Progress Report

Program Evaluation Unit
Legislative Finance Committee
July 22, 2021

Tax Gap, Audit and Compliance, and Fraud

Summary

The Evaluation: *The LFC evaluation Tax Gap, Audit and Compliance, and Fraud looked at TRD's effectiveness in reducing the state's tax gap, the difference between taxes owed and paid. The report found more could be done to focus efforts to collect unpaid taxes and reduce fraud, including ensuring TRD was adequately resources to collect these monies.*

Of key recommendations highlighted here and in a 2017 progress report, TRD completed one additional item since the original evaluation and is making progress toward four more.

In the last five years, the "tax gap" between what taxpayers owe and what they actually pay has grown 17 percent, partly because agency efforts have resulted in greater identification of owed taxes but no increased collections.

The Taxation and Revenue Department (TRD) is the entry point for almost all state tax revenues and the department's ability to accurately assess and collect taxes is key to funding new government initiatives without raising taxes on law-abiding taxpayers. Combatting the tax gap has also become a key strategy at the federal level to pay for post-pandemic infrastructure packages without increasing taxes on law-abiding taxpayers.

In the five years since the original 2016 LFC tax gap evaluation TRD's tax administration program expenditures expanded by 11 percent, along with new investments in IT tools which have helped the agency increase auditing efficiencies. These investments resulted in TRD improving identification of taxes owed, but not collections. Some of the remaining challenges identified in the original 2016 program evaluation and 2017 progress report persist, including high vacancy rates.

Key recommendations from the 2016 evaluation still stand with the intent of helping TRD tackle the tax gap: better managing tax protests, focusing staff work and audits on collections, and working with LFC and Economic Development Department staff to monitor the impact of state tax expenditures.

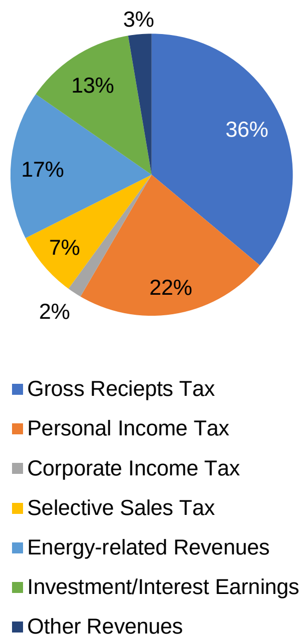
Progress Reports foster accountability by assessing the implementation status of previous program evaluation reports, recommendations and need for further changes.

NEW MEXICO LEGISLATIVE FINANCE COMMITTEE

Tax Gap: The tax dollars legitimately owed to the state but not paid by taxpayers

Chart 1. Estimated Fiscal Year 2021 General Fund Revenue by Type

Total: $7.6 billion



Source: FY21 General Fund Monthly Tracking (April)

Background

To the maximum extent possible, the state should be able to gauge the amount of taxes it is due from businesses and citizens and then collect those taxes wholly and efficiently. However, some people and companies underreport or underpay the taxes they owe, resulting in a significant tax gap. Money existing in this tax gap represents potential revenue not collected, and ultimately law-abiding taxpayers could potentially pay more than their fair share of the cost of government operations.

In October 2016, LFC released an evaluation, *Tax Gap, Audit and Compliance, and Fraud*, focusing on the effectiveness and efficiency of the Taxation and Revenue Department (TRD) efforts to reduce the tax gap, as well as the impact of tax exemptions, credits, and refunds to the state coffers. At the time, TRD had not performed a New Mexico tax gap analysis based on state-specific data or modeling. Instead, using out-of-state information as a proxy, LFC staff estimated the FY16 tax gap to be $635 million.

LFC staff completed a progress report of the 2016 evaluation a year later in October 2017, noting that while TRD was making progress on most of the recommendations, there were ongoing concerns, including staff resource allocation, turnover, management of protests, and insufficient monitoring of tax-code loopholes. The progress report also noted the ongoing need for TRD to provide data on large dollar risks to the general fund, especially related to tax protests, that complicate estimation of revenue for budget-making.

In New Mexico, revenues consist primarily of taxes on income and gross receipts. TRD collected over $7.6 billion in taxes for the state general fund in FY21. Sales taxes, including gross receipts taxes (GRT), compensating taxes, and specialty taxes like the liquor excise tax are the largest category of taxes coming into the general fund at $3.6 billion in FY20, followed by income taxes at $1.7 billion, and taxes on oil, gas, and other mineral extraction at $439 million. See Appendix A for the latest FY21 general fund revenue tracking.

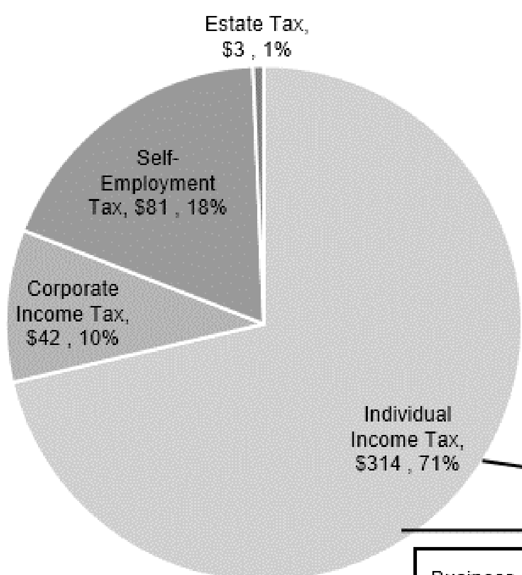
How Tax Expenditures Relate to the Tax Gap: New Mexico has an extensive system of tax expenditures. Tax expenditures are special provisions in the state tax code that benefit specific activities or groups of taxpayers by reducing the taxes owed on certain income or from certain transactions. While not included in the tax gap calculation, these expenditures still effectively reduce the revenue that would otherwise come to the state by more than $1 billion per year. Tax expenditures also add complexity to the tax code, often confusing how much taxes a person or business may owe to the state. The result of this confusion can be misfilings, audits, and protests of taxes owed—all of which can delay or further reduce the amount of revenue coming to the state. LFC's 2016 tax gap evaluation explored the impacts of statutorily created tax exemptions, credits, and refunds on state revenues. The evaluation recommended a more thorough review of the effectiveness and use of those exemptions.

In October 2018, LFC adopted a set of tax expenditure policy principles to evaluate new proposals and changes to existing tax expenditure statutes. However, in an extensive "Money Matters" report on state tax expenditures in October 2020, LFC economists noted a lack of quality information and analysis for adequate examination of the outcomes of existing tax expenditures. LFC economists recommended that TRD work with them and the Economic Development Department to perform a thorough review of reporting requirements for tax incentives and recommend additional information that TRD could collect for better evaluation.

The lion's share of the $441 billion federal income tax gap is related to underreporting of business income at the federal level. At the federal level, the Internal Revenue Service's (IRS) latest income tax gap estimate in September 2019 found that taxpayers paid 83.6 percent of federal taxes voluntarily and timely during tax years 2011-2013, leaving an annual gross income tax gap of $441 billion. In April 2021, the Commissioner of the IRS testified to Congress that the tax gap could likely be closer to $1 trillion in 2021 due to trading in cryptocurrencies that were escaping taxation, rising foreign-sourced income, and abuses of business income passed through as personal income.

The majority of the federal gross income tax gap is due to underreporting of individual income taxes ($245 million or 56 percent of the $441 billion gross tax gap), particularly from income that is subject to little or no reporting to the IRS, such as income from the self-employed (in technical terms, nonfarm proprietors' income, or "business income" in the chart below), rents and royalties, and farm income. In contrast, taxpayers misreported only 1 percent of their income when employers both withheld taxes from wages and reported that information to the IRS through W-2 forms. As almost all taxpayers must file both federal and state income taxes, it is likely that these same categories represent the largest portion of the state income tax gap as well.

Chart 2. **Federal Gross Tax Gap - $441 Billion**
(in billions)



Large Corporations ($10m +)	$26	62%
Small Corporations (under $10m)	$11	26%

Business Income	$110	35%
Non-Business Income	$57	18%
Credits	$42	13%
Adjustments, Deductions, and Exemptions	$20	6%
Other	$16	5%

Source: IRS

Estimates from the U.S. Treasury and the Congressional Budget Office purport a return on investment between 2.6 to 1 and 3.3 to 1 in tax collections for every extra $1 invested into the IRS.

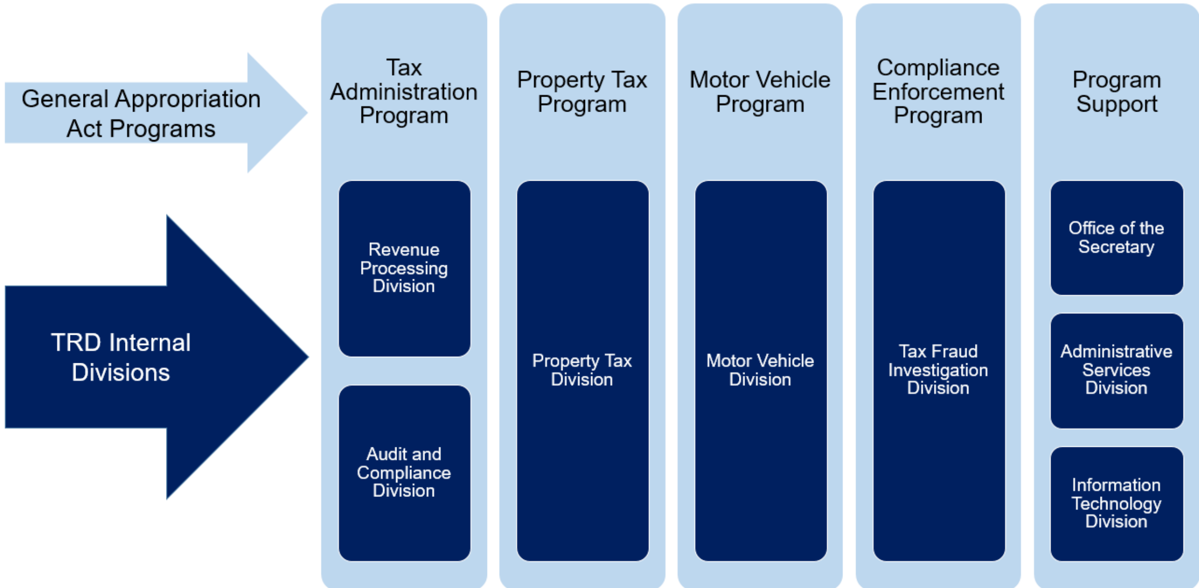
Closing the tax gap is the newest federal strategy for bringing in revenue to pay for large national spending packages without raising taxes on law-abiding taxpayers. As of July 2021, the White House is proposing to cover some of the costs of their $700 billion infrastructure plan by reducing the tax gap—both by increasing IRS funding for tax administration and requiring additional reporting from banks and other financial institutions to improve tax compliance.

In 2020, the Congressional Budget Office (CBO) found that the IRS's appropriations had fallen by almost 20 percent in inflation-adjusted dollars since 2010, resulting in the elimination of 22 percent of its staff. The amount of funding and staff allocated to enforcement activities even more dramatically declined, by about 30 percent, since 2010. Estimates from the CBO were that increasing the IRS's funding for audits by $20 to $40 billion over ten years would increase collectible audit revenues by between $61 billion and $103 billion over the same time, or an average of 16 percent to 27 percent of the year-over-year net tax gap. Similarly, a May report released by the Treasury Department concluded that $80 billion in new resources over a decade to fund new technology and to hire and train new agents would bring in $266 billion over in new revenue over nine years.

Responsibility for monitoring and minimizing the tax gaps falls mainly across two TRD programs, though IT investments have become increasingly important. The Legislature appropriates funding to TRD in five different programs and the department further separates these programs into divisions and bureaus for specific types of work. The 2016 evaluation focused on the work of the Audit and Compliance and Tax Fraud Investigation Divisions (TFID). However, recent investments in IT systems and initiatives undertaken by the secretary likely mean that efforts to close the tax gap have broadened across the department. For example, the department received an $8.4 million nonrecurring IT appropriation for FY21 to redesign its combined reporting system for gross receipts, withholding, and compensating taxes. As the combined reporting requirements did not come into effect until July 1 of this year, it is not clear how much of an impact they will have on the tax gap.

Another key IT appropriation in 2018 of $1.15 million gave the Audit and Compliance Division a new data analytics tool to identify the most collectible audit assessments. TRD also received another $3 million appropriation in that same year that the Legislature intended to be for IT support to implement the insurance premium tax program, but the governor vetoed some language in the appropriation, making it for tax administration software generally. These ongoing upgrades to GenTax, the department's tax administration software, including allowances for credit card processing, might ease the burden of paying taxes, which in turn could, theoretically, help shrink the tax gap. Though as illustrated later in this report, collections have remained a quite low percentage of audit assessments and so the return on investment of these IT projects is either low or has yet to materialize.

Figure 1. General Structure of the Taxation and Revenue Department



Source: TRD, GAA

Table 1. TRD Funding Sources and Uses at a Glance

(in thousands)

	Compliance Enforcement Program			Tax Administration Program			TRD, all programs (includes MVD and other nontax-related programs)		
	FY17 Actuals	FY20 Actuals	Change FY17 to FY20	FY17 Actuals	FY20 Actuals	Change FY17 to FY22	FY17 Actuals	FY20 Actuals	Change FY17 to FY20
Sources									
General Fund	$1,566.2	$1,612.7	3%	$20,507.4	$29,363.5	43%	$51,271.7	$63,302.3	23%
Other Transfers							$542.6		
Federal				$1,331.5	$1,383.9	4%	$1,517.6	$1,445.2	-5%
Other	$0.2			$6,726.3	$1,055.8	-84%	$30,586.6	$32,239.9	5%
Fund Balances							$8,676.6		
TOTAL SOURCES	**$1,566.4**	**$1,612.7**	3%	**$28,565.2**	**$31,803.2**	11%	**$92,595.1**	**$96,987.4**	5%
Uses									
PSEB	$1,167.0	$1,129.9	-3%	$22,815.9	$24,552.6	8%	$54,094.5	$56,312.0	4%
Contractual Services	$3.9	$3.7	-5%	$244.8	$144.7	-41%	$9,139.7	$10,542.2	15%
Other	$209.2	$354.0	69%	$5,156.0	$5,644.4	9%	$14,345.8	$17,136.4	19%
Other Financing Uses							$7,765.6	$3,313.9	
TOTAL USES	**$1,380.1**	**$1,487.6**	8%	**$28,216.7**	**$30,341.7**	8%	**$85,345.6**	**$87,304.5**	2%
Authorized FTE	**22.0**	**21.0**	-5%	**496.8**	**490.8**	-1%	**1,087.8**	**1,072.8**	-1%

Sources: LFC files

ACD spends about $1.7 million annually on leased regional office space, most of which was unused during the pandemic and may not be necessary post-pandemic. As with much of state government, ACD's otherwise in-person audit and collections services moved to a remote environment during the pandemic. With expanded options for taxpayers to pay through the call center, and the closing of regional taxpayer dropboxes during nine months of the pandemic, TRD staff reported they were internally assessing their model of providing regional, in-person auditors and collections staff.

The Audit and Compliance Divisions' primary contact with taxpayers is through its call center. As in the 2016 evaluation, the majority of audit collections are paid either through that call center or the department's Albuquerque office. The department's other regional offices do relatively little in the way of collections. The Farmington office in particular collects very little for the department, collecting zero dollars of audit assessments and only $547 thousand of total collections during FY21. The lease on the Farmington office expires at the end of 2021, but others are for three to nine years more. However, leased property agreements for state entities generally have early termination clauses stating the lease can be terminated early without penalty if the Legislature does not grant sufficient authority and appropriations to carry out the terms of the lease.

Table 2. FY22 Lease Costs for Regional ACD Offices

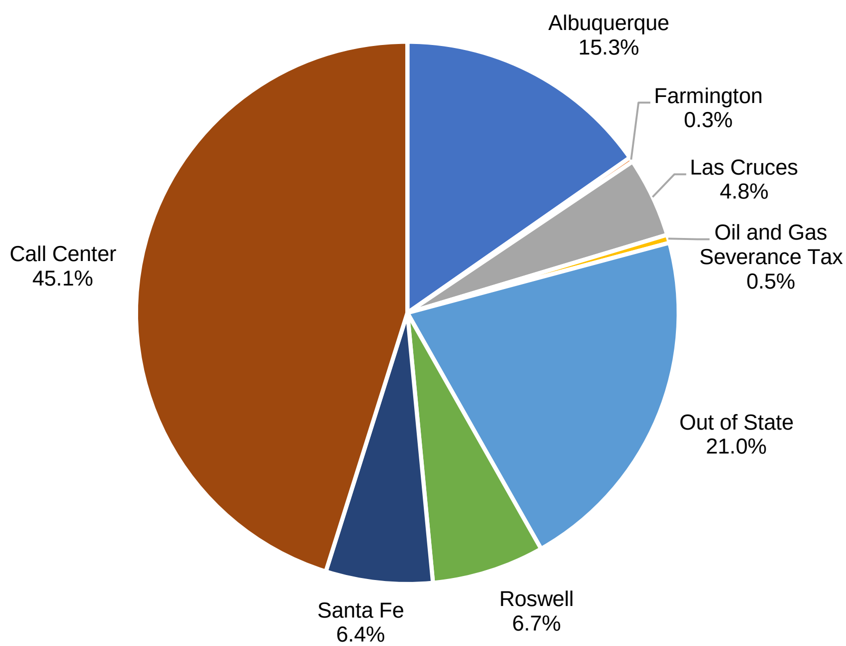
(in thousands)

Office Location	Lease Expires	ACD Lease Cost
Farmington	12/31/2021	$30.5
Las Cruces	10/31/2029	$165.5
Roswell	4/4/2024	$179.4
Albuquerque	11/30/2030	$1,306.1
Total		**$1,681.5**

Source: SHARE

Chart 3. ACD Collections by Location, FY21

Total collections, including nonaudit assessments: $192 million



Source: TRD

The Estimated Annual New Mexico Tax Gap is $743 Million

In 2013, TRD estimated New Mexico's tax gap at $609 million with the LFC estimating growth in the tax gap to $635 million in FY16. Using similar methodology as the LFC 2016 program evaluation, LFC estimates the FY20 tax gap as having grown to $743 million with the income tax gap consisting of $341 million and sales tax gap (GRT) consisting of $402 million for FY20. The difference between the income tax gap amounts in FY16 and FY20 are due entirely to increases in general fund revenues from personal and corporate income tax over those years. In FY16, income taxes provided $1.5 billion in revenue, while in FY20, income tax revenue to the general fund was $1.7 billion.

Due to rising income tax revenues, the general fund income tax gap for FY20 grew to $341 million, compared to $239 million in FY16.

A 2005 analysis by the California Legislative Analyst's Office of their state's tax gap noted that "for the most part, the tax-gap-related focus of state and federal governments has been on income taxes rather than on consumption (sales) taxes. States tend to have income tax systems that are similar to and share information with the federal system and thus directly benefit from any tax gap initiative taken at the federal level. In contrast, states are largely left to their own resources with respect to consumption tax issues." Likewise, in their 2020 tax expenditure report, TRD noted that GRT collections rely on self-reporting and the department expends significant resources to ensure statutory compliance.

New Mexico's FY20 estimated GRT gap is $402 million, only slightly more than $396 million in FY16.

Nevertheless, it is likely that some level of tax gap exists in New Mexico's consumptive taxes arising from the underground or cash economy. The 2016 evaluation noted this and used a 9.9 percent estimated GRT tax gap based on an estimate from Minnesota, resulting in an estimated $396 million tax gap. Using the same gap estimate of 9.9 percent, an FY20 estimate of the sales tax gap would be closer to $402 million.

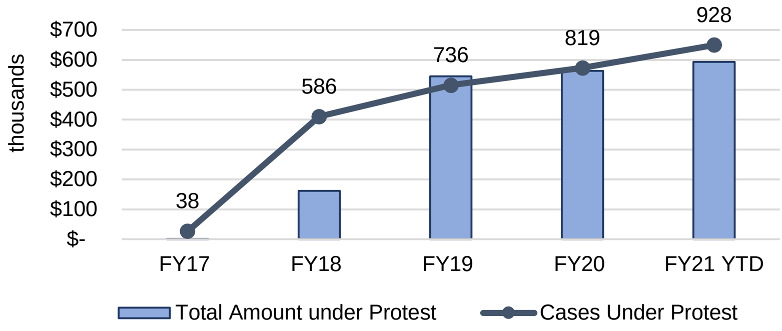
Table 3. Estimated Gross New Mexico Tax Gap Analyses
(in millions)

	LFC FY20	LFC FY16	TRD FY13
Gross income tax gap	$341	$239	$236
Gross receipts tax (GRT) gap	$402	$396	$374
Total Gross Tax Gap	**$743**	**$635**	**$609**

Source: LFC Analysis

The amount of assessed taxes under protest has grown to $592.9 million. The 2017 tax gap progress report highlighted the large and growing amount of money under tax protest ($445 million as of October 2017) and recommended that the Legislature consider amending statute to define protest hearing timelines based on prioritization criteria such as dollar amount of protest, tax program impacted, etc., to facilitate addressing backlogs in tax protest hearings. Since that time, little statutory change has occurred, though Senate Bill 129 passed in the 2019 session clarified Administrative Hearings Office timelines and procedures for tax protests but did not define those timelines based on any sort of prioritization criteria.

Chart 4. Number of Tax Protest Cases and Amount Under Protest
(in thousands of dollars)



Source: TRD

Having such a large amount of potential revenue in limbo makes regularly estimating state revenues difficult for LFC and other state economists. Unfortunately, since 2017, the number of protest cases and the amount of taxes under protest has continued to grow, to $592 million in May 2021. Of that, 57 percent ($337) million was related to protests around tax expenditures such as the chemicals and reagents deduction and high-wage tax credit. Another approximately 20 percent ($118 million) of the protested amount was from audit assessments.

TRD's legal service's bureau which contains the protest office currently has 25 FTEs, five of which are vacant: three auditors, one attorney, and the chief legal counsel. TRD currently reports on the number of tax protest cases it resolves each quarter as a part of its required Accountability in Government Act reporting but is not required to report on the financial impact of these cases. For FY19, the department received a $500 thousand general fund special appropriation to support tax protest litigation. The department spent the majority for contracted attorney services from Peifer Hanson Mullins & Baker PA of Albuquerque and left $46 thousand unspent.

TRD already identifies much of the tax gap through protested amounts and uncollected audits. As of May 2021, TRD reported $123 million in year-end receivables—the amount of taxes it assessed from audits but could not collect or abate. The year-end receivable amount had grown since FY17 when it was only $26 million. Each year as TRD collects only a portion of the outstanding taxes it is owed, the remainder accumulates into a large outstanding balance amount that TRD last reported at $763.1 million. Further, the amount of taxes under protest in FY21 has ballooned to $569 million, at least some of which will end up being taxes owed to the state. The remaining amount of estimated tax gap not covered by uncollected assessments or protested taxes owed to the state is likely from non-filers or under reporters that are not caught by the state tax system.

TRD Made Progress Identifying Taxes Owed, but Not Collections

After years of increasing productivity, ACD staff conducted significantly fewer GRT audits during FY21. The Audit and Compliance Division increased its productivity to a level where they assessed $671 thousand for every FTE in the division each year in FY20—a 12-to-1 return on investment, assuming an average FTE salary of $55 thousand. Assessments per FTE were only $336 thousand in FY18.

In FY21, the year of the pandemic, assessments per FTE fell 26 percent to $497 thousand per FTE – almost all of which was due to a drop in assessments on gross receipts tax audits. In FY21, the division conducted about half as many field and desk audits on gross receipts taxes (GRT) than they did the year prior. TRD staff also reported that use of its data analytics tool in FY21 to better target audits resulted in fewer assessments, but also fewer abatements, by decreasing incorrect assessments by auditors. As a result, the division assessed $55 million fewer in GRT audits than it did the year prior.

Table 4. ACD Productivity Measures FY17 through May FY21

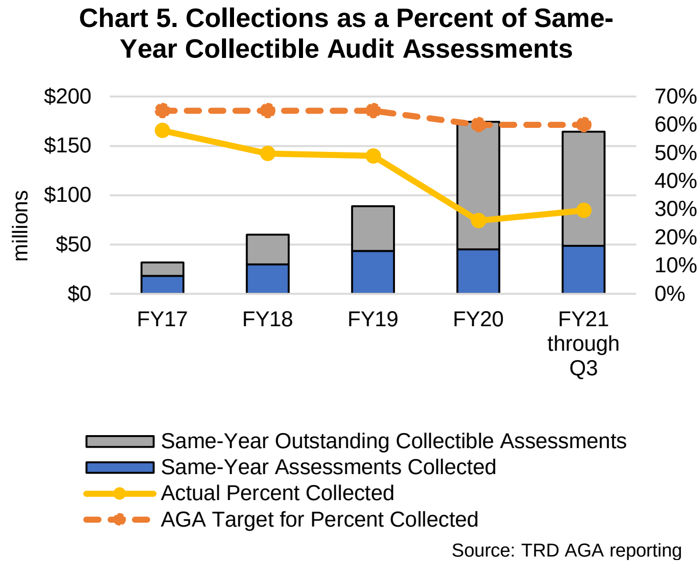
	FY21 thru May	FY20	FY19	FY18	FY17
ACD Authorized FTE	*344*	*349*	*349*	*349*	*349*
Audits (including desk and managed audits)	*11,924*	*14,183*	*11,965*	*6,702*	*7,638*
Assessed (in thousands)	*$171,126*	*$234,091*	*$180,859*	*$117,429*	*$158,113*
Audits per FTE	**35**	**41**	**34**	**19**	**22**
Assessments per FTE (in thousands)	**$497**	**$671**	**$518**	**$336**	**$453**

Source: TRD

TRD stopped collections activities, slowed the audit process and allowed taxpayers to apply for extensions during the pandemic, affecting productivity. According to TRD staff, auditors were pulled during the pandemic to other activities like the department's questionable refund unit, abatements, and refunds. TRD citing doing this as a shift in focus to assist in the economic recovery. As the state's emergency public health order expired in July 2021 and businesses are reopening to full capacity, TRD may return to a higher level of audits and assessments. However, with most TRD staff continuing to work remotely, LFC staff will continue to monitor the productivity of ACD staff.

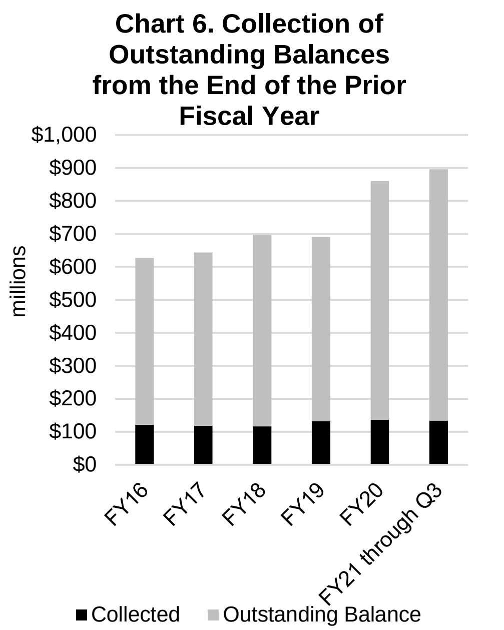
While audit assessments have risen, the percent of assessment collected has fallen significantly with growing outstanding tax debts at an all-time high of $763.1 million.

The 2016 evaluation found a slowdown in the rate of collections from same-year audits, and that trend holds true today. Collection of taxes owed from audits in the same year they are assessed is currently at 30 percent, while the collections of aged (over one year) accounts have fallen to only 18 percent. As a comparison, in FY17, TRD was able to collect 58 percent of same-year assessments.



The falling rate is due not to fewer collections, as TRD collected nearly $27 million more from same-year audits in FY20 than it did in FY17. Rather, the total of all assessments, the denominator of the rate, just increased much more than collections.

Owed taxes are not collected in the same year; they are assessed annually and added to the outstanding balances of prior years that TRD continually works to collect over time. Between FY17 and FY20, those outstanding balances from all years grew 45 percent. The outstanding tax debts remaining to be collected reached an all-time high in the most recent fiscal quarter at $763.1 million. Conversely, the amount TRD collects on these backlogs rose much more modestly – only 13 percent over the same period. Though assessments had been growing steadily year-over-year since FY17, there was a major jump in the amount of overdue assessments—nearly $170 million more—between FY19 and FY20. In an August 2020 presentation to LFC, TRD indicated that the outstanding balances had increased significantly "due to the use of external data" from their data analytics tool, and also that the number of abatements and protests has increased over the last three years (during the period in which a protest or abatement is being evaluated, the assessment is placed in an uncollectable state.)



The amount of outstanding assessments at TRD have risen **45 percent** between FY17 and FY21 to an all-time high of $763.1 million. The amount collected each year over that time, however, increased only **13 percent.**

Source: TRD AGA quarterly reports

As per the recommendation in 2016, TRD reported in the 2017 progress report that it had universally adopted the best practice of jointly assigning collectors and auditors to work together on priority projects in all district offices beginning January 2017. However, the adoption of this practice seems not to have had the intended effect as collections remain much lower than assessments.

The statute of limitations on TRD's ability to collect audit assessments is ten years. With only a fraction of outstanding balances collected each year, it is unclear how much of the outstanding balances become uncollectable due to age each year.

Persistent vacancies hamper TRD's efforts to close the tax gap.

Unlike the IRS, spending on TRD's tax administration program has not fallen over time but instead has grown 11 percent since FY17. However, key divisions in TRD responsible for identifying and closing the tax gap have persistently high-funded vacancy rates, likely impacting the number of audits and amount of collections TRD achieves each year.

As in previous years, TRD carries high vacancy rates across programs, likely suppressing assessments and collections. These vacancies have been a persistent problem, even back to the 2016 evaluation. Since that time, funding for personnel in both the tax administration and compliance programs and across the department as a whole has increased while the number of authorized positions has fallen.

TRD's Tax Fraud Investigations Unit (TFID) is responsible for investigations of various types of tax fraud, motor vehicle fraud and other financial or so-called "white collar" crimes. The 2016 evaluation found that performance in TRD's Tax Fraud Investigations Division was adversely impacted by vacancies. Specifically, the LFC evaluation stated that "while some states are expanding their investigative units to address the cash economy, New Mexico's has been shrinking. Almost 65 percent of pending cases logged for FY16 have not been assigned due to lack of resources." As such, a recommendation of the 2016 evaluation was to fill Tax Fraud Investigation Division vacancies and pursue the backlog of potential fraud cases. The level of vacancies in the TFID changed little between FY11 and FY20, though the total positions decreased significantly. Note that the number of open positions is at an all-time low for FY21. Importantly, TFID staff noted that their vacancies were primarily in their internal investigations bureau and not in bureaus responsible for investigating taxpayer fraud and evasion.

Table 5. Vacancy Rates in Key TRD Audit and Collections Divisions and Bureaus

	FY17	FY21	FY21 Authorized FTE
Audit and Compliance Division	22%	22%	344
Tax Fraud Investigations Division	27%	14%	21
Call Center Bureau	21%	23%	50

Source: LFC Files and TRD FY22 budget request presentation

Like the TFID, ACD total positions have dropped significantly over the last decade. Unlike the TFID, vacancy rates at the TRD's Audit and Compliance Division remain high and have even crept up in recent years to a quarter of all positions. Both the 2016 evaluation and 2017 progress report highlighted that ACD's lack of staff, especially for collections, would continue to suppress the amount of tax money coming into the general fund.

TRD has taken steps to modernize its call center, and now uses distrct staff to take and make payment calls. TRD's call center bureau has 37 FTE, of which 7 are vacant—a 19 percent vacancy rate. TRD staff indicated that they have district office staff working the call center when they are not providing in person customer service and during peak times. The department reports this give them 63 total employees available to take calls on a daily basis. TRD plans to continue this model for teleworking employees.

The 2016 evaluation noted that ACD could benefit most from an overhaul of its call center, where over half of the delinquent collections occur. In particular, "while TRD provides online payments, extending this self-service capability to touch-tone phone would free up staff time while increasing collections." As of October 2020, TRD reported that it was accepting self-service phone payments for personal income tax, gross receipts tax, oil and gas, combined fuel tax, workman's compensation tax, and weight distance tax. This expanded phone service occurred as TRD had removed regional taxpayer dropboxes for tax payments during the pandemic.

In FY19, TRD received $235 thousand in IT funding to modernize its call center operations, including expanding to a cloud-based system and expanding automated self-service options—both of which were recommendations of the 2016 evaluation. As part of its May 2021 project close-out documentation to the Department of IT, TRD reported that the funding increased collections via outbound calling by 5 percent.

IT tools have improved audit selection and assessments, but TRD has been unable to procure similar tools to improve collections.

Despite 13 percent growth in collections, the relative growth in collections has not kept up with that of assessments. In FY21, the department proportionally collected less than it ever has and continually misses related performance targets. The department was appropriated funding to improve the audit and collections targets, but has yet to use similar tools to improve its collections functions, despite having appropriations to do so.

In 2018, TRD received a $1.15 million IT appropriation for data analytics to automate and target the process of audit selection and collections. The department used that funding to procure an SAS-based tool from Executive Information Systems, LLC. The department began using that tool in FY21 with goals to 1) increase the objectivity around which returns were flagged for audits, 2) decrease the amount of over (incorrect) assessments, and 3) begin to assess the collectability of the audits. TRD reports the new tool flagged 82 returns for audits in FY21 with $19.7 million assessed of which $6 million (30 percent) had been collected. Thirty percent collections of same-year assessments is similar to TRD's performance for all same year assessments, whether audits were selected by the new tool or not. Annual subscription costs for that tool are approximately $244 thousand.

In 2019, TRD received an additional $1.15 million appropriation for a data analytics tool that the department reports was intended to improve collections. However, the department only ended up spending $1,442 of the appropriation, allowing the remainder to revert rather than move forward with purchasing the tools. The department cited unanticipated annual costs as one of the reasons for not moving forward with the collections data analytics tool.

The Legislature has yet to make the use of tax zappers and phantom ware illegal*.*

The 2016 evaluation recommended that the Legislature outlaw the sale of tax zapping mechanisms and phantomware software which obscures sales or otherwise falsifies electronic records with the intent of lowering GRT tax burdens. House Bill 90 in the 2021 regular legislative session contained a number of changes to tax penalties, including making the selling, licensing, purchasing, installing, transferring, manufacturing, developing, or possessing of tax zappers or phantomware software illegal. The legislation was proposed on behalf of TRD and was endorsed by the Revenue Stabilization and Tax Policy Committee. However, the bill failed to make it through all its Senate committees before the end of the 2021 session.

Other states, including Arizona and Texas, have enacted similar legislation and conversations with TFID staff indicate it is still a high priority for the division. LFC fiscal analysis of the bill noted that, based on suspicious activity reports and dialogue with the IRS, TRD believed this software is likely still being used in New Mexico. However, the department had not investigated a tax evasion case that has used this software at the time.

Status of Select Evaluation Recommendations

Finding

Tax expenditure design weaknesses impact state revenues much more than expected.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
The Legislature should consider amending statute to create a broad sunset review process for tax expenditures, where tax policies are reviewed every five years, and where alternating groups of tax expenditures are reviewed every year to meet this five-year requirement with the Legislature voting to extend, terminate, or amend the tax expenditure.				In an extensive "Money Matters" report on state tax expenditures in October 2020, LFC economists noted that there was still a lack of quality information and analysis for adequate examination of the outcomes of existing tax expenditures. The LFC economists recommended that TRD work with them and the Economic Development Department to perform a thorough review of reporting requirements for tax incentives and recommend additional information that TRD could collect for better evaluation.
The Legislature should consider amending statute to require all newly proposed tax expenditures be vetted through interim committees including the Revenue Stabilization and Tax Policy Committee and the Legislative Finance Committee where fiscal, legal, and general policy parameters can be reviewed.				In October 2018, LFC adopted a set of tax expenditure policy principles to evaluate new proposals and changes to existing tax expenditure statutes. In FY21, the Legislature provided TRD with an additional $200 thousand recurring funding to evaluate the impacts of tax expenditures.
The Legislature should consider amending statute to require all newly proposed tax expenditures include a cap in order to better predict fiscal impact with the ability to amend a cap upward or downward during sunset reviews.				

Finding

The Taxation and Revenue Department has not performed a New Mexico tax gap analysis based on state-specific data and modeling.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
TRD should enlist the University of New Mexico's Bureau of Business and Economic Research and New Mexico State University's Arrowhead Center in developing a broad-ranged, state-based tax gap analysis that also characterizes the state's cash economy.				

Finding

Addressing intentional and unintentional taxpayer noncompliance requires different strategies; a tax gap analysis would help effectively deploy resources.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
TRD should identify areas to expand and broaden tax gap initiatives, including multi-agency efforts, and detail any expansion requests with clear return on investment quantifiers.				
TRD should adopt a bi-annual review process to monitor progress in narrowing the tax gap and identifying emerging areas of concern.				TRD reports internal ROI assessment for auditors.

Finding

The call center's collection efforts have been hampered by both internal and imposed inefficiencies.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
Modernize the call center to current best practices by taking the following actions: ●Hire a call center expert as the director and revamp the call center business processes, reporting, personnel management, and culture, including incorporating appropriate best practices identified in the Heights Consulting "Roadmap for New Mexico Taxation and Revenue Customer Contact Center;" ●Consider transferring the call center from existing DoIT information technology products to the more advanced cloud-based platform used by the Motor Vehicle Division call center; and ●Consider long-range plans to consolidate all TRD call centers under centralized management.				The vacant bureau chief position in the call center was filled in October 2016, and that person has stayed in that position since. In FY19, TRD received $235 thousand in IT funding to modernize their call center operations, including expanding to a cloud-based system and expanding automated self-service options—both of which were recommendations of the 2016 evaluation.

Finding

Management focuses on return-on-investment metrics to measure program success; this metric reveals staffing issues can swamp data warehouse efficiency gains.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
TRD should assign collectors to work with auditors on priority projects.				In 2017, ACD reported they had universally adopted the best practice of jointly assigning collectors and auditors to work together on priority projects in all District offices. However, this activity seems to have little effect on reducing outstanding assessment balances.

Finding

The Taxation and Revenue Department could do more to bring in revenues but some options require legislation.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
TRD should consider deploying additional tools used by other states to encourage taxpayer compliance, such as employing collection agencies to work difficult accounts; supporting the effort to develop a state lien registry; and proposing legislation to permit internet posting of delinquent taxpayers and expanded offsets.				TRD reported that due to an IRS recommendation six years ago, it does not employ collections agencies in order to keep federal taxpayer information confidential. No legislation or actions on a lien registry or internet posting of delinquent taxpayers has occurred.
TRD should upgrade the phone system to leverage data warehouse capabilities to implement "new generation" collection tools, such as implementing a risk analysis of accounts, automating some labor intense activities, automating collections, and improving customer service through a phone payment option.				In FY19, TRD received $235 thousand in IT funding to modernize their call center operations, including automated outbound calling and collections.

Appendix A. FY21 General Fund Monthly Tracking

FISCAL YEAR 2021 GENERAL FUND MONTHLY REVENUE TRACKING

(dollars in millions; italics indicate preliminary actual revenue; bold indicates actual revenue)

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	ESTIMATED REVENUE ACCRUALS												FY21	TRACKING CHANGE		
	July Actual	Aug Actual	Sept Actual	Oct Actual	Nov Actual	Dec Actual	Jan Actual	Feb Actual	Mar Est.	Apr Est.	May Est.	June Est.	Actual + Estimate	FY21 Feb. Forecast	% Diff.	$ Diff.
Gross Receipts Tax	220.5	226.8	205.6	226.1	207.7	261.3	234.2	216.4	*265.6*	207.0	206.6	199.3	2,677.1	2,520.5	6.2%	156.7
Compensating Tax	4.3	1.8	7.6	4.8	4.5	6.1	3.3	4.3	*10.6*	1.0	4.2	5.0	57.5	54.3	5.8%	3.2
TOTAL GENERAL SALES TAXES	224.8	228.7	213.2	230.9	212.3	267.4	237.5	220.7	*276.1*	208.0	210.8	204.2	2,734.6	2,574.8	6.2%	159.8
Tobacco Products & Cigarette Taxes	7.6	8.6	8.1	6.5	7.5	7.5	5.5	6.9	6.5	7.3	7.9	9.3	89.3	91.5	-2.4%	(2.2)
Liquor Excise Tax	1.7	2.5	2.1	2.2	1.5	2.9	1.7	1.9	2.0	1.9	2.0	2.5	24.9	24.9	0.2%	0.0
Insurance Premiums Tax	1.1	29.5	29.6	1.2	7.0	55.2	3.5	31.7	55.9	0.3	0.3	55.9	271.3	230.8	17.5%	40.5
Fire Protection Fund Reversion	-	-	-	-	0.0	-	-	-	-	-	-	12.0	12.0	12.0	0.1%	0.0
Motor Vehicle Excise Tax	15.6	14.5	14.7	15.0	7.5	12.5	13.3	12.4	*16.2*	12.5	12.9	13.0	160.0	156.3	2.4%	3.7
Gaming Excise Tax	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	1.1	1.1	1.1	1.0	4.5	8.5	-47.6%	(4.0)
Leased Vehicle Surcharge & Other	0.3	0.4	0.4	0.4	0.3	0.8	0.7	0.3	0.3	0.3	0.3	0.3	4.8	4.3	11.4%	0.5
TOTAL SELECTIVE SALES TAXES	26.3	55.4	55.0	25.2	23.8	78.9	24.7	53.3	82.1	23.5	24.6	94.0	566.7	528.3	7.3%	38.4
Withholding	133.2	109.9	121.4	125.0	116.8	173.3	117.7	127.8	*144.7*	115.5	119.3	131.0	1,535.6	1,478.2	3.9%	57.5
Final Settlements	27.3	65.8	22.6	0.4	36.4	54.3	12.3	43.2	*91.9*	119.0	49.0	46.4	568.6	535.7	6.1%	32.9
Oil and Gas Withholding Tax	4.8	5.3	14.4	2.8	2.5	12.1	2.4	10.8	*12.6*	20.5	4.7	14.1	107.0	106.2	0.8%	0.9
Fiduciary Tax	0.3	1.5	(0.8)	0.2	0.2	0.6	(5.3)	1.4	*2.8*	(0.1)	1.3	(1.2)	0.8	6.2	-86.8%	(5.4)
Gross Personal Income Tax	165.6	182.5	157.6	128.4	155.9	240.3	127.0	183.2	*252.1*	254.9	174.4	190.4	2,212.1	2,126.2	4.0%	85.9
Transfer to PIT Suspense	(6.3)	(8.8)	(29.0)	(6.0)	(2.8)	(4.5)	(183.4)	(158.6)	*(50.3)*	(40.9)	(18.9)	(18.2)	(527.8)	(505.5)	4.4%	(22.3)
Retiree Health Care	(2.7)	(2.7)	(2.7)	(2.7)	(2.7)	(2.7)	(2.7)	(2.7)	*(2.7)*	(2.7)	(2.7)	(2.7)	(32.9)	(32.9)	0.0%	0.0
Less: Refunds, distributions to other funds	(9.0)	(11.5)	(31.7)	(8.8)	(5.5)	(7.3)	(186.2)	(161.4)	*(53.0)*	(43.7)	(21.6)	(21.0)	(560.7)	(538.4)	4.1%	(22.3)
NET PERSONAL INCOME TAX	156.6	170.9	125.8	119.6	150.4	233.0	(59.2)	21.8	*199.1*	211.2	152.8	169.4	1,651.4	1,587.1	4.0%	64.2
CORPORATE INCOME TAX	19.1	(2.9)	13.4	12.8	0.9	23.8	(1.7)	(9.1)	*48.4*	(8.1)	(9.7)	12.6	99.5	51.4	93.7%	48.1
TOTAL INCOME TAXES	175.7	168.0	139.2	132.4	151.3	256.8	(60.9)	12.7	247.6	203.1	143.1	181.9	1,750.9	1,638.5	6.9%	112.4
Oil and Gas School Tax **	39.5	40.2	42.9	44.8	50.8	55.1	65.4	80.2	1.5	-	-	-	420.4	420.4	0.0%	0.0
Oil Conservation Tax	2.1	2.2	2.2	2.3	2.6	2.8	3.4	4.0	2.7	2.5	2.8	2.8	32.4	29.5	9.7%	2.9
Resources Excise Tax	0.4	0.5	0.2	0.7	0.4	0.4	0.2	1.0	0.6	0.6	0.6	0.6	6.3	6.7	-6.7%	(0.4)
Natural Gas Processors Tax	0.8	0.9	0.9	0.9	0.9	0.9	0.9	0.7	0.8	0.8	0.8	0.8	10.0	9.6	4.2%	0.4
TOTAL MINERAL PROD. TAXES	42.8	43.7	46.2	48.7	54.6	59.2	69.9	85.9	5.6	3.9	4.2	4.2	469.0	466.2	0.6%	2.8
LICENSE FEES	0.4	0.3	0.4	0.4	0.4	0.4	0.3	0.7	0.5	0.4	0.2	49.1	53.6	52.7	1.6%	0.8
Land Grant Perm. Fund Distributions	60.0	60.0	60.1	60.1	60.1	60.1	60.1	60.2	60.0	60.0	60.0	60.0	720.6	719.9	0.1%	0.7
State Treasurer's Earnings	3.5	0.5	1.1	(1.3)	2.5	2.1	(0.3)	(6.2)	*(1.2)*	*3.7*	4.6	4.6	13.5	31.0	-56.5%	(17.5)
Severance Tax Perm. Fund Distributions	19.5	19.5	19.5	19.5	19.5	19.5	19.5	19.5	19.5	19.5	19.5	19.5	234.0	234.0	0.0%	0.0
TOTAL INVESTMENT EARNINGS	83.1	80.1	80.6	78.2	82.1	81.7	79.3	73.4	78.3	83.1	84.1	84.1	968.1	984.9	-1.7%	(16.8)
Federal Mineral Leasing Royalties	14.1	31.4	39.2	108.7	57.5	50.6	66.5	79.4	*74.5*	*94.2*	*95.4*	91.3	802.7	738.5	8.7%	64.2
State Land Office Bonuses, Rents	2.6	2.3	1.7	1.7	0.9	1.8	2.3	8.1	2.5	2.5	2.5	2.5	31.1	59.4	-47.7%	(28.3)
TOTAL RENTS & ROYALTIES	16.7	33.6	40.9	110.4	58.4	52.4	68.7	87.4	77.0	96.6	97.8	93.7	833.8	797.9	4.5%	35.9
TRIBAL REVENUE SHARING	0.0	0.1	-	7.5	1.0	0.1	6.8	0.6	14.3	1.1	1.0	14.3	46.7	53.8	-13.2%	(7.1)
MISCELLANEOUS RECEIPTS	0.4	0.8	0.6	0.9	1.7	0.5	18.8	0.7	1.2	1.2	1.2	19.8	47.9	47.5	0.9%	0.4
REVERSIONS	0.0	-	-	1.3	0.9	8.4	0.3	4.0	6.3	0.5	-	33.2	54.9	50.0	9.9%	4.9
TOTAL RECURRING REVENUE	570.2	610.7	576.2	635.9	586.6	805.8	445.4	539.5	788.9	621.4	567.1	778.5	7,526.2	7,194.6	4.6%	331.7
Non-Recurring	0.0	0.3	(0.1)	0.0	0.2	1.9	0.4	0.6	-	-	-	-	3.3	-		3.3
Additional Transfers *	-	-	-	-	(10.0)	14.0	-	-	-	-	-	75.7	79.7	62.8		16.8
TOTAL NON-RECURRING REVENUE	0.0	0.3	(0.1)	0.0	(9.8)	15.8	0.4	0.6	-	-	-	75.7	83.0	62.8		20.1
GRAND TOTAL REVENUE	570.3	611.0	576.1	635.9	576.8	821.6	445.7	540.1	788.9	621.4	567.1	854.2	7,609.2	7,257.4	4.8%	351.8

Estimates are developed by LFC and based on the consensus revenue estimate and historical monthly patterns.

*Nonrecurring estimates for HB 349 from the 2020 regular session include $2.9 million in reversions for general fund capital projects overfunded in the bill and $45.8 million in expected FY21 Medicaid reversion. Expect additional $27 million in FY20 Medicaid reversion booked to FY21. Negative $10 million in November reflects adjustment for PED reversion in FY20. December amount of $14 million for FY20 fire protection fund reversion submitted too late for inclusion in FY20 audit.

** Distributions to the Tax Stabilization Reserve estimated to begin in March 2021

Appendix B. TRD's FY21 Third Quarter Report Card

NEW MEXICO LEGISLATIVE FINANCE COMMITTEE

PERFORMANCE REPORT CARD
Taxation and Revenue Department
Third Quarter, Fiscal Year 2021

ACTION PLAN

Submitted by agency?	Yes
Timeline assigned?	No
Responsibility assigned?	No

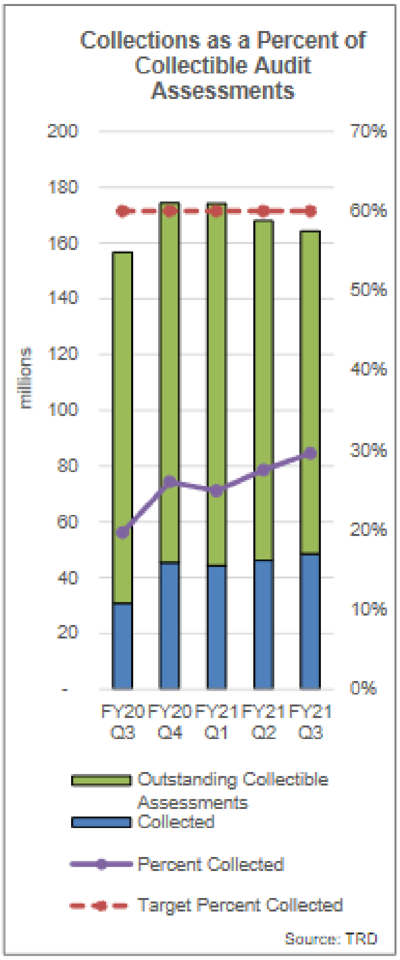
Taxation and Revenue Department

For the third quarter of FY21, the Taxation and Revenue Department (TRD) fell slightly behind in meeting its annual target for collections of outstanding balances. While the department continues to fall short of its target for collectible audit assessments, the Audit and Compliance Division (ACD) is making slow but steady progress in increasing collectible audit assessments, improving its collection rate from approximately 20 percent to 30 percent over the past year.

Call center wait times in the Motor Vehicle Division (MVD) continued to increase, which MVD attributes to a more accurate measurement method, as well as higher call volumes. MVD has not tracked wait times in offices for the past year, citing a need to focus on Covid-19-related social distancing and hygiene practices. A lack of measurement makes it difficult to know how well MVD offices are able to serve customers, even with limited capacity. The division has implemented a number of customer-friendly changes that make it easier for drivers to conduct transactions remotely and in-person, and reopened offices at 100 percent capacity beginning in the fourth quarter.

The agency's vacancy rate fell slightly, to 24.2 percent in May, after nearly of year of increasing. The agency points to high vacancy rates in its MVD call center and plans to focus on hiring for that division during the next quarter.

In response to the Covid-19 public health emergency, both MVD offices and TRD district offices were open by appointment only during the quarter. The department has not held delinquent property tax sales for the past five quarters.



Tax Administration

The Tax Administration Program is slightly behind in progress towards its annual target for collections of outstanding balances. As of the third quarter, the program had collected $133.7 million, or nearly 15 percent, of its total collectible balance of $896.9 million, or 65 percent of the target amount for the year.

The program again fell short of its goal for collectible audit assessments. At the end of the third quarter, the program had collected $48.6 million, or 29.6 percent, of the $164.3 million in collectible audit assessments, short of its goal of maintaining collections at 60 percent. However, the program continues to make slow but steady progress on this measure, increasing collectible audit assessments by almost 10 percentage points since the third quarter of FY20. ACD began using a new data analytics tool in FY20 to identify the most collectible audits, and expects performance on collectible audits to continue to improve over time as a result of the tool. TRD received a $1.15 million appropriation to implement the tool, and has increased collections by almost $20 million in the past year. While it is difficult to know how much use of the tool is directly tied to increasing collections, early indications suggest the tool may already have a very positive return on investment.

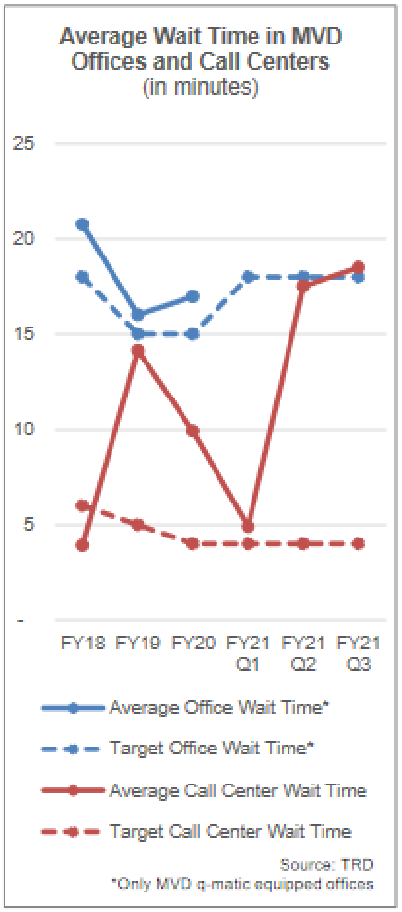
$560.7 million

Amount under protest
(as of April 2021)

Budget: $33,916 **FTE:** 495.8

Measure	FY19 Actual	FY20 Actual	FY21 Target	FY21 Q1	FY21 Q2	FY21 Q3	Rating
Collections as a percent of collectible outstanding balances from the end of the prior fiscal year*	19%	19%	23%	9.4%	12%	14.9%	Y
Collections as a percent of collectible audit assessments generated in the current fiscal year	49%	26%	60%	24.9%	27.5%	29.6%	Y
Program Rating	Y	Y					Y

*Target is cumulative



Motor Vehicle

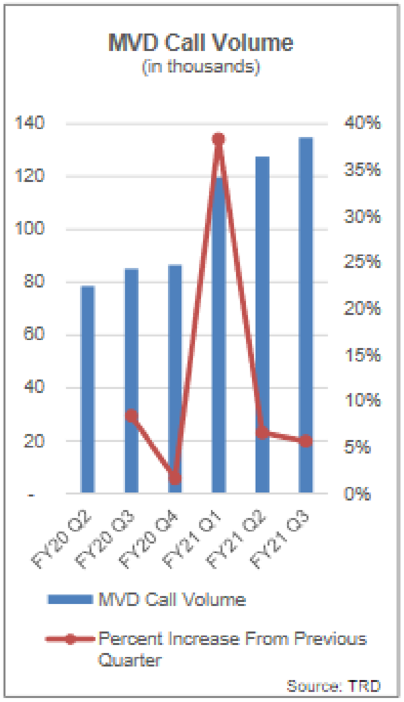
For the fourth consecutive quarter, MVD did not report on office wait times, citing a need to focus on maintaining Covid-19-related social distancing and hygiene practices while offices are operating on an appointment-only basis and with limited capacity. MVD has made available additional online transaction types, including license renewal for New Mexicans over the age of 79, weight distance renewals, and interlock driver's licenses. In addition, MVD is testing a new queuing system to allow customers to check in remotely at offices. The improvements to online and in-person services will likely be beneficial even with expanded office capacity. As of the fourth quarter, all offices reopened at 100 percent capacity, while remaining on an appointment-only model.

MVD call center wait times continued to rise, increasing from under five minutes in the first quarter to 17.5 minutes in the second quarter and 18.5 minutes in the third quarter. However, MVD recently changed the way it measures call times, using a weighted average based on volume of different call types. For example, MVD now weights English-language calls, which tend to have a longer wait time, more heavily, as they account for the majority of all calls. TRD may want to consider updating its targets to better reflect the new, more accurate, method of measurement. MVD call volume continued to increase, although not as much as in recent quarters, growing by almost 6 percent from the previous quarter. TRD indicated that the increased volume made it challenging to keep up with calls, and the call center's vacancy rate also increased over the past year. As MVD offices increase capacity in the fourth quarter, pressure on call centers will likely decrease. A new phone system allows more customers to wait on hold, but likely also contributes to a higher rate of abandoned calls. In March, 52 percent of customers abandoned their calls.

The share of registered vehicles with liability insurance continued to increase slightly, nearly reaching the target of 92 percent.

Budget: $40,396 **FTE:** 326

Measure	FY19 Actual	FY20 Actual	FY21 Target	FY21 Q1	FY21 Q2	FY21 Q3	Rating
Registered vehicles with liability insurance	90.4%	90.6%	92%	91.2%	91.3%	91.4%	Y
Average wait time in "q-matic" equipped offices, in minutes	16:01	16:29	<18:00	NR	NR	NR	R



Average call center wait time to reach an agent, in minutes	14:09	9:55	<4:00	4:54	17:31		R
Program Rating	Y	Y					R

Compliance Enforcement

The agency is on track to meet its target for referral of tax investigations to prosecutors. The number of tax investigations opened annually is small, causing this measure to fluctuate significantly between each quarter. Only one tax fraud case was prosecuted – successfully – during the third quarter, leading to a 100 percent success rate. Due to the Covid-19 pandemic, the courts are experiencing a delay in scheduling hearings.

Budget: $1,656 **FTE:** 21

Measure	**FY19 Actual**	**FY20 Actual**	**FY21 Target**	**FY21 Q1**	**FY21 Q2**	**FY21 Q3**	**Rating**
Tax investigations referred to prosecutors as a percent of total investigations assigned during the year	61%	114%	85%	25%	50%	20%	G
Successful tax fraud prosecutions as a percent of total cases prosecuted*	100%	100%	N/A	0%	0%	100%	
Program Rating	R	G					G

*Measure is explanatory and does not have a target

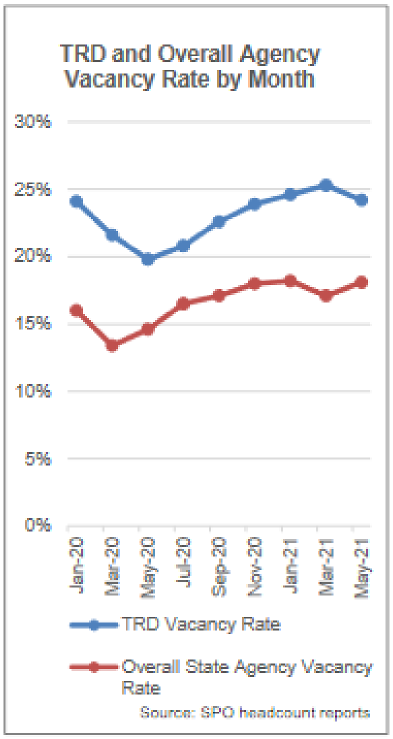
Property Tax

In the third quarter of FY21, the Property Tax Program collected and distributed to counties $1.6 million in delinquent property taxes, reaching nearly 50 percent of the annual target, and recovered 2.5 percent of total delinquent property taxes, or nearly 62 percent of the annual target. Public sales of delinquent property have not taken place for the previous four quarters, due to public health restrictions. TRD indicates it will begin holding property sales in the next quarter.

Budget: $4,226 **FTE:** 41

Measure	**FY19 Actual**	**FY20 Actual**	**FY21 Target**	**FY21 Q1**	**FY21 Q2**	**FY21 Q3**	**Rating**
Delinquent property tax collected and distributed to counties, in millions	$12.9	$10.4	$13	$2.5	$2.2	$1.6	Y
Percent of total delinquent property taxes recovered	21.2%	18.7%	18%	4.9%	3.7%	2.5%	Y
Dollar value of all delinquent property tax sales held, in thousands	$244.4	$435.6	$800	$0	$0	$0	R
Program Rating	G	Y					Y

Program Support



The department is running slightly behind in meeting its annual performance target for the number of tax protest cases resolved, resolving 334 cases in the second quarter of FY21, or nearly 70 percent of its total target number of cases for FY21.

The department submitted a figure of 73 percent for internal audit recommendations implemented, which is on track to meet a goal of 92 percent for FY21. However, the Internal Audit Division is engaged in documenting procedures for all of TRD, and is counting completed internal controls as part of the performance measure on implementation of internal audit recommendations. The work of the internal audit team has shifted since FY20 to assist in business process improvement, and supporting other divisions in identifying and documenting internal controls. These efforts reflect the result of previous audit findings on agency-wide lack of documented controls. TRD intends to build business process improvement capacity within its divisions, allowing the internal audit team to refocus its efforts on internal audits, while still providing support on internal controls. While business process improvement is an important agency-wide goal, it may not be the best measure of internal audit performance. TRD may wish to consider a separate performance measure to gauge progress on internal controls. So far in FY21, the division has completed 26 internal procedures and 15 audits.

Budget: $21,077 **FTE:** 182

Measure	FY19 Actual	FY20 Actual	FY21 Target	FY21 Q1	FY21 Q2	FY21 Q3	Rating
Tax protest cases resolved	1,003	1,744	1,550	432	310	334	Y
Internal audit recommendations implemented	61%	94%	92%	43%	73%	73%	Y
Program Rating	R	Y					Y