

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2416

2007 SENATE FINANCE AND TAXATION

SB 2416

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2416**

Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: # 2470 and #2479

Committee Clerk Signature



Minutes:

**Sen. Urlacher** called the committee to order and opened the hearing on SB 2416.

**Sen. Christmann**: appeared as prime sponsor of the bill stating he brings this bill before you because of a real and overwhelming need. Sharing between counties, between Oliver and Morton counties. The money that transfers over the county line is imperative to the future of Oliver County. This legislation is basically to fix a rather unique problem of a very time county, population wise that really has no other place to turn.

**Rep. Kreidt**: co-sponsor of the bill appeared in support stating we are just trying to help out a small county that had the impact from the industry there and dwell with and be able to bring some funds into them that they are losing from the tiple tax that is now being imposed on this county.

Tipple Tax Sheet handed out

**John Mahoney**: Oliver County States Attorney appeared in support stating Oliver County suffers more of an impact as far as roads, law enforcement, ambulance services and infrastructure. We rely on coal impact dollars and we had these plants and what not tax just regular property taxes we wouldn't need money from anybody. But the way its set up it's a smaller tax, we share 50% of it with the whole State and out of our share that comes back to

us roughly 50%, we have to share a portion of it with Morton County. We looked at just possibly taking out that tipple sharing provision and all you would have to do is basically eliminate section 2 of the present law where its apportioned between the coal and non coal producing counties. Rather than do that as a compromise we'd present this bill where the revenues that we share with Morton County would be an appropriation for those dollars which would come back to us, roughly \$196,000 a biennium.

**Sen. Cook:** wasn't this tipple addressed and changed in the 1990's.

**Answer:** yes, we came up with a compromise on the 3.4 ton and haven't looked at it since.

**Kent Albers:** Oliver County Commissioner appeared in support and appeared to give background on the tipple situation affects Oliver County government. The cost of repaving 1 mile of road is between 150 and 200 thousand dollars. We have at least 13 miles of road that are impacted by this full traffic that will need attention. That's negative impact to our county.

**Mike Liffrig:** Oliver County States Attorney appeared in support stating a past legislature imposed this upon us and its time to get rid of the tipple tax.

**Sen. Cook:** fairness issue

**Royal Lyson:** Superintendent of Center-Stanton Public School appeared in support with written testimony. (See attached)

**Jill Palerine:** Pres. Of Center/Stanton Student Council appeared in support with written testimony. (See attached)

**Andrew Alderin:** Pres. of Center/Stanton FFA appeared in support with written testimony. (See attached)

**Jayden Ziegler:** Pres of Center/Stanton Future Business Leaders of America appeared in support with written testimony. (See attached)

**Marcy Dickerson**: Tax Dept. appeared neutral on the bill with written testimony. (See attached)

**Sen. Christmann**: presented the committee with some proposed amendments (0201)

**Kelly Schmidt**: State Treasurer stated she would provide the committee with a printout of exact dollars and cents that have been distributed to Morton and Oliver Counties.

**Leon Samuel**: Morton County Commissioner appeared neutral stating he would oppose any amendments to repeal the bill as presented. On the 15 mile radius, its land only it doesn't include any improvements.

**John Mahoney**: clarification on property taxes paid on the mine. That's correct the real property taxes are paid on the mine, but the big differential is, on the diversion tax on the facilities so the power plants are worth hundreds of millions of dollars, there's a \_\_\_ of conversion tax that we don't get property on them like Morton County with the oil refinery. So that's the distinction between the conversion and severance tax.

Closed the hearing.

# 2479 Discussion and Action

**Sen. Cook**: I thought it was taken care of a long time ago.

**Sen. Urlacher**: seems there is a problem but they should probably work them out themselves.

**Sen. Triplett**: what are you thinking in terms of correction? My objection to the bill in addition to the inappropriate way it was presented is the way its written, but I think I agree with you, if there's a problem it seems to be the appropriate way is to take the taxes there and reallocate it between the two counties.

**Sen. Oehlke**: it seems to me that when the employees were forced to live where they worked, that really created the problem.

**Sen. Cook:** I think the right thing to do is put this bill to rest real quick and if there is people who have a concern as to whether times have changed and this needs to be addressed I think the proper to do it is someway we tack a study resolution on a bill or Sen. Christmann can introduce a study resolution. This is a good interim study for the Tax Dept. where you don't have Morton and Oliver County. Have some people who can step back and look at what is the true mission and purpose of the coal severance tax and then are we properly applying to meet that mission.

**Sen. Triplett:** should we hog house it and do a study resolution?

**Sen. Cook:** I'd rather put this one to rest and find a place for a study resolution.

**Sen. Triplett:** made a **Motion for DO NOT PASS**, seconded by Sen. Cook.

**Sen. Anderson:** it appears to be a squabble between two counties and coming to the Legislature isn't such a good idea.

**Sen. Urlacher:** feels so too, but it's also law that restricts them in doing certain things and that's why they come to the State.

**Sen. Horne:** Is there some merit to their argument or maybe recommending a study to give them some relief and do a study to look at the bigger picture as opposed to just killing the bill?

**Sen. Urlacher:** that would somewhat mean admitting we know what's right which we don't know.

**Sen. Cook:** well we heard one side of the story this morning, there are 2 sides to every story.

Roll Call Vote: 6-1-0 Sen. Anderson will carry the bill.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2416

Page 3, line 11, overstrike "subsection" and insert immediately thereafter "subdivision"

Page 4, line 5, replace "tax commissioner" with "state treasurer"

Page 4, line 11, replace "tax commissioner" with "state treasurer"

Page 4, line 14, replace "tax commissioner" with "state treasurer"

Page 4, line 17, after the second "the" insert "two"

Page 4, line 20, replace "tax commissioner" with "state treasurer"

Renumber accordingly



**REPORT OF STANDING COMMITTEE (410)**  
February 1, 2007 8:40 a.m.

**Module No: SR-22-1732**  
**Carrier: Triplett**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2416: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO NOT PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2416 was placed on the Eleventh order on the calendar.**

2007 TESTIMONY

SB 2416

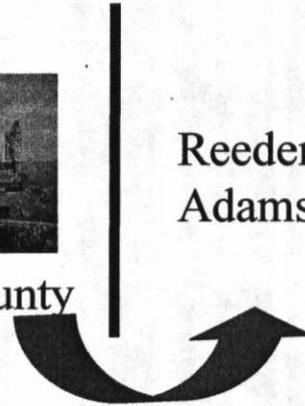
# Tipple Tax: Unfair Loophole

Purpose: "Negative Impacts"



Bowman County

Reeder School  
Adams County



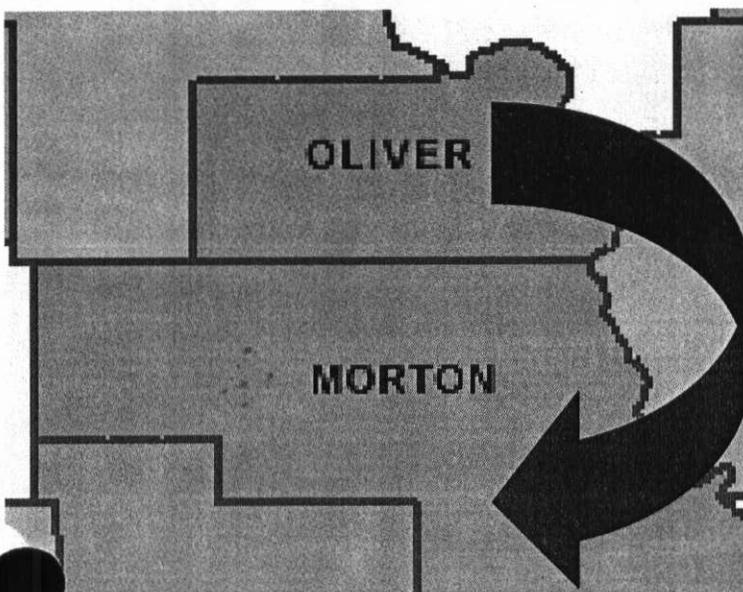
## Today: Unfair

Salaries Exported: \$5,231,600

Jobs Created: 82 @ \$63,800

*Positive Impact:* \$31 million!

**AND a Tipple Subsidy? NO!**



Mike L. Brigg

**Chairman Urlacher and Members of the Committee**

My name is Royal Lyson

I'm the Superintendent of Center-Stanton Public School

**We are like many small North Dakota school districts. We are suffering from falling enrollment and are always looking at ways to make things better for our students. Bill 2416 will go a long ways to helping us out for the next two years. My board feels the tippie Bill has out lived its usefulness and it is unfair for the patrons of Oliver County. Bill 2416 will go a long ways to making things right and isn't that what laws are made for. Making things better and doing what is right for the people of North Dakota.**

**Right now we are taxing our patrons at 185 mill a year. So you can see they are paying their fair share. We are not in here begging for these funds but only asking that you help correct what is wrong for the 2,000 people in Oliver County.**

**As you all know rural bus routes travel mostly on gravel roads. The Oliver County road crew does a good job but they are operating on a limited budget. They are trying to maintain the roads on a budget supported by only 2,000 people. Our buses take quite a beating if roads are not maintained. Oliver County is still being impacted by the plant and mine. The people traveling back and forth from Bismarck/Mandan area is unbelievable. This includes workers as well as maintenance people coming out**

of Bismarck/Mandan area each and everyday. They travel our black top roads as well as many of gravel roads to and from the plant and mine and back to Bismarck and Mandan area.

In the new educational funding bill we will be getting \$57,000. While New Salem will be getting \$254,000. Right now I believe New Salem is getting about \$56,000 off the tippie bill. The plant has no negative impact on them while in fact it has a positive impact because there are many people living in the New Salem district that work at the plant or the mine and their children go to New Salem. I believe New Salem deserves everything they receive but we are asking you to do what is right for Center/Stanton School and pass Bill 2416.

We are asking you to do what is fair for our County and School. Thank You for time. If you have any questions I will try to answer them for you.

**Chairman Urlacher and Members of the Committee**

My name is Jill Palerien

I'm the President of Center/Stanton Student Council

The Center/Stanton Student Council members are here to ask for your support. The money that we will receive will help improve our out dated computer lab and improve our curriculum. We are very proud of our school and county. Many of us ride the bus to school each day. We know Oliver County is short of funds to keep the roads well maintained for the school buses. I don't know if you have ever ridden on a washboard road in a school bus, but it is not a very fun ride to say the least. We know you have many important bills you need to consider this legislative session, but please support this bill. Thank You for all your hard work in representing the Great State of North Dakota.

**Chairman Urlacher and Members of the Committee**

My name is Andrew Alderin

I'm the President of the Center/Stanton FFA

I'm hear to ask for your help. The Center/Stanton FFA would like to see this committee support this bill. The additional \$56,000 for our school will help us continue our strong Ag Program in Center. We have always had a strong FFA program but we need this bill to pass to continue the many programs that we offer right now and hopefully continue to offer. As you know many of the Ag Programs around the state have closed. We do not want to be one them. Thank You for listening to us today.

## **Chairman Urlacher and Members of the Committee**

My name is Jayden Ziegler

I'm the President of the Future Business Leaders of America in Center/Stanton

We need your help. The Center/Stanton FBLA would like to see this committee support this bill. We have many needs in our school as many others school do in the state. We are asking you to do what we think is only fair for our school. Our enrollment is dropping while Mandan's is growing. Mandan is receiving a positive impact while we are receiving a negative impact. That is why we are all here to day to ask for support for this bill. Thank You for looking out for the young business leaders of North Dakota.

is due to the fraudulent intent or the willful attempt of the taxpayer in any manner to evade the tax, no time limitation for giving the notice of taxes due applies.

**57-60-09. Proceedings and penalty on delinquency.** If the tax provided for in this chapter becomes delinquent, there is hereby imposed a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, with interest at the rate of one percent per month on the tax due, for each calendar month or fraction thereof during which such delinquency continues, excepting the month within which such tax became due, which must be collected in the manner hereinafter provided. If any person fails to make any report herein required, within the time prescribed by law for such report, it is the duty of the commissioner to examine the books, records, and files of such person to ascertain the amount and value of such production to compute the tax thereon as provided herein, and the commissioner shall add thereto the amount of any penalties accrued thereon. The commissioner, for good cause shown, may waive the penalty or the interest provided by this section.

**57-60-10. Lien for tax.** The tax herein provided for must, at all times, be and constitutes a first and paramount lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer, and such lien may be foreclosed in the manner provided in chapter 32-20.

**57-60-10.1. Refund of overpayments.** If it appears that as a result of a mistake an overpayment of a tax, penalty, or interest was made which was not due under the provisions of this chapter, then such amount must be credited against any amount due under this chapter from the person who made the erroneous payment or must be refunded to such person; provided, that the person entitled to the overpayment makes a written claim for it to the commissioner within six years after the date the overpayment was received by the commissioner. If a refund is authorized by the commissioner, the commissioner shall certify the amount of the refund, the reason for it, and the name of the person entitled to it to the office of management and budget which shall thereupon draw a warrant for such amount on the funds to which the overpayment was credited.

**57-60-11. Appeal from decision of commissioner.** Any person aggrieved because of any action or decision of the commissioner under the provisions of this chapter may within fifteen days of written notification thereof from the commissioner make application in writing to the commissioner for a hearing to be governed by the provisions of chapter 28-32 and may appeal the commissioner's decision following such hearing to the district court of Burleigh County as provided in chapter 28-32.

**57-60-12. Rules and regulations - Bond.** The commissioner is hereby authorized and empowered to prescribe all necessary rules for the purpose of making and filing of all reports required hereunder and otherwise necessary to the enforcement of this chapter, and may require a sufficient bond from any person charged with the making and filing of reports and the payment of the taxes herein imposed, and said bond must run to the state of North Dakota and must be conditioned upon the making and filing of reports as required by law or regulation, and for the prompt payment, by the principal therein, of all taxes justly due the state by virtue of the provisions of this chapter.

**57-60-13. Moneys to be deposited with state treasurer.** It is the duty of the commissioner to immediately deposit with the state treasurer all moneys collected by the commissioner under this chapter and to accompany each remittance with the necessary information to allow the state treasurer to allocate the moneys received as provided by this chapter.

**57-60-14. Allocation of revenue - Continuing appropriation.**

1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08, fifteen

~~percent to the county and eighty-five percent to the state general fund, except~~ moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund.

2. Notwithstanding any other provision of law, the allocation under this section to each county may not be less in each calendar year than the amount certified to the state treasurer for each county under this section in the immediately preceding calendar year, except that through December 31, 2009, the portion of the revenue allocation to each county which is attributable to a coal gasification coal conversion facility must exclude consideration of calendar year 2001, and be based on calendar year 2000 or the appropriate year after 2001, whichever is greater. For a county that has received less in a calendar year than the amount certified to the state treasurer for that county in the immediately preceding calendar year, not later than January tenth of the following year, the county auditor shall calculate the amount that is due under this subsection and submit a statement of the amount to the state treasurer. The state treasurer shall verify the stated amount and make the required payment under this subsection to the county, from collections received under section 57-60-02, not later than March first of the following year. The funds needed to make the distribution to counties under this subsection are appropriated on a continuing basis for making these payments. Money received by a county under this subsection must be distributed pursuant to section 57-60-15.
3. Notwithstanding any other provision of law, for a county in which is located a coal conversion facility that was not a coal conversion facility under this chapter before January 1, 2002, that county must receive for calendar year 2002 at least as much under this section as was received by that county and taxing districts in that county in property taxes for that facility for taxable year 2001. For years after 2002, subsection 2 applies to allocations to that county under this section, except that for a county described in this subsection, amounts received for any calendar year must be allocated by the county in the same manner property taxes for the facility were allocated for taxable year 2001.

**57-60-15. Duty of state treasurer - Allocation to political subdivisions.** Moneys allocated to counties under the provisions of section 57-60-14 must be apportioned as follows:

1. Thirty percent of all revenues allocated to any county must be paid by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
2. Forty percent of the revenues allocated to any county must be paid to the county treasurer who shall deposit it in the county general fund to be used for general governmental purposes.
3. Thirty percent of all revenues allocated to any county must be apportioned by the state treasurer to school districts within the county on the average daily membership basis, as certified to the state treasurer by the county superintendent of schools.

**57-60-16. Penalty.** Any person intentionally violating any of the provisions of this chapter is guilty of a class A misdemeanor.

**Chairman Urlacher and Members of the Committee**

My name is Jill Peteriwe

I'm the President of Center/Stanton Student Council

The Center/Stanton Student Council members are here to ask for your support. The money that we will receive will help improve our out dated computer lab and improve our curriculum. We are very proud of our school and county. Many of us ride the bus to school each day. We know Oliver County is short of funds to keep the roads well maintained for the school buses. I don't know if you have ever <sup>ridden</sup> rode on a washboard road in a school bus, but it is not a very fun ride to say the least. We know you have many important bills you need to consider this legislative session, but please support this bill. Thank You for all your hard work in representing the Great State of North Dakota.

**Chairman Urlacher and Members of the Committee**

My name is Andrew Alder

I'm the President of the Center/Stanton FFA

I'm hear to ask for your help. The Center/Stanton FFA would like to see this committee support this bill. The additional \$80,000 for our school will help us continue our strong Ag Program in Center. We have always had a strong FFA program but we need this bill to pass to continue the many programs that we offer right now and hopefully continue to offer. As you know many of the Ag Programs around the state have closed. We do not want to be one them. Thank You for listening to us today.

SENATE FINANCE AND TAXATION COMMITTEE

Testimony of Marcy Dickerson, State Supervisor of Assessments  
Senate Bill 2416 – January 31, 2007

Mr. Chairman, Members of the Committee, for the record my name is Marcy Dickerson and I am employed by the State Tax Commissioner as State Supervisor of Assessments and Director of the Property Tax Division.

My testimony on Senate Bill 2416 does not address whether a coal-producing county should be reimbursed for the amount of coal severance tax revenue the coal-producing county is required to share with a non-coal-producing county. My concern is with the duties assigned to the State Tax Commissioner. The State Treasurer currently makes allocations of coal severance tax revenue to the coal-producing and non-coal-producing counties, and the affected cities and school districts. The State Treasurer's office receives certifications from the county director of tax equalization of the coal-producing county and the superintendent of the non-coal-producing county, as required by statute. It makes sense to make the new responsibilities contained in SB 2416 the responsibilities of the State Treasurer also. It is my understanding that State Treasurer Kelly Schmidt agrees with that. I recommend that, beginning on page 4, line 5 and continuing through line 20, all references to "tax commissioner" be changed to "state treasurer."

On page 4, line 17, after the second "the" insert "two".

There is another related issue that I have discussed with Deputy State Treasurer Lawrence Hopkins that I want to bring to your attention. The provisions for a coal-producing county to share coal severance tax revenue with a non-coal-producing county were originally enacted when the Gascoyne Mine was operating in Bowman County. Legislation was enacted to require Bowman County to share some revenue with Adams County. Because a small mine was

operating in Adams County, Adams County was producing a small amount of coal and was not eligible for a share of Bowman County's coal severance tax revenue. During the next legislative session definitions of "coal-producing county" and "non-coal-producing county" were added to make a county with minimal coal production eligible for tax sharing as a non-coal-producing county.

Now neither the Gascoyne mine in Bowman County nor the small mine in Adams County is operating. There is a small mine operating in Bowman County. That mine pays coal severance tax, which is distributed to the county and to the trust fund. However, that mine does not qualify as a "currently active coal mining operation" and Bowman County does not qualify as a coal-producing county under the definitions in current law, because the mine produces less than 150,000 tons during a quarterly period.

The problem is that § 57-62-02(2)(a), which addresses distribution of coal severance tax that does not have to be shared with another county, provides for distribution of coal severance tax revenue from a "currently active coal mining operation." There is no provision for distributing coal severance tax revenue from an active mine that is too small to qualify. The Tax Department and Office of State Treasurer agree that Bowman County should receive revenue from the coal severance tax paid by a mine within the county, and distributions have been made to Bowman County since that mine began operations.

To alleviate this problem, I make the following suggestion: On page 3, line 11, replace "this subsection" with "subdivision b". That change will limit the application of the definitions in § 57-62-02(b)(4) to subdivision b only, which addresses counties that have to share coal severance tax, and not to subdivision a, which applies to counties that do not have a mine with a tipple within 15 miles of another county.

I realize that was a long explanation for a small change, but I want you to understand the reason for the change and what the effect will be.

I believe these changes are incorporated in amendments you have received.

That concludes my prepared testimony. I will try to answer any questions.

Chairman Unlacker & members of the Committee,

● My name is Jayden Ziegen and I'm the president of the Center-Stanton Future Business Leaders of America Chapter

First of all, I begin by asking for your help to pass this bill, not only on behalf of my fellow FBLA members but also on behalf of the entire school.

● We have many needs in our school, as do many other schools in the state, and by passing this bill you can make those needs a reality

for at least one of them. With the added money, not only could we supply our school with the proper up-to-date materials, <sup>that we need</sup> but we could also further establish our extracurricular activities, such as the FBLA <sup>or FFA</sup> chapters, & make possible the

growth & prosperity of these organizations that are so essential <sup>proper</sup> to academic development. <sup>Not</sup> As you <sup>may</sup> know, the

tipple tax was just instated in response to supposed negative

impacts Obama's coal imposed on Mountain  
Prouth.

However, that was then. Now <sup>the country of</sup> Morton  
is as positive as ever. With over  
13 times more people than Olive and  
growing, I might call — Morton is  
nothing short of thriving. Olive, on  
the other hand, has suffered a loss  
in population in more recent years,  
and this inverse effect has further  
detrimented Olive's economy while adding  
generous amounts more of Olive's coal  
money to Morton. But simply, as  
Morton continues to grow, it gains even  
more of our money while we get even  
less. Thus, Morton reaps + Olive  
plunders. <sup>However,</sup> Morton already gets over 2  
million dollars a year from the refinery.  
I ask you then, how much of that money  
Olive ever sees. Quite honestly, none. The  
simple fact is that the TOSURA refinery  
lies completely in Morton County. Olive  
shouldn't get any because <sup>the refinery is</sup> not within  
its jurisdiction. On the same note, <sup>then</sup> our  
coal mine lies entirely within the  
County of Olive <sup>thus</sup> Morton, for the  
same reasons, need have no claim to  
the Tipple tax either.

Furthermore the  
woods are filled  
with coal and  
our air is  
polluted by

Besides, since when is coal the only commodity with impact on neighboring counties & communities? Wheat, for example, has just the same beneficial effect on the whole of the United States & most of the world, for that matter, yet no such tipple tax applies in that instance either. All in all, then, by

What justification does Morton County hold claim as the only County in North Dakota to

know by now, reap the benefits from <sup>that of</sup> another? As you all well know, times have changed. It's no longer

"all for one & one for all" anymore; therefore, it shouldn't be "all for one" anymore but rather "one for one" or "one for all" either.

And that is why we are all here today to ask for your support for this bill. Thank you for looking out for the young business leaders of Blaine County.

	Yearly Totals- MORTON	Yearly Totals-OLIVER
July- Dec 2001	\$31,689.57	\$100,766.78
2002	\$45,951.45	\$148,510.96
2003	\$51,955.55	\$167,915.59
2004	\$90,808.58	\$308,409.94
2005	\$89,583.88	\$309,043.90
2006	\$93,893.35	\$348,472.83
2007	\$0.00	\$0.00
<b>Subtotal:</b>	<b>\$403,882.38</b>	<b>\$1,383,120.00</b>
Audit Adjustments	\$75,585.86	(\$75,585.72)
<b>Net Total for County</b>	<b>\$479,468.24</b>	<b>\$1,307,534.28</b>

*Revd 2-27-07  
From: Kelly Schmidt*