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JOBS AND GROWTH TAX RELIEF RECONCILIATION ACT OF 2003 - TEMPORARY STATE FISCAL RELIEF FUNDS

This memorandum reviews provisions of the federal Jobs and Growth Tax Relief Reconciliation Act of 2003 which relate to temporary state fiscal relief appropriations. On May 23, 2003, the United States Congress adopted and on May 28, 2003, the President signed the Jobs and Growth Tax Relief Reconciliation Act of 2003. Included in that Act are provisions appropriating \$20 billion for temporary state fiscal relief. The appropriation includes \$10 billion for a temporary increase of the Medicaid federal medical assistance percentage (FMAP). Of that amount, it appears North Dakota will receive about \$21 million. The legislation also provides \$5 billion for each of fiscal years 2003 and 2004 for payments to states to provide essential government services or to cover the cost to a state of complying with any federal intergovernmental mandate to the extent that mandate applies to the state and the federal government has not provided funds to cover the cost. It appears North Dakota will be eligible to receive \$25 million for each federal fiscal year (2003 and 2004) under this program.

TEMPORARY INCREASE OF THE MEDICAID FMAP

The legislation provides funding for permitting maintenance of the fiscal year 2002 FMAP for the last two calendar quarters of fiscal year 2003. Under the law, if the FMAP determined for 2003 is less than the FMAP determined for fiscal year 2002, the FMAP for the state for fiscal year 2002 must be substituted for the state's FMAP for the third and fourth calendar quarters of fiscal year 2003. The legislation also provides funding for permitting maintenance of fiscal year 2003 FMAP for the first three quarters of the fiscal year 2004. Under the legislation, if the FMAP determined for a state for fiscal year 2004 is less than the FMAP determined for fiscal year 2003, the FMAP for the state for fiscal year 2003 must be substituted for the state's FMAP for the first, second, and third calendar quarters of fiscal year 2004.

The legislation also provides funding for a 2.95 percent increase for the FMAP for each state for the third and fourth calendar quarters of fiscal year 2003 and for the first, second, and third calendar quarters of fiscal year 2004.

The bill provides that the increases in the FMAP for a state apply only for purposes of Title XIX of the Social Security Act and do not apply with respect to disproportionate share hospital payments or to spending receiving an enhanced matching rate, such as payments for the children's health insurance program.

Under the legislation, a state is eligible for the 2.95 percent increase in the FMAP only if the eligibility under its state plan under Title XIX of the Social Security Act is no more restrictive than the eligibility under the

plan as in effect on September 2, 2003. If a state has restricted eligibility under its state plan, the state is eligible for an increase in its FMAP in the first calendar quarter and subsequent calendar quarters in which the state has reinstated eligibility that is no more restrictive than the eligibility under the plan in effect on September 2, 2003.

The legislation provides that if a state requires political subdivisions to contribute toward the nonfederal share of expenditures under the state Medicaid plan, the state may not require that political subdivisions pay a greater percentage of the nonfederal share of its expenditures for the third and fourth calendar quarters of fiscal year 2003 and the first, second, and third calendar quarters of fiscal year 2004 than the percentage that was required by the state under its plan on April 1, 2003. North Dakota does not require political subdivisions to contribute toward the nonfederal share of Medicaid costs.

GOVERNMENT SERVICES APPROPRIATION

The legislation appropriates \$5 billion for each of fiscal years 2003 and 2004 to provide payments to states to provide essential government services or to cover the costs to a state of complying with any federal intergovernmental mandate to the extent that the mandate applies to the state and the federal government has not provided funds to cover the costs. The legislation requires a state to provide to the Secretary of the Treasury a certification that the state's proposed uses of the funds are consistent with the required uses. The payments to the states must be based on the relative population of the state to the total population of all states. The legislation does not include a definition of essential government services.

RECEIPT OF FEDERAL FUNDS - NORTH DAKOTA REQUIREMENTS

North Dakota Century Code Section 54-16-04.1 allows the Emergency Commission to authorize the State Treasurer to receive any funds not appropriated by the Legislative Assembly which are made available by any federal agency and which the Legislative Assembly has not indicated an intent to reject. If the amount under consideration exceeds \$50,000, the Emergency Commission, with approval of the Budget Section of the Legislative Council, may authorize any state officer to expend federal money from the date the money becomes available until June 30 following the next regular legislative session. Section 54-16-04.1 was amended by the 2003 Legislative Assembly to provide that a state officer may not receive federal funds exceeding \$50,000 without Budget Section approval and

to include provisions that state that the approval of the Budget Section is not required for the acceptance of federal funds if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. However, Budget Section approval is required before the expenditure of any funds accepted under those conditions. The 2003 amendments become effective on August 1, 2003.

Section 54-16-04.1 further provides that the expenditures of federal funds that have not been appropriated must be consistent with state law and with the terms of the grant and the program may not commit the Legislative Assembly for matching funds in the future unless the program has been first approved by the Legislative Assembly. The section specifically requires a state officer to submit an expenditure plan with a request for approval of expenditure of federal funds combined with or as part of a block grant for a new or existing program.

SUMMARY

Of the \$20 billion provided under the Jobs and Growth Tax Relief Reconciliation Act of 2003, it is estimated that North Dakota will be eligible to receive

\$25 million in fiscal year 2003 and \$25 million in fiscal year 2004 to provide for essential government services or to cover the cost of unfunded federal mandates. It is also estimated that the state will receive approximately \$21 million during fiscal years 2003 and 2004 as a result of the temporary increase of the Medicaid FMAP and the 2.95 percent increase in the FMAP. The federal law does not provide any specific requirements for matching funds but does provide certain eligibility requirements with respect to the FMAP increase. In addition, the state is required to provide certification that the state's proposed uses of the essential government services and unfunded mandate funds are consistent with the requirements of the federal law.

Section 54-16-04.1 allows the Emergency Commission to authorize acceptance of the federal funds so long as the Legislative Assembly did not indicate an intent to reject those funds. Because the amount of the funds exceeds \$50,000, Budget Section approval is needed before the Emergency Commission may authorize a state officer to expend the federal money. After August 1, 2003, Budget Section approval is also required before a state officer may receive federal funds in excess of \$50,000.