

Tobacco Control Fund Status

March 2010





Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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March 9, 2010

Honorable Paul A. Manglona
President of the Senate
17th Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

and

Honorable Froilan C. Tenorio
Speaker of the House of Representatives
17th Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear President Manglona and Speaker Tenorio:

Subject: Tobacco Control Fund Status Inspection Report

Enclosed is a copy of the Office of the Public Auditor's (OPA) Inspection Report showing the results of our inspection of the Tobacco Control Fund. The primary objectives of the inspection were to determine if the tobacco fund was over-appropriated and if appropriations met the criteria of the original bill.

Our inspection found that within fiscal years 2003 to 2009, the required amount to cover all enacted appropriations out of the Fund exceeded actual Fund revenues. Also, appropriations were enacted for purposes that have no relationship to the original legislative intent. We concluded that the Tobacco Control Fund has become merely a reserve for the General Fund.

OPA's major recommendation was to have the Tobacco Control Fund merged with the General Fund. This would simplify the budgeting process and allow greater transparency in the budgeting and accounting process. The Acting Secretary of Finance concurred with OPA's recommendation.

Also, in our review of the Fiscal Year 2008 CNMI Single Audit, we noted a total of 18 similar special revenue funds. We suggest that the Legislature consider looking into these funds and take similar actions if found warranted.

Sincerely,

Michael Pai, CPA
Public Auditor

cc: Governor, CNMI
Lt. Governor, CNMI
Members, 17th Commonwealth Legislature
Minority Leader, House of Representatives, 17th Commonwealth Legislature
Acting Secretary of Finance
Special Assistant for Management and Budget

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SUMMARY

At the request of the Legislature for the Commonwealth of the Northern Mariana Islands (CNMI), the Office of the Public Auditor (OPA) conducted an inspection of the Tobacco Control Fund. We concluded that the Tobacco Control Fund has become merely a reserve for the General Fund with no relationship to the original Legislative intent and we therefore made recommendations that we believe will address this issue.

BACKGROUND

The Tobacco Control Fund (Fund) was created by PL 13-38 which was signed into law on December 13, 2002. The purpose of this law was to increase the overall taxes on various “sin” items of consumption, to thereby discourage their use and reduce the physical abuse on the user.

Specifically for tobacco products, the tax increased the overall sin tax on a pack of cigarettes to \$1.75 per pack with the goal of raising the tax to \$2.00 per pack by 2010. Of this increase, 30 percent was to be deposited into the Fund. The purpose of the Fund was clearly defined and named four major programs which would benefit from the Fund’s proceeds. These four programs are as follows:

1. Funding for the Department of Health, for monitoring of morbidity and mortality relating to cancer and other tobacco related illnesses;
2. Funding for prenatal and maternal care, provided that the program incorporate smoking cessation assistance;
3. School health education programs; and
4. Workplace and community smoking prevention and cessation programs.

Given these purposes and the specific funding source the Fund was properly classified as a special revenue fund within the CNMI’s single audit report. There are a total of 19 non-major Governmental Funds classified as special revenue funds for FY 2008.

OPA received a Legislative request on May 19, 2009 to review the Fund and determine the “...actual performance of the fund as compared to appropriations.” Based on our preliminary survey and narrow scope of the request, OPA determined that an audit would not be performed. Instead, this report was conducted in accordance with the “Quality Standards for Inspections” issued by the President’s Council on Integrity and Efficiency (PCIE) Inspection Report.

OBJECTIVES AND SCOPE

The four objectives for this inspection were to determine the following:

1. Was the Tobacco Fund over-appropriated?
2. If so, what actions caused the over appropriation?
3. Did the appropriations meet the criteria of the original bill?
4. If not, what options exist for the Legislature to cure the situation.

The scope of the Inspection covered the period October 1, 2002 through May 6, 2009

FINDINGS

We found that the revenues deposited to the Fund had continuously declined since FY 2004. The Fund is basically insolvent and the appropriated programs that it was enacted to support are currently only being partially funded. Because of Legislative appropriations and the Administration's use of emergency transfers a negative balance was created in FY 2008 and was estimated to be \$950,210 and greatly increased in FY 2009 to an estimated \$2,865,551.

We also found that a significant portion of the appropriations did not meet the criteria as provided by the original Public Law 13-38 and that the fund was basically treated as a reserve for the General Fund.

Appropriations Exceeding Revenues

Public Law 13-38 established the Tobacco Fund by crediting 30% of the increase in the cigarette tax including any penalties, forfeitures, interests, costs of suits, and fines collected. These amounts are then used to administer tobacco control programs in the Commonwealth subject to the appropriations of the Legislature.

In reviewing the CNMI single audits, the revenues from the Tobacco Fund had steadily decreased over the years since 2004, going from a high of \$1,873,215 to a projected FY 2009 total of \$1,151,318 (a decline of 39%). The continuous appropriation in Public Law 16-39 for FY 2009 and beyond totals \$1,414,000, an amount which exceeds projected revenues by almost \$263,000, or almost 23% of the projected revenues.

The Legislature appropriated funding to programs when the Fund lacked the necessary revenue resources to support these programs. Part of the reason this happened was that appropriations from prior years that were on a continuing resolution budget were not necessarily considered. Other reasons include the emergency declarations for the Commonwealth Utilities Corporation, the

reprogramming and amendments of prior appropriations laws, and payment of Government Health and Life Insurance (GHLI).

Further the various appropriation acts repeatedly used the terminology that the appropriation was continuous without regard to fiscal year, yet when a new appropriation act was approved it was generally silent as to whether a prior act was being repealed.

As an example of how confusing this situation can become, consider the following conflict and questions between Public Law (PL) 14-80 (normal tobacco fund appropriation generally in compliance with PL 13-38 of \$1,077,000), PL 15-109 (\$250,000 appropriation for the Post Secondary Teacher Education Program), and PL 15-110 (\$300,000 appropriation for Low Income Home Energy Assistance Program) vs. PL 16-39 (FY 2009, normal tobacco fund appropriation generally in compliance with PL 13-38 of \$1,414,000). All three bills provided for continuous funding, not subject to fiscal year limitations. PL 16-39 enacted for FY 2009 "...appropriated all monies deposited to the Fund..." for a continuous annual appropriation of \$1,414,000. Further, the bill was not signed into law until over seven months into Fiscal Year 2009, compounding confusion over how to manage the prior Legislative commitments from the Fund.

Even if PL 16-39 effectively repealed the prior appropriation acts (PLs 14-80, 15-109, & 15-110), the prior appropriations would have already been budgeted and at least partially spent. Did, in fact, PL 16-39 effectively repeal the prior laws? If so, at what point in time, PL 14-80 and PL 16-39 have provisions for pro-rationing if funds are not available, however which appropriation would be affected?

Attached as **Appendix A** is a history-to-date summary of OPA's calculated deficit in the Fund as of May 6, 2009, which reflects a deficit of \$2,865,551. **Appendix B** gives a similar summary reflecting what the Secretary of Finance believes to be the deficit of \$909,549 as of March 31, 2009. If the impact of PL 16-39 (\$1,414,000) which was passed in May 2009, was shown, the Secretary of Finance would recognize a deficit of \$2,323,549. Due to the above cited over appropriations and emergency transfers, the true deficit, based on Legislative intent, can not be exactly determined.

Appropriations Not Meeting Required Criteria

When Public Law 13-38 was enacted, it specified certain areas where the revenues from the Tobacco Fund would be expended. The following four criteria were listed: 1) Department of Public Health for the monitoring of morbidity and mortality from cancer and other tobacco-related illnesses; 2) prenatal and maternal care; 3) school health education programs; and 4) workplace-based and community smoking prevention and smoking cessation programs.

In reviewing the Fund's appropriation laws, they show that many of the programs that were appropriated funds do not fall into the categories stated in the original bill or have a questionable nexus with tobacco and related programs and activities as outlined in PL 13-38. Selected examples include appropriations that were made to the following programs.

Mobile Medical Clinic	\$500,000
Diabetes Control Program	1,305,000
Attorney General's Office	315,000
Northern Marianas College	518,000
Guma Esperansa Women's Shelter	25,000
Family Violence Task Force	50,000
The purchase of a van	40,000
Repair of a roof	20,000
CUC emergency transfers	3,175,785
GHLI	1,200,000
Total	<u>\$7,148,785</u>

As shown in the above examples, of the total revenues received by the fund of \$9,972,811, at least \$7,148,785 (72%) was allocated to programs with questionable relationship to the original intent of the Law. By allocating funds to these various unrelated programs the intended purpose of the Fund has been circumvented. For a full listing of all appropriations see **Appendix C**. While the need and purpose of these programs is undeniably beneficial, they would have been more properly funded from the General Fund.

From these actions it would appear that the Fund has become merely a reserve for the General Fund with no relationship to the original Legislative intent and taxing objectives. Regardless of the amount, the deficit is real and will impact various beneficiaries of the Fund in future years.

RECOMMENDATIONS

1. The Legislature should consider eliminating the Tobacco Control Fund and allow the revenues and unresolved appropriations to flow to the General Fund. The unknown total deficit of the Fund would then be absorbed by the General Fund. This would simplify the budgeting process and allow greater transparency in the budgeting and accounting process.
2. Alternatively, the Legislator could in consultation with the Secretary of Finance, amend and delay the enactment of PL16-39 until such time as the fund becomes solvent, however that might suspend the funding of various programs.
3. Any future appropriation bills should clearly indicate the funding period(s), lapsing provisions, and if previous appropriation bills are being repealed/replaced.

MANAGEMENT'S RESPONSE

The Acting Secretary of Finance responded with the following comments:

“The Department of Finance agrees with OPA's analysis of the status of the fund. Declining Fund revenues, over appropriation of revenues and confusing language in the appropriation laws has made it very difficult to manage the distribution of the revenues collected by the Fund. PL 16-39, passed seven months into the FY2009 fiscal year, appropriated all FY2009 revenues but was silent on the status of previous appropriations. This left seven months of expenditures for previous appropriations in limbo and did not clarify the status of employees funded under those programs.

The draft report contains three recommendations.

1. We agree that the Legislature should consider the elimination of the Tobacco Control Fund and include the revenues in the annual appropriation estimate. We do not agree that a deficit should be brought into the General Fund. If the Legislature decides on this course of action, previous appropriations should be canceled (prospectively not retroactively) and new appropriations made as part of the annual budget process.
2. If the Tobacco Control Fund is retained, rather than try to amend and delay PL 16-39, new legislation should be enacted canceling all previous appropriations and appropriating available funds and/or annual revenue estimate to the programs the Legislature decides to fund. These appropriations should be prospective and define the status of the employees currently funded under the existing programs.
3. We agree that future legislation should clearly indicate the funding period(s), lapsing provisions and if previous legislation is being repealed or replaced.”

Appendix A

**Tobacco Control Fund
Six Year Analysis
Fiscal Years 2003 to 2008
Revenues vs. Appropriation
Source: OPA**

	2003	2004	2005	2006	2007	2008	6-May-09
Revenues PL 13-38^a	1,171,504	1,873,215	1,735,292	1,698,642	1,613,132	1,305,367	575,659
Cumulative Revenues	1,171,504	3,044,719	4,780,011	6,478,653	8,091,785	9,397,152	9,972,811
Appropriations							
PL 13-58	1,160,000	1,160,000	1,160,000 ^b				
PL 14-75			518,000				
PL 14-80 ^c				342,528 ^h	1,077,000 ^h	274,041	1,077,000
PL 15-65 (Amend 14-80)						492,000	
Emergency CUC ^d			922,814	164,679	788,292		
PL 15-79 Amendment							
Emergency CUC ^d				1,300,000			
PL 15-106						60,000 ^g	
PL 15-109 ^e						250,000 ^g	
PL 15-110 ^f						300,000 ^g	
PL 16-2 - GHLI						1,200,000	
PL 16-39							1,414,000 ⁱ
Total Appropriation	1,160,000	1,160,000	2,600,814	1,807,207	1,865,292	2,576,041	2,491,000
Cumulative Appropriation	1,160,000	2,320,000	4,920,814	6,728,021	8,593,313	11,169,354	13,660,354
Balance	11,504	724,719	(140,803)	(249,368)	(501,528)	(1,772,202)	(3,687,543)
Lapse Funds per SOF	100,000	395,937	(10,780)	16,044	10,791	310,000	-
Cumulative Lapses	-	395,937	385,157	501,201	511,992	821,992	821,992
Balance after Lapses	111,504	1,120,656	344,354	251,833	10,464	(950,210)	(2,865,551)
^a Taken from audited financial statements for FY 2003-2008; FY 2009 from SOF activity report.							
^b PL 13-58 superceded by PL 14-80.							
^c PL 14-80 calls for prorating of available fund, due to the emergency. However, the amount from PL 15-65 (PL 14-80 amended) was exempted from the emergency declaration.							
^d Amount taken from Secretary of Finance's schedule							
^e Amount is continuous until 2012							
^f Funds are continuously appropriated without further action of Legislature							
^g Funding is superceded by PL 16-39							
^h Although the SOF records show that \$342,000 was released for 2006 and \$1,077,000 for 2007, the amounts as shown should have been pro rationed as 594,361 for 2006 and 835,631 for 2007.							
ⁱ Funding under PL 16-39 is continuous without regard to fiscal year, while allotments are prorated based upon available funds, the funding would still remain available at a future time. However PL 16-39 was not passed until May 6, 2009 which puts it							

Appendix B

**Tobacco Control Fund
Six Year Analysis
Fiscal Years 2003 to 2008
Revenues vs. Appropriations
Source: SOF**

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>Mar. 31,2009</u>
Revenues PL 13-38	1,171,505	1,873,215	1,735,292	1,698,643	1,613,132	1,305,367	575,659
Cumulative Revenues	<u>1,171,504</u>	3,044,720	4,780,012	6,478,655	8,091,787	9,397,154	9,972,813
Appropriations							
PL 13-58	1,160,000	1,160,000	1,160,000				
PL 14-75			518,000				
PL 14-80				342,528	1,077,000	274,041	1,327,000
PL 15-65 (Amend 14-80)							
Emergency CUC			922,814	164,679	788,292		
PL 15-79 Amendment							
Emergency CUC				1,300,000			
PL 15-106						60,000	
PL 15-109						250,000	
PL 15-110							
PL 16-2 Emergency GHLI						1,200,000	
PL 16-39							
Total Appropriation	1,160,000	1,160,000	2,600,814	1,807,207	1,865,292	1,784,041	1,327,000
Cumulative Appropriation	<u>1,160,000</u>	2,320,000	4,920,814	6,728,021	8,593,313	10,377,354	11,704,354
Balance	11,504	724,720	(140,802)	(249,366)	(501,526)	(980,200)	(1,731,541)
Lapse Funds per SOF	100,000	395,937	(10,780)	16,044	10,791	310,000	-
Cumulative Lapses	<u>100,000</u>	395,937	385,157	501,201	511,992	821,992	821,992
Balance after Lapses	111,504	1,120,657	244,355	251,835	10,466	(158,208)	(909,549)

**Tobacco Control Fund Analysis
Fiscal Years 2003 to 2009
List of Appropriations**

			<u>Purpose</u>	<u>Amount</u>	
2003	8/14/2003	PL 13-58	Dept. of Public Health	955,000.00	
			Office of the Attorney General	105,000.00	
			Rota Health Center	30,000.00	
			Rota Youth Organization	20,000.00	
			Tinian Health Center	40,000.00	
			Tinian Health Organization	10,000.00	
				<u>1,160,000.00</u>	
2004			Continuing Resolution to PL 13-58	<u>1,160,000.00</u>	
2005			Continuing Resolution to PL 13-58	<u>1,160,000.00</u>	
	6/21/2005	PL 14-75	NMC-Payment of Adjunct Faculty	208,000.00	
			NMC-Nursing Program	310,000.00	
				<u>518,000.00</u>	
			Governor's CUC Emergency Declaration	<u>922,814.00</u>	
2006	7/27/2005	PL 14-80	Dept. of Public Health	492,000.00	
			Special Asst. for Youth Affairs	70,000.00	
			DCCA	10,000.00	
			As Matuis learning Center	10,000.00	
			PSS	200,000.00	
			Guma Esperansa Women's Shelter	25,000.00	
			Family Violence Task Force	50,000.00	
			1st Senatorial District (Rota)	110,000.00	
			2nd Senatorial District (Tinian)	110,000.00	
				<u>1,077,000.00</u>	
			12/15/2005 CUC Emergency transfer	164,679.00	
			3/21/2006 CUC Emergency transfer	1,300,000.00	
				<u>1,464,679.00</u>	
2007		PL 14-80	Continuing Resolution of PL 14-80	<u>1,077,000.00</u>	
	5/31/2007	PL 15-65	Dept. of Public Health	442,000	Amending PL 14-80
			Attorney General's Office	50,000	Amending PL 14-80
				<u>492,000</u>	
		PL 15-71	Expense transfers	<u>788,292</u>	
	5/31/2007	PL 15-79	DCCA	10,000	Amending PL 14-80
			PSS	10,000	Amending PL 14-80
				<u>20,000</u>	
2008		PL 14-80	Continuing Resolution of PL 14-80	<u>1,077,000</u>	
	9/9/2007	PL 15-106	DCCA-purchase of van	40,000	
			DCCA-repair of roof	20,000	
				<u>60,000</u>	
	11/9/2007	PL 15-109	Scholarship Office (Teacher & Medical)	<u>250,000</u>	
		PL 15-110	Low income utility subsidies	<u>300,000</u>	
		PL 16-2	Transfer for AETNA payment	<u>1,200,000</u>	

Appendix C

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	<u>Purpose</u>	<u>Amount</u>
2009	PL 14-80 Continuing Resolution of PL 14-80	<u>1,077,000.00</u>
	PL 16-39 DPH Diabetes Prevention Program	535,000.00
	DPH Substance Abuse Services	250,000.00
	DPH Mammogram Program	39,000.00
	DPH Cancer Registry	1,000.00
	DPH Cancer Coalition	75,000.00
	PPS Health Education Program	225,000.00
	PPS Project Familia	50,000.00
	PPS Teen Talk Program	50,000.00
	Special Asst. Youth Affairs	39,000.00
	Tinian Substance Abuse Program	75,000.00
	Rota Substance Abuse Program	<u>75,000.00</u>
		<u>1,414,000.00</u>

Note: Amounts represent gross appropriations, no lapses or prorating are shown.