association Report

Terry Walker, president, New Mexico Horsemen's Association (NMHA); Susan Vescovo, vice president, NMHA; Pat Bingham, executive director, NMHA; and Frank Sena, board member, NMHA, spoke for the NMHA.

Racing and breeding industries are labor-intensive. There are thousands of people employed by these industries in the state. These range from owners of racing and breeding operations to trainers, grooms, drivers, riders and exercisers, veterinarians, racetrack employees and employees of other support businesses. An economic impact study is being developed by Dr. Weiss of New Mexico State University. The breeding industry has grown in the state since

1999, when there was a total of 980 to 1,100 foals in the state. In 2007, the number of thoroughbred foals alone was 1,000. There is too much overlap in racing days of tracks. More and better stables need to be available for horses stabled at racetracks.

Issues that should be addressed in the future are the availability and needs of jockeys, tracks, breeders and owners. Because races are split between quarter horse races and thoroughbred races, enough stalls need to be available to accommodate a larger number of horses than will run. The State Fair needs to upgrade its facilities. All tracks should provide figures for jockey safety records and types of accidents, racetrack surfaces and horse mortality. The committee should schedule time to inspect tracks, stalls and other facilities at racetracks.

Arnold Rael, chair, SRC, commented on the need to coordinate among racetracks to keep the number of horses at an optimum level to provide good races.

Relative Revenue Generation from New Mexico Taxes

Mr. Nunns discussed the amount of revenue collected by the TRD from various taxes. Since fiscal year 1998, the GRT has almost doubled from $1.8 billion to an estimated $3.3 billion in fiscal year 2007. Personal income tax increased from $.8 billion to $1.2 billion. Corporate income tax more than doubled from $.18 billion to $.4 billion. Oil and gas taxes went from $.38 billion to $1.05 billion between fiscal years 1998 and 2007. The most recent GRT totals are from after the food and medical gross receipts credits went into effect. There was a substantial increase in gross receipts collected in spite of the lack of collections from fiscal years 2006 and 2007.

The committee adjourned at 2:59 p.m.