

# **Supplement to the 2003-04 Annual Information Statement of the State of New York**

*May 5, 2004*

This Supplement to the January 26, 2004 Update to the Annual Information Statement of the State of New York is dated May 5, 2004 (the "Supplement") and contains information only about the specific matters described herein and only through that date. The Annual Information Statement ("AIS") dated May 30, 2003 and the Update to the AIS dated January 26, 2004 should be read, in their entirety, in conjunction with the information in this Supplement.

While not statutorily required, on April 29, 2004, the Division of the Budget (DOB) issued a "2003-04 Year-End Report" (the "Year-End Report") based on unaudited year-end results reported by the State Comptroller on April 15, 2004. The purpose of the Year-End Report is to provide (i) a timely summary and analysis of preliminary 2003-04 Financial Plan results on an unaudited basis and (ii) describe the potential implications of 2003-04 results on the 2004-05 Financial Plan projections. DOB expects to issue a year-end report annually (either as a separate report in years when budget adoption is delayed or as part of the Enacted Budget Report in years when a budget is adopted by, or close to, the start of a fiscal year). DOB issued such a year-end report for the first time in 2003.

This Supplement is organized in four Parts:

Part I sets forth extracts of the Year-End Report. The remainder of the Year-End Report is incorporated by reference. The Year-End Update is available in its entirety on-line at [www.budget.state.ny.us](http://www.budget.state.ny.us) or by contacting DOB at the address below.

Part II is entitled "Special Considerations" and summarizes certain potential risks that may affect the State's Financial Plan in the State's 2004-05 fiscal year or in the future. The discussion of special considerations is by its nature speculative and is not intended to identify or describe every potential risk that could adversely affect the State Financial Plan.

Part III provides updated information on The City of New York.

Part IV reports on recent developments in litigation against the State and is furnished by the Attorney General.

This Supplement has been supplied to provide information about the financial condition of the State in connection with financings by certain issuers (including public authorities of the State) that may depend in whole or in part on State appropriations as sources of payment of their respective bonds, notes or other obligations, and for which the State has contractually obligated itself to provide such information pursuant to an applicable continuing disclosure agreement (a "CDA").

An official copy of this Supplement has been filed with each Nationally Recognized Municipal Securities Information Repository (NRMSIR) and may be obtained by contacting a NRMSIR or the Division of the Budget, State Capitol, Albany, NY 12224, Tel: (518) 473-8705.

An informational copy of this Supplement is available on the DOB website ([www.budget.state.ny.us](http://www.budget.state.ny.us)). The availability of this Supplement in electronic form is being provided solely as a matter of convenience to readers and does not imply that there have been no changes in

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## PART I: 2003-04 Year-End Report (Extracts)

### Introduction

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While not statutorily required, the Division of the Budget (DOB) has adopted a policy of preparing a report on results for the prior fiscal year based on preliminary year-end data. Consistent with that policy and with “best practices” in governmental financial reporting, this 2003-04 Year-End Report (the “Year-End Report”) compares unaudited year-end results (the “results” or “year-end results”) to projections at two mileposts -- those made at the time the 2003-04 budget was enacted, and the revised estimates for the 2003-04 fiscal year contained in the 2004-05 Executive Budget (as amended) -- as well as summarizes the reasons for the annual changes in receipts and disbursements from 2002-03 to 2003-04. The Year-End Report describes the differences between (i) these planning assumptions for both receipts and disbursements and what actually occurred, (ii) analyzes the reasons for the variances, and (iii) discusses the potential implications of 2003-04 results on the 2004-05 Financial Plan. Readers may obtain additional copies of the Year-End Report by visiting DOB on-line at [www.budget.state.ny.us](http://www.budget.state.ny.us) or by contacting the Division of the Budget, State Capitol, Albany, NY 12224, (518) 473-8705.

Readers should note that information in this Year-End Report relating to fiscal year 2003-04 is based on the year-end results reported by the Comptroller on April 15, 2004. The Comptroller is expected to issue the audited financial statements for 2003-04 in July 2004.

### Executive Summary

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The following table compares General Fund and All Governmental Funds (or “All Funds”) spending results to DOB’s Enacted Budget Financial Plan projections issued in May 2003 (the “Enacted Budget Financial Plan” or “initial projections”) and to DOB’s most recent Financial Plan Update in February 2004, submitted with amendments to the 2004-05 Executive Budget (the “30-Day estimates” or “30-Day Financial Plan”).

<i>Dollars in Millions</i>	2003-04			Year-End Above/(Below)	
	Enacted Budget	30-Day Update	Year-End Results	Enacted	30-Day
<b>General Fund *</b>					
Disbursements	42,737	42,071	42,065	(672)	(6)
<b>All Funds</b>					
Disbursements	96,374	98,304	97,327	953	(977)

\* Includes transfers.

In brief, the variances in both General Fund and All Funds spending were due mainly to the impact of Federal aid approved after DOB published the 2003-04 Enacted Budget Financial Plan (in particular the temporary increase in the Federal Medical Assistance Percentage (FMAP)). The balance of this Year-End Report explains the reasons for the receipts and disbursement variances in detail.

After reviewing the year-end results for 2003-04, DOB reports that the 2003-04 General Fund surplus was \$308 million, or \$47 million above the level projected at the time of the 30-Day

Update. The General Fund ended the 2003-04 fiscal year with a balance of \$1.1 billion. The closing balance consists of dedicated balances held in the Tax Stabilization Reserve Fund, the Contingency Reserve Fund, and the Community Projects Fund. The surplus, which is transferred separately from the 2003-04 fiscal year to the 2004-05 fiscal year through the tax refund reserve account, is not part of the closing balance.

## 2003-04 Results At A Glance

DOB now estimates that the State ended the 2003-04 fiscal year on March 31, 2004 with a General Fund operating surplus of \$308 million. Total receipts, including transfers from other funds, were \$42.3 billion. Disbursements, including transfers to other funds, totaled \$42.1 billion.

The General Fund ended the fiscal year with a balance of \$1.1 billion, which included \$794 million in the Tax Stabilization Reserve Fund (after an \$84 million deposit at the close of 2003-04), the Contingency Reserve Fund (\$21 million), and the Community Projects Fund (\$262 million).

On an All Governmental Funds basis, receipts totaled \$99.0 billion in 2003-04, including \$37.3 billion in Federal grants. Spending from All Governmental Funds totaled \$97.3 billion. Total year-end balances were \$2.9 billion, and were held principally in the General Fund and in other State funds, as described later in this Year-End Report.

The table below summarizes the spending revisions to the 2003-04 Financial Plan from DOB's Enacted Budget projections to year-end results.

(\$ in millions)	2003-04 Spending Results			
	Enacted	FMAP*	Other Changes	Year-End Results
<b>General Fund</b>	<b>42,737</b>	(506)	(166)	<b>42,065</b>
<b>All Funds</b>	<b>96,374</b>	484	469	<b>97,327</b>

\* Temporary increase in the Federal Medical Assistance Percentage (FMAP) from 50% to 52.95% effective April 1, 2003 through June 30, 2004.

The State Legislature approved the annual budget for fiscal year 2003-04 on May 15, 2003, successfully overriding gubernatorial vetoes totaling \$3.2 billion. On May 28, 2003, DOB issued its 2003-04 Enacted Budget Financial Plan summarizing the impact of the Legislature's actions and other events on the State's 2003-04 Financial Plan as submitted by the Governor in January 2003. DOB reported that the annual budget approved by the Legislature created a potential imbalance of \$912 million in the General Fund, which DOB planned to correct through a combination of management actions and temporary Federal aid that the President had signed into law after the State Legislature had acted on the budget. At the time, the Legislature did not agree with DOB's Financial Plan estimates. For more information on the differences, please see "Comparison of Year-End Results: DOB vs. Legislative Forecasts" later in this Year-End Report.

As noted in the following table, General Fund results in 2003-04 were \$69 million better than the initial DOB estimates, after excluding the impact of Federal aid.

(\$ in millions)	2003-04 General Fund Operating Results			
	Enacted	Federal Aid*	All Other Changes	Year-End
<b>General Fund (Deficit)/Surplus</b>	<b>(912)</b>	1,151	69	<b>308</b>
*FMAP and revenue sharing grant				

The temporary Federal aid produced \$1.2 billion in General Fund relief during the 2003-04 fiscal year, which eliminated the initial projected \$912 million imbalance. New York's share of the national aid package consisted of a revenue sharing grant worth \$645 million and a temporary 2.95 percent increase in the Federal Medical Assistance Percentage (FMAP) that produced \$506 million in General Fund savings. The grant increased General Fund receipts, while the higher matching rate lowered Medicaid spending in the General Fund, but increased the amount spent from Federal Funds (see "FMAP At A Glance" later in this Year-End Report).

Aside from the extraordinary Federal aid, the net General Fund operating variance was \$69 million, although 2003-04 year-end results for a number of programs varied from the initial projections. In particular, even though the State economy rebounded modestly in 2003-04, the persistent effects of the national recession and a weak recovery continued to put pressure on the State's social services programs to a greater extent than anticipated in the Enacted Budget Financial Plan. The actual number of people receiving Medicaid and welfare benefits during the year exceeded initial projections, driving additional Financial Plan costs. However, the positive impact of Federal aid, modestly higher tax receipts, and spending that came in below projections in other programs, were more than sufficient to offset the growth in social services costs.

The year-end operating surplus of \$308 million in the General Fund was the first recorded since fiscal year 2000-01. The year-end reported surplus in 2003-04 was \$47 million higher than the surplus projected by DOB in the 30-Day Financial Plan. The following table summarizes the major revisions to the General Fund Financial Plan in 2003-04 that affected operating results.

<b>SUMMARY OF 2003-04 GENERAL FUND OPERATING RESULTS</b>		
<b>Enacted Budget to Year-End Results</b>		
	<b>2003-04</b>	<b>Comment</b>
<b>Enacted Budget Projected Imbalance</b>	<u>(912)</u>	DOB projected impact from operations.
Federal Revenue Sharing	645	Unrestricted grant deposited to the General Fund.
Federal MA Match Increase (2.95%)	506	Increase in matching rate lowered General Fund spending on Medicaid.
LGAC Payment to NYC	170	Payment subject to litigation and delayed in 2003-04.
Tax Receipts	129	PIT collections exceeded initial projections.
Legislative Initiatives ("member items")	100	Legislature agreed to delay \$100 million of 2003-04 deposit until 2004-05.
State Operations Savings	111	Savings from hiring controls and management actions.
Timing of Tobacco Proceeds	400	Transaction planned for 2004-05 done earlier to respond to market conditions.
Planned Use of Tobacco Funds in 04-05	(400)	Proceeds still budgeted for 2004-05 and transferred from 2003-04 results.
Medicaid	(192)	Utilization and medical inflation exceeded initial projections.
Welfare	(82)	Average caseload and expenditure levels exceeded initial projections.
Corrections	(41)	Operating costs exceeded projections.
Tuition Assistance Program	(31)	Recipients exceeded projections.
Deposit to Rainy Day Reserve	(84)	Eighth annual deposit in nine years brings balance to \$794 million.
All Other Changes	<u>(11)</u>	
<b>DOB Preliminary Reported Surplus</b>	<u><b>308</b></u>	

<b>VARIANCE IN GENERAL FUND OPERATING RESULTS</b>	
<b>30-Day Estimate to Year-End Results</b>	
	<b>2003-04</b>
<b>30-Day Projected Operating Surplus</b>	<u><b>261</b></u>
Corrections	(41)
Medicaid	(34)
Transfers below Plan	(30)
Receipts	96
Judiciary Underspending	28
Other State Operations Underspending	23
All Other Changes	<u>5</u>
<b>DOB Preliminary Reported Surplus</b>	<u><b>308</b></u>

## **Impact of 2003-04 Results on the 2004-05 Financial Plan**

At this time, DOB expects that 2003-04 operating results will have only a modest impact on the 2004-05 Financial Plan. The 2004-05 Financial Plan already used \$261 million of the anticipated \$308 million surplus to help balance the 2004-05 Financial Plan. Spending of \$362 million for legislative member items budgeted in 2003-04 but now expected to be spent in later fiscal years also has no effect on overall 2004-05 Financial Plan balance, since the resources to finance the spending have already been, or are planned to be, set aside in the Community Projects Fund. DOB expects other timing-related spending in 2004-05 to have no net impact on budget balance.

During the final quarter of 2003-04, the State announced that it had reached tentative collective bargaining agreements with several of the State's employee unions. On April 27, 2004, the State's largest union, the Civil Service Employee Association (CSEA), ratified the first of these agreements. DOB projects that, if all of the State's employee unions approved comparable agreements, it would result in General Fund costs of roughly \$350 million in 2004-05 growing to \$1.4 billion by the end of the contract period in 2006-07. The current Financial Plan has no dedicated reserves for the costs of new labor agreements, but additional 2004-05 revenues of between \$150 million and \$500 million above Executive Budget projections identified in the consensus revenue agreement reached by the Legislature and the Governor in March 2004 could help to cover these costs.

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## REVIEW OF 2003-04 ECONOMIC AND REVENUE RESULTS

### Economic Outlook

Overall, the economy improved at a pace consistent with what was projected at the time of the Enacted Budget. DOB economic projections for the Enacted Budget Report released in May 2003 were essentially unchanged from those contained in the 2003-04 Executive Budget. The DOB forecast of 2003 economic activity was modestly optimistic in terms of U.S. and New York employment and personal income growth.

### National Economic Forecast

When the 2003-04 Executive Budget was submitted in January 2003, it appeared that the U.S. economy was following a relatively weak recovery path. In retrospect, the overall performance of the national economy turned out to be quite close to the Executive Budget forecast, particularly in light of the significant uncertainty that characterized the economy during the forecast period. The war with Iraq was looming, the U.S. business cycle trough had not yet been announced; and the impact of a fiscal stimulus package then under discussion was not yet clear. As indicated in the table below, DOB was forecasting growth in real U.S. GDP of 2.4 percent compared to actual growth of 3.1 percent. In contrast, growth in personal income was overestimated. DOB overestimated employment levels, forecasting an unemployment rate of 5.8 percent compared to an actual rate of 6.0 percent. Inflation, as measured by growth in the Consumer Price Index, was only 0.1 percentage point lower than projected, while long-term interest rates, as measured by the 10-year Treasury note, was only 0.3 percentage points lower.

FORECAST PERFORMANCE—US ECONOMY 2003		
	2003-04 Executive Budget	Actual
Real GDP	2.4	3.1
Personal Income	4.7	3.3
Unemployment Rate	5.8	6.0
CPI	2.4	2.3
Federal Funds Rate	1.4	1.1
10-Year T Bill	4.3	4.0

*Source: Economy.com; DOB staff estimates, January 2003.*

### New York State Economic Forecast

In January 2003, DOB was projecting that New York's emergence from recession was imminent. The State's downturn had been much sharper than that of the nation overall due to the September 11th attacks and the impact of corporate governance scandals and related events on equity markets. At the beginning of 2003, the State labor market appeared to be improving. For example, the size of the State's employment loss for the fourth quarter of 2002 was estimated at about 44,000 from the same quarter of the prior year, compared with a 136,000 decline reported for the first quarter of the year. However, the employment growth anticipated by DOB failed to materialize, in part due to the geopolitical uncertainties. As shown in the table below, the State's unemployment rate was 6.3 percent for 2003, 0.4 percentage points higher than projected. Personal



income was also lower than forecast, despite higher than expected inflation. Overall, the performance of the New York economy was in line with expectations.

<b>FORECAST PERFORMANCE—NEW YORK ECONOMY 2003</b>		
	<b>2003-04 Executive Budget</b>	<b>Actual/Estimate</b>
Personal Income*	3.1	2.8
Unemployment Rate	5.9	6.3
New York CPI	2.2	2.8
* Based on three quarters of actual ES 202 wage data, one quarter forecast for wages, and four quarters of actuals for the remaining components. Source: Economy.com; NYS Department of Labor; DOB staff estimates, January 2003 and April 2004.		

### Annual Comparison of Receipts (2002-03 vs. 2003-04)

<b>Receipts: Year over Year Comparison</b> (millions of dollars)								
	<b>All Governmental Funds</b>				<b>General Fund</b>			
	<b>Actual 2002-03</b>	<b>Results 2003-04</b>	<b>Change</b>	<b>Percent Change</b>	<b>Actual 2002-03</b>	<b>Results 2003-04</b>	<b>Change</b>	<b>Percent Change</b>
Personal Income Tax (PIT)	23,698	24,050	352	1.5%	16,791	15,774	(1,017)	-6.1%
PIT (Excluding Refund Reserve)	22,648	24,647	1,999	8.8%	15,741	16,371	630	4.0%
User Taxes and Fees	10,804	11,919	1,115	10.3%	7,063	7,979	916	13.0%
Business Taxes	4,983	5,007	24	0.5%	3,380	3,413	33	1.0%
Other Taxes	1,191	1,278	87	7.3%	743	768	25	3.4%
<b>Total Taxes</b>	<b>40,676</b>	<b>42,254</b>	<b>1,578</b>	<b>3.9%</b>	<b>27,977</b>	<b>27,934</b>	<b>(43)</b>	<b>-0.2%</b>
<b>Total Taxes (Excl. Refund Reserve)</b>	<b>39,626</b>	<b>42,851</b>	<b>3,225</b>	<b>8.1%</b>	<b>26,927</b>	<b>28,531</b>	<b>1,604</b>	<b>6.0%</b>
<b>Misc Receipts</b>	<b>14,148</b>	<b>19,416</b>	<b>5,268</b>	<b>37.2%</b>	<b>2,091</b>	<b>5,926</b>	<b>3,835</b>	<b>183.4%</b>
<b>Federal Grants</b>	<b>33,250</b>	<b>37,314</b>	<b>4,064</b>	<b>12.2%</b>	<b>N/A</b>	<b>645</b>	<b>645</b>	<b>N/A</b>
<b>Transfers</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>7,328</b>	<b>7,822</b>	<b>494</b>	<b>6.7%</b>
<b>TOTAL</b>	<b>88,074</b>	<b>98,984</b>	<b>10,910</b>	<b>12.4%</b>	<b>37,396</b>	<b>42,327</b>	<b>4,931</b>	<b>13.2%</b>

Total receipts increased by 12.4 percent in 2003-04, an increase of \$10.9 billion over the prior year. The increase was primarily due to three factors:

Proceeds from the securitization of tobacco proceeds (\$4.2 billion);

Increased Federal aid (\$4.1 billion); and

Tax increases included in the 2003-04 Enacted Budget (\$2.3 billion).

Without these actions, growth in annual collections would have remained below historical averages. Excluding the impact of both the tax increases included in the 2003-04 Enacted Budget and the deposit to the refund reserve account, All Governmental funds tax collections grew by only

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\$942 million or 2.4 percent over 2002-03. The following table summarizes the impact of the 2003-04 revenue package on total receipts.

<b>Estimated Impact of Enacted Budget Revenue Package 2003-04</b>		
<b>(millions of dollars)</b>		
	<b>2003-04 Enacted</b>	<b>2003-04 Revised*</b>
Temporary PIT Increase	1,400	1,115
Sales Tax 0.25 Percent	451	445
Clothing Exemption	449	441
Video Lottery Terminals (Tracks Only)	0	13
Insurance Premiums Tax	158	158
Recapture of Bonus Depreciation	58	58
Intangible Holding Companies	0	0
Native Americans: Cigarettes and Gas Tax	0	0
LLC's Filing Fees and Single Member	26	26
Non-Resident Partner Withholding	15	15
Non-Resident Sales of Real Property	0	7
City Portion of Excise Tax	7	7
Reduced Refund for Late Refunds	5	5
Use Tax Line on PIT Return	0	2
SUV Decoupling	1	1
Racing (Simulcasting)	2	2
Six Day Liquor Sales	0	1
Streamlined Sales Tax	0	0
<b>GRAND TOTAL</b>	<b>2,572</b>	<b>2,296</b>
* Based on 30-Day Estimates and actual data through the end of 2003-04.		

## Comparison of 2003-04 Estimates to Year-End Results

In summary, with results for 2003-04 now complete, the estimates for tax receipts contained in both the Enacted Budget and the 30-Day Update differed from year-end results by only a small margin. However, the level of miscellaneous receipts deposited to other funds varied modestly from published estimates.

2003-04 Receipts Estimate Comparison – 30-Day vs. Year-End Results								
(millions of dollars)								
	All Governmental Funds				General Fund			
	30-Day Update	Results 2003-04	Variance	Percent Change	30-Day Update	Results 2003-04	Variance	Percent Change
Personal Income Tax (PIT)	24,028	24,050	22	0.1%	15,750	15,774	24	0.2%
PIT (Excluding Refund Reserve)	24,605	24,647	42	0.2%	16,327	16,371	44	0.3%
User Taxes and Fees	11,871	11,919	48	0.4%	7,939	7,979	40	0.5%
Business Taxes	4,953	5,007	54	1.1%	3,365	3,413	48	1.4%
Other Taxes	1,275	1,278	3	0.2%	784	768	(16)	-2.0%
<b>Total Taxes</b>	<b>42,127</b>	<b>42,254</b>	<b>127</b>	<b>0.3%</b>	<b>27,838</b>	<b>27,934</b>	<b>96</b>	<b>0.3%</b>
<b>Total Taxes (Excluding Refund Reserve)</b>	<b>42,704</b>	<b>42,851</b>	<b>148</b>	<b>0.3%</b>	<b>28,414</b>	<b>28,531</b>	<b>116</b>	<b>0.4%</b>
Miscellaneous Receipts	19,750	19,416	(334)	-1.7%	5,970	5,926	(44)	-0.7%
Federal Grants	37,187	37,314	127	0.3%	645	645	0	N/A
Transfers From Other Funds	N/A	N/A	N/A	N/A	7,818	7,822	5	0.1%
<b>TOTAL</b>	<b>99,064</b>	<b>98,984</b>	<b>(80)</b>	<b>-0.1%</b>	<b>42,270</b>	<b>42,327</b>	<b>57</b>	<b>0.1%</b>

Receipts Estimate Comparison – Enacted Budget 2003-04								
(millions of dollars)								
	All Governmental Funds				General Fund			
	2003-04 Enacted*	2003-04 Results	Variance	Percent Change	2003-04 Enacted Budget*	2003-04 Results	Variance	Percent Change
Personal Income Tax (PIT)	24,460	24,050	(410)	-1.7%	16,285	15,774	(511)	-3.1%
PIT (Excluding Refund Reserve)	24,301	24,647	346	1.4%	16,126	16,371	245	1.5%
User Taxes and Fees	11,984	11,919	(65)	-0.5%	8,007	7,979	(28)	-0.3%
Business Taxes	5,052	5,007	(45)	-0.9%	3,498	3,413	(85)	-2.4%
Other Taxes	1,176	1,278	102	8.7%	771	768	(3)	-0.4%
<b>Total Taxes</b>	<b>42,672</b>	<b>42,254</b>	<b>(418)</b>	<b>-1.0%</b>	<b>28,561</b>	<b>27,934</b>	<b>(627)</b>	<b>-2.2%</b>
<b>Total Taxes (Excluding Refund Reserve)</b>	<b>42,513</b>	<b>42,851</b>	<b>339</b>	<b>0.8%</b>	<b>28,402</b>	<b>28,531</b>	<b>129</b>	<b>0.5%</b>
Miscellaneous Receipts	19,605	19,416	(189)	-1.0%	5,569	5,926	357	6.4%
Federal Grants	33,444	37,314	3,870	11.6%	0	645	645	N/A
Transfers From Other Funds	N/A	N/A	N/A	N/A	7,610	7,822	212	2.8%
<b>TOTAL</b>	<b>95,721</b>	<b>98,984</b>	<b>3,263</b>	<b>3.4%</b>	<b>41,740</b>	<b>42,327</b>	<b>587</b>	<b>1.4%</b>

\* Enacted Budget estimates of 2003-04 fiscal year receipts.

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All Governmental Funds tax receipts for 2003-04 were \$42.3 billion, \$127 million, or 0.3 percent, above the 30-Day estimate. The variance is the result of higher-than-expected collections from the personal income tax (\$22 million), user taxes and fees (\$48 million), business taxes (\$54 million), and other taxes (\$3 million). Compared to the Enacted estimate, results were \$418 million, or 1.0 percent, lower than expected. The variance is a result of additional deposits into the tax refund reserve account of \$756 million, primarily resulting from the acceleration of tobacco securitization proceeds from 2004-05 to 2003-04, offset by higher than expected tax receipts of \$339 million.

After adjusting for the impact of changes in the refund reserve deposit, All Governmental Funds tax receipts were \$148 million, or 0.3 percent, higher than the 30-Day estimates and \$339 million, or 0.8 percent, higher than the 2003-04 Enacted Budget projections.

All Governmental Funds receipts, including miscellaneous receipts from all sources and Federal grants, were \$80 million, or 0.1 percent, below the 30-Day estimate. The variance is primarily the result of lower-than-expected collections from miscellaneous receipts partially offset by higher-than-expected receipts from taxes and Federal grants.

General Fund tax collections totaled \$27.9 billion in 2003-04. The year-end results were \$96 million, or 0.3 percent, above the 30-Day estimate. The variance is a result of higher-than-expected collections from personal income tax (\$24 million), user taxes and fees (\$40 million) and business taxes (\$48 million) partially offset by lower collections in other taxes (16 million). Year-end results were \$627 million, or 2.2 percent, lower than the Enacted estimate. The variance was primarily the result of additional deposits into the tax refund reserve account offset by higher-than-expected tax collections. Excluding the impact of the refund reserve, total General Fund tax collections were \$129 million, or 0.5 percent higher than the Enacted Budget estimate.

Total General Fund receipts, including miscellaneous receipts and transfers from other funds, reached \$42.33 billion in 2003-04. Year-end receipts were \$57 million, or 0.1 percent, above the 30-Day estimate. The variance resulted from higher-than-expected tax collections partially offset by lower-than-expected miscellaneous receipts collections (\$44 million). In comparison to the Enacted Budget estimates, total General Fund receipts exceeded the forecast by \$587 million, or 1.4 percent. The variance reflects the receipt of the \$645 million Federal revenue sharing grant described earlier, the acceleration of \$400 million in tobacco securitization proceeds, and a net increase in tax, transfer and miscellaneous receipts collections (\$298 million) partially offset by additional deposits into the tax refund reserve account (\$756 million).

*Personal Income Tax*

Total All Funds personal income tax net receipts in 2003-04 were \$24.1 billion. The year-end results were \$22 million, or 0.2 percent, above the 30-Day estimate. The variance is primarily the result of higher-than-expected current returns and delinquencies collections partially offset by lower-than-expected withholding collections and higher-than-expected refunds. In addition, the end-of-the-year deposit into the refund reserve account was \$20 million more than anticipated in the 30-Day estimates, further reducing net receipts. After adjustment for the impact of the acceleration of the \$400 million in tobacco proceeds from 2004-05 into 2003-04, year-end results were \$10 million, or 0.0 percent, less than anticipated in the Enacted Budget estimate. The variance primarily reflects a large addition from estimated tax collections that were nearly \$400 million higher than expected in May and smaller additions from final payments collections and lower refunds. Offsetting these additions were reductions in receipts from lower-than-anticipated withholding and delinquencies collections and a larger year-end refund reserve account deposit.

Total General Fund personal income tax net receipts in 2003-04 were \$15.8 billion. The year-end results were \$24 million, or 0.1 percent, above the 30-Day estimate. In addition to the changes reflected in All Funds net receipts, the deposit into the RBTF was \$14 million more than anticipated and the deposit into the School Tax Relief (STAR) Fund was \$16 million less than anticipated. After adjustment for the impact of the acceleration of the \$400 million in tobacco proceeds from 2004-05 to 2003-04, General Fund year-end results were \$111 million, or 0.7 percent, less than anticipated in the Enacted Budget estimate. In addition to the changes reflected in All Funds net receipts, the deposits into the RBTF and the STAR Fund were \$82 million and \$19 million more, respectively, than anticipated in May.

### *Consumption and Use Taxes*

In 2003-04, All Funds receipts were \$11.9 billion. This is \$48 million, or 0.4 percent, above the 30-Day estimate. Year-end sales and use tax receipts were \$30 million above the 30-Day estimate while the other taxes in the category accounted for the remaining \$18 million difference. Receipts were \$65 million, or 0.5 percent, below the 2003-04 Enacted Budget estimate. Sales and use tax receipts were \$49 million below the Enacted Budget estimate while the other taxes in the category accounted for the remaining \$16 million shortfall.

In 2003-04, General Fund receipts were \$8 billion. This is \$40 million, or 0.5 percent, above the 30-Day estimate. Sales and use tax receipts were \$21 million above the 30-Day estimate while the other taxes in the category accounted for the remaining \$19 million difference. Receipts were \$27 million, or 0.3 percent, below the 2003-04 Enacted Budget estimate. Sales and use tax receipts were \$44 million below the Enacted Budget estimate.

### *Business Taxes*

All Funds business tax receipts totaled \$5.0 billion, up \$54 million, or 1.1 percent, over 30-Day estimates. This reflects higher-than-expected corporate franchise tax payments on liability and higher-than-expected petroleum business tax collections due to increased consumption of residual fuel by electric generating facilities. All Funds receipts were down \$45 million, or 0.9 percent, over Enacted Budget projections. This reflects a decline in Metropolitan Transportation Authority (MTA) receipts for utilities and banks due to the decrease in General Fund revenues, partially offset by an increase in petroleum business taxes receipts.

General Fund business tax receipts totaled \$3.4 billion, up by \$48 million, or 1.4 percent, over 30-Day estimates. The increase reflects stronger-than-expected corporate franchise tax payments on liability and the accelerated transfer of insurance premiums taxes, offset by weak bank receipts and lower-than-expected collections in the utilities taxes. General Fund receipts were down by \$85 million, or 2.4 percent, compared with the Enacted Budget. Utilities and bank receipts were down by \$230 million, partially offset by corporate franchise tax receipts and insurance taxes, which were up by \$144 million.

### *Other Taxes*

All Funds other tax receipts for fiscal year 2003-04 were \$1.3 billion. This is \$3 million, or 0.2 percent, more than the 30-Day estimate. This change reflects a minor drop in estate tax receipts; offset by higher-than-expected receipts in the real estate transfer tax of \$19 million. Other tax receipts for fiscal year 2003-04 were \$102 million, or 8.7 percent, more than the Enacted Budget estimate. This is mostly due to a difference of \$106 million in the real estate transfer tax.

General Fund other tax receipts for fiscal year 2003-04 were \$768 million. This is \$16 million, or 2.0 percent, below the 30-Day estimate. The estate tax currently represents 95 percent of the other tax category. The minor drop in estate tax receipts reflect the lower-than-expected gains in the equity market, recent tax law changes, and the impact of variations in a small number of large estates. Other tax receipts for fiscal year 2003-04 were \$3 million, or 0.4 percent, below the Enacted Budget estimate. The estate tax receipts were \$2 million, or 0.3 percent, below the Enacted Budget estimate. The drop in estate receipts from the estimate may have resulted from lower-than-expected gains in the equity market. The pari-mutuel tax receipts were \$4 million, or 13.3 percent, below the Enacted Budget estimate. Negative press from legal problems with NYRA and the recent no smoking laws may have, in part, caused the decline of the pari-mutuel tax receipts.

### *Miscellaneous Receipts*

General Fund collections for miscellaneous receipts were \$5.9 billion in 2003-04, which were \$44 million, or 0.7 percent, below the 30-Day estimate. The variance is primarily the result of a reclassification by the State Comptroller in March 2004 of motor vehicle receipts received during 2003-04. The difference from the Enacted Budget estimate is \$357 million, or 6.4 percent, resulting from acceleration of \$400 million in tobacco securitization proceeds partially offset by the reclassification of motor vehicle receipts.

All Governmental Funds miscellaneous receipts for 2003-04 totaled \$19.4 billion, a decrease of \$189 million from the Enacted Budget estimate. The General Fund increase of \$357 million above initial estimates was offset by a \$546 million decrease in other funds. The decrease includes delays in capital projects spending, particularly in transportation (\$171 million) and SUNY (\$101 million) resulting from spending controls and inclement weather, and the timing of project approval and spending associated with the Strategic Investment Plan (\$108 million). In addition, the Comptroller did not report certain capital receipts related to programs that are financed in the first instance with bond proceeds (\$325 million), but such receipts had been included in DOB's estimates. Higher spending related to the Health Care Reform Act (HCRA) pools and Indigent Care Fund partially offset the decreases in capital spending.

### *Federal Grants*

Federal grants for 2003-04 totaled \$37.3 billion, a net increase of \$127 million from the 30-Day Financial Plan and \$3.9 billion from the Enacted Budget estimate, respectively. Changes to Federal Grants generally correspond to changes in federally-reimbursed spending as described later in this Year-End Report; however, since Federal reimbursement was assumed to be received in the State fiscal year in which spending occurs additional timing related variances resulted.

General Fund Federal Grants for 2003-04 totaled \$645 million. The Enacted Budget did not anticipate this extraordinary aid.

### *Transfers to the General Fund*

Transfers to the General Fund totaled \$7.8 billion in 2003-04, an increase of \$5 million from the 30-Day estimate. Year-end receipts available to the General Fund in excess of debt service needs were higher than projected, but were offset partially by a transfer from the dedicated highway fund that did not occur (\$29 million) and a lower-than-expected transfer from the Waste Tire Management and Recycling Program (\$13 million).

In comparison to the Enacted Budget, year-end transfers to the General Fund were \$212 million above initial estimates. Again, receipts in excess of debt service needs contributed to the positive variance, reflecting both stronger collections in personal income taxes (\$119 million), sales taxes (\$118 million), and real estate transfer taxes (\$105 million), as well as lower debt service costs on general obligation bonds.

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## REVIEW OF 2003-04 SPENDING RESULTS

This section compares year-end Financial Plan spending results against both the Enacted Budget Financial Plan projections and the revised projections in the 30-Day Financial Plan. It also analyzes trends in annual spending. A full explanation of the variances “from plan” for the State’s major program and activities appears in the Year-End Report in the section entitled “2003-04 Spending Results by Major Function.”

### 2003-04 Year-End Results: Variance from Enacted Estimates

The following table summarizes the most significant spending variances from Enacted Budget Financial Plan to year-end results for 2003-04.

**2003-04 SPENDING -- ENACTED BUDGET TO YEAR-END RESULTS**  
**MAJOR SOURCES OF VARIANCE**  
(millions of dollars)

	<b>General Fund</b>	<b>Other State Funds</b>	<b>State Funds</b>	<b>Federal Funds</b>	<b>All Govt'l Funds</b>
<b>2003-04 Enacted Estimate</b>	<b>42,737</b>	<b>20,250</b>	<b>62,987</b>	<b>33,387</b>	<b>96,374</b>
<b>Major Functions/Activities</b>					
Medicaid	(208)	189	(19)	802	783
School Aid (excluding Federal aid)	62	(35)	27	0	27
Welfare	(26)	0	(26)	(93)	(119)
Children and Families	38	(34)	4	325	329
Mental Hygiene	(79)	(56)	(135)	101	(34)
Higher Education	156	(73)	83	(67)	16
Debt Service	(109)	73	(36)	0	(36)
General State Charges	14	10	24	10	34
<b>OTHER SOURCES OF VARIANCE</b>					
All Other K-12 Education	(64)	4	(60)	929	869
World Trade Center "Pass-Through"	10	0	10	593	603
Transportation Capital Spending	(1)	(275)	(276)	53	(223)
Capital Spending Reclassification	0	(325)	(325)	0	(325)
Member Items Spending	(362)	0	(362)	0	(362)
All Other	(103)	(461)	(564)	(45)	(609)
<b>2003-04 YEAR-END RESULTS</b>	<b>42,065</b>	<b>19,267</b>	<b>61,332</b>	<b>35,995</b>	<b>97,327</b>
<b>\$ Change</b>	<b>(672)</b>	<b>(983)</b>	<b>(1,655)</b>	<b>2,608</b>	<b>953</b>
<b>% Change</b>	<b>-1.57%</b>	<b>-4.85%</b>	<b>-2.63%</b>	<b>7.81%</b>	<b>0.99%</b>

In brief, the most important reasons for the variances from initial projections to year-end results include:

- **Medicaid:** An increase in FMAP lowered General Fund costs, but increased Federal Funds spending; service utilization and enrollment exceeded initial projections; and the Federal government did not approve, by the end of the 2003-04 fiscal year, a number of transactions that were budgeted in the Financial Plan.



- **School Aid:** Modest reestimates in reimbursable spending and elimination of the use of planned resources from the Temporary Assistance for Needy Families block grant (TANF).
- **Welfare:** The number of people receiving public assistance and average expenditure levels exceeded initial projections, which the State financed by redirecting TANF funds originally budgeted to offset costs for the Tuition Assistance Program (TAP) and universal Pre-Kindergarten education programs in school aid.
- **Children and Family Services:** Federal TANF and other Federal Funds supported local claiming growth in child care, foster care, and adoption services.
- **Mental Hygiene:** Patient care revenues, which are used in part to reduce State Operations costs in the General Fund, exceeded projections (due mainly to the refunding of mental hygiene facility bonding which lowered debt service costs), thereby reducing General Fund costs and increasing Federal Funds spending; and spending for other State-supported programs increased more slowly than expected.
- **Higher Education:** The General Fund financed more of the TAP than initially planned because TANF resources budgeted for this purpose were ultimately needed to pay for higher welfare costs; in other State-supported funds, spending for capital projects at the State and City universities occurred more slowly than expected.
- **Debt Service:** Savings from refundings and other debt management activities exceeded initial projections.
- **General State Charges:** The State paid the entire 2003-04 pension bill instead of deferring the payment and incurring interest costs; this higher spending was mostly offset by modest savings in other areas.
- **Federal Education Aid:** Federal support for education programs substantially exceeded expectations, particularly in programs for disadvantaged students (Title I), special education, school lunch and breakfast, and teacher quality. The higher level of Federal support is due in part to actual increases in available aid and from changes in claiming patterns by school districts.
- **World Trade Center Relief:** The level of ongoing Federal reimbursement to New York City in 2003-04 that flowed through the State Financial Plan occurred more quickly than anticipated (DOB does not expect the total amount expected from the Federal government for this purpose to increase).
- **Transportation:** The impact of inclement weather and a delay in the start of the 2003 construction season slowed spending in capital projects.
- **Capital Projects:** Spending originally included by DOB in the Enacted Budget Financial Plan was not accounted for by the State Comptroller in actual cash results but will be reflected in GAAP results, consistent with the accounting treatment of such activities; and year-end capital spending was generally below projections.
- **Community Projects Fund:** Spending on “member items,” which consist of thousands of small grants statewide, was substantially below initial projections.

## 2003-04 Year-End Results: Variance from 30-Day Estimates

The following table summarizes the most significant spending variances from the 30-Day Financial Plan to year-end results for 2003-04.

**2003-04 SPENDING -- 30-DAY TO YEAR-END RESULTS**  
**MAJOR SOURCES OF VARIANCE**  
(millions of dollars)

	General Fund	<i>Other</i> State Funds	State Funds	Federal Funds	All Govt'l Funds
<b>30-Day Estimate (2003-04)</b>	<b>42,071</b>	<b>20,052</b>	<b>62,123</b>	<b>36,181</b>	<b>98,304</b>
<b>Major Functions/Activities</b>					
Medicaid	109	84	193	(612)	(419)
School Aid (Excluding Federal aid)	12	(35)	(23)	0	(23)
Welfare	55	0	55	(286)	(231)
Children and Families	33	(13)	20	183	203
Mental Hygiene	7	(46)	(39)	43	4
Higher Education	46	(245)	(199)	(1)	(200)
Debt Service	6	(8)	(2)	0	(2)
General State Charges	(11)	6	(5)	4	(1)
<b>OTHER SOURCES OF VARIANCE</b>					
All Other K-12 Education	(79)	1	(78)	402	324
Labor	12	(15)	(3)	133	130
Department of Corrections	41	(4)	37	4	41
Judiciary	(28)	(17)	(45)	(3)	(48)
Member Items Spending	(63)	0	(63)	0	(63)
Encon	0	(93)	(93)	13	(80)
Transportation	(1)	(94)	(95)	(111)	(206)
All Other	(145)	(306)	(451)	45	(406)
<b>2003-04 YEAR-END RESULTS</b>	<b>42,065</b>	<b>19,267</b>	<b>61,332</b>	<b>35,995</b>	<b>97,327</b>
<b>\$ Change</b>	<b>(6)</b>	<b>(785)</b>	<b>(791)</b>	<b>(186)</b>	<b>(977)</b>
<b>% Change</b>	<b>-0.01%</b>	<b>-3.91%</b>	<b>-1.27%</b>	<b>-0.51%</b>	<b>-0.99%</b>

The major variances of year-end results from 30-Day estimates were principally related to the timing of Federal aid and delays in spending for capital projects (especially transportation). In Medicaid, the Federal government did not approve several transactions that DOB had expected to occur prior to the end of the 2003-04 fiscal year, which had the effect of substantially lowering spending from Federal Funds. In welfare, transaction delays also affected Federal spending.

Year-end capital projects spending also came in well below the levels projected in the 30-Day Financial Plan. The impact of inclement weather and a greater than expected impact from a delay in the start of the 2003 construction season slowed project start-ups and resulted in capital spending below projections in various agencies including SUNY, environmental conservation, transportation and the RESCUE program for schools. A more detailed discussion appears in the Year-End Report.

## FMAP AT A GLANCE

<b>Temporary Federal Medical Assistance Percentage (FMAP) Increase</b>	
<i>(\$ in millions)</i>	<b>Financial Plan Impact</b>
<b>General Fund Savings</b>	<b>(506)</b>
DOH Medicaid (net)	<u>(415)</u>
<i>Gross Medicaid</i>	<i>(588)</i>
<i>Savings to HCRA</i>	<i>173</i>
Mental Hygiene	(81)
School Based Services	(10)
<b>Federal Funds Spending Increase</b>	<b><u>990</u></b>
State Benefit	679
Local Benefit	311
<b>Net All Funds Spending Increase</b>	<b>484</b>

In May 2003, the Federal government authorized a temporary 15-month increase (retroactive to April 1, 2003) of 2.95 percent to the Federal Medical Assistance Percentage (FMAP) for Medicaid costs (from 50 percent to 52.95 percent). This increase financed an estimated \$990 million of the State and local shares of Medicaid costs with Federal Funds in 2003-04, resulting in State savings of \$679 million and \$311 million in savings passed on to counties and New York City. In 2004-05, the Federal matching rate is projected to finance approximately \$400 million of State and local costs with Federal Funds. The higher rate is scheduled to expire on June 30, 2004.

The total projected State benefit of \$679 million is comprised of lower Medicaid spending for the Department of Health (DOH) (\$588 million), mental hygiene agencies (\$81 million), and school based services (\$10 million). A portion of the State benefit (\$173 million) was transferred to the Health Care Reform Act (HCRA) pools, which finances a share of the State's Medicaid costs. The remaining savings totaling \$311 million was also transferred to counties and New York City to provide local fiscal relief. Since the 2003-04 Enacted Budget, All Funds spending increased by a net \$484 million as a result of this transaction.

## Annual Growth in Spending from 2002-03 to 2003-04

The following table summarizes the annual growth in spending in the General Fund, State Funds, and All Governmental Funds.

### ANNUAL SPENDING GROWTH -- 2002-03 ACTUAL TO 2003-04 YEAR-END RESULTS

#### MAJOR SOURCES OF CHANGE

(millions of dollars)

	General Fund	Other State Funds	State Funds	Federal Funds	All Govt'l Funds
<b>2002-03 Actual</b>	<b>37,613</b>	<b>18,138</b>	<b>55,751</b>	<b>33,304</b>	<b>89,055</b>
<b>Major Functions/Activities</b>					
Medicaid	109	310	419	1,827	2,246
School Aid (excluding Federal aid)	93	(21)	72	0	72
Welfare	585	0	585	(519)	66
OCFS	107	2	109	(40)	69
Mental Hygiene	(237)	22	(215)	359	144
Higher Education	(69)	294	225	(156)	69
Debt Service	(22)	335	313	0	313
General State Charges	480	60	540	(7)	533
<b>OTHER SOURCES OF CHANGE</b>					
All Other K-12 Education	(81)	1	(80)	750	670
World Trade Center "Pass-Through"	(24)	(1)	(25)	430	405
Public Health	8	204	212	(2)	210
STAR	0	155	155	0	155
Motor Vehicles	(106)	97	(9)	0	(9)
ESDC	(98)	(14)	(112)	0	(112)
Transportation	(4)	(136)	(140)	(167)	(307)
All Other	(89)	(179)	(268)	216	(52)
<b>Net Impact of FY 2003 Deferrals</b>	<b>3,800</b>	<b>0</b>	<b>3,800</b>	<b>0</b>	<b>3,800</b>
<b>2003-04 YEAR-END RESULTS</b>	<b>42,065</b>	<b>19,267</b>	<b>61,332</b>	<b>35,995</b>	<b>97,327</b>
<b>Annual \$ Change</b>	<b>4,452</b>	<b>1,129</b>	<b>5,581</b>	<b>2,691</b>	<b>8,272</b>
<b>Annual % Change</b>	<b>11.84%</b>	<b>6.22%</b>	<b>10.01%</b>	<b>8.08%</b>	<b>9.29%</b>

On an All Funds basis, spending grew by nearly \$8.3 billion over 2002-03. The annual impact of payment deferrals, which had the effect of lowering 2002-03 spending by \$1.9 billion and increasing 2003-04 spending by the same amount, accounted for \$3.8 billion (46 percent) of the annual increase. Aside from the payment deferrals, Medicaid spending, driven mainly by caseload, utilization, and inflationary pressures, increased by nearly \$2.3 billion, followed by growth in Federal education aid, State pension costs, and pass-through aid related to World Trade Center recovery efforts. A detailed discussion of the annual changes for the State's major programs and activities appears in the Year-End Report.

## 2002-03 Payment Deferrals

As noted in the prior table, the annual growth in General Fund, State Funds, and All Funds spending is affected by the deferral of \$1.9 billion in payments that were scheduled in 2002-03 but made in 2003-04 in response to a delay in the sale of the State's tobacco settlement revenues. The table below summarizes the payment deferrals by program. All the payments deferred in 2002-03 were paid early in 2003-04, after the State received the tobacco securitization proceeds. To avoid distorting program growth trends, the program spending totals described in "2003-04 Spending Results by Major Function" in the Year-End Report are adjusted to exclude the impact of the deferrals.

<b>2002-03 GENERAL FUND PAYMENT DEFERRALS</b>	
<b>(millions of dollars)</b>	
School Aid	1,312
CUNY Senior Colleges	219
Medicaid - Mentally Disabled Payments	82
Welfare - Administration	38
Empire State Development Corporation	32
Education - All Other	30
Education - Preschool Special Education	24
HESC	10
Division of Military and Naval Affairs	10
Welfare	8
All Other Local Assistance	61
<b>Total Local Assistance</b>	<b>1,826</b>
State Police	26
World Trade Center	9
All Other State Operations	2
<b>Total State Operations</b>	<b>37</b>
<b>General State Charges</b>	<b>33</b>
<b>Capital Projects</b>	<b>4</b>
<b>Total 2002-03 Payment Deferrals</b>	<b>1,900</b>

## Fund Balances

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The General Fund ended the 2003-04 fiscal year with a balance of \$1.1 billion. The balance is comprised of the Tax Stabilization Reserve Fund (the State's "rainy day" reserve -- \$794 million), the Contingency Reserve Fund (\$21 million) and the Community Projects Fund (\$262 million).

At the close of 2003-04, the All Governmental Funds Cash Financial Plan had positive fund balances of \$2.9 billion, comprised of \$ 1.1 billion in the General Fund, \$2.2 billion in the Special Revenue Funds and \$175 million in the Debt Service Funds, offset by a negative fund balance of \$495 million in the Capital Projects Fund.

The fund balance in the Special Revenue Funds partly reflects the timing of receipts and disbursements (e.g. dedicated monies received for a specified purpose prior to disbursement). The largest fund balance is dedicated to finance the operations and activities of SUNY campuses and central administration (\$442 million). The remaining fund balances are held in numerous funds/accounts that support a variety of programs including industry regulation, public health, and public safety. The negative balance in the Capital Projects Fund results from outstanding loans from the Short-Term Investment Pool (STIP) used to finance capital projects costs prior to the receipt of bond proceeds.

## **Temporary Loans and Short-Term Investments**

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The Comptroller invests General Fund moneys, bond proceeds, and other funds not immediately required to make payments through STIP, which is comprised of joint custody funds (Governmental Funds, Internal Service Funds, Enterprise Funds and Private Purpose Trust Funds), as well as several sole custody funds including the Tobacco Settlement Fund. The interest earnings accrued are allocated and deposited to the credit of those funds with positive balances that contribute to the overall invested STIP pool.

The Comptroller is authorized to make temporary loans from STIP to cover temporary cash shortfalls in certain funds and accounts resulting from the timing of receipts and disbursements. The Legislature authorizes the funds and accounts that may receive loans each year, based on legislation submitted with the Executive Budget. Loans may be granted only for amounts that the Director of the Budget certifies are "receivable on account" or can be repaid from the current operating receipts of the fund (i.e., loans cannot be granted in expectation of future revenue enhancements).

The State Comptroller repays loans from the first cash receipts into the borrowing fund or account. Fund balances outside the General Fund are presented on a net basis, i.e., they are reduced by the amount of outstanding temporary loans from STIP. The primary sources of this outstanding loan balance include timing-related delays in the receipt from Federal Funds and the sale of bonds used to finance capital projects, a delinquent SUNY hospital loan, and unreimbursed costs related to the Office for Technology Internal Service funds.

The total outstanding loan balance at March 31, 2004 was \$1.3 billion, a decrease of \$410 million from the outstanding loan balance of \$1.7 billion at March 31, 2003. The decrease in the outstanding loan balance is primarily attributable to the receipt of planned bond proceeds that reimburse capital projects spending.

The 2003-04 Enacted Budget included legislation that permitted the Comptroller to temporarily loan balances in other funds to the General Fund within any month. The State relied on this authorization in 2003-04 to support intra-month cash flow needs. This authorization has been extended through March 31, 2005 pursuant to Chapter 19 of the laws of 2004.

## **Reserves and Risks**

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As of the close of 2003-04, balances in the State's principal reserves to guard against unbudgeted risks totaled \$815 million. The reserves include \$794 million in the Tax Stabilization Reserve Fund and \$21 million in the Contingency Reserve Fund for litigation. To permanently improve the State's reserve levels, the Governor has proposed legislation to increase both the maximum size of the State's rainy day fund from 2 percent to 5 percent of General Fund spending, and the maximum annual deposits from two-tenths of one percent to five-tenths of one percent of spending. Absent this legislation, the Fund will reach its statutory maximum balance of 2 percent or \$840 million with the next annual deposit.

Aside from the \$21 million in the Contingency Reserve Fund, the current Financial Plan does not set aside specific reserves to cover potential costs that could materialize as a result of adverse rulings in pending litigation, the cost of collective bargaining agreements with State employee unions, Federal disallowances, or other Federal actions that could adversely affect the State's projections of receipts and disbursements.

In addition, the consensus revenue process mandated by State law produced an agreement between the Governor and the Legislature on increased revenues in the range of \$150 million to \$500 million.

### *Litigation<sup>1</sup>*

In June 2003, the State Court of Appeals ruled that the State's financing system for New York City public schools is unconstitutional and directed the State to submit a remedy to the Court by July 30, 2004. Several entities, including the plaintiffs, have made recommendations on the funding requirements necessary to satisfy the court order. Most recently, the Commission on Educational Reform issued a report that identified a "resource gap" of between \$2.5 and \$5.6 billion to provide all students the opportunity for a sound basic education (SBE). The Commission has recommended that the additional funding to address the resource gap be phased in over a multi-year period and be financed by State, local, and Federal Funds. The Commission also recommended other reforms to comply with the Court's order. The 2004-05 Executive Budget, which has yet to be acted on by the Legislature, reserves all video lottery terminal (VLT) revenues for SBE funding. On a fiscal year basis, the VLT revenues are projected to increase from \$240 million in 2004-05 to \$950 million in 2005-06 to \$1.3 billion in 2006-07, and ultimately to over \$2 billion annually. The 2004-05 Executive Budget also proposes an additional \$100 million increase in General Fund support to New York City on a school year basis for this purpose.

Other litigation includes ongoing claims by several Indian Nations alleging wrongful possession of lands by the State and several counties, as well as claims involving the adequacy of shelter allowances for families on public assistance. The State has implemented a court-ordered increase in the shelter allowance schedule for public assistance families that became effective on November 1, 2003. Plaintiffs brought a motion to have the court determine the adequacy of the increased shelter schedule, for which a hearing is scheduled for May 2004. For a complete summary of significant litigation affecting the State, please refer to the State's current Annual Information Statement, as updated and supplemented.

### *Collective Bargaining*

The State is negotiating new labor contracts with nine State employee unions. The CSEA ratified a new labor contract on April 27, 2004 and the United University Professions (UUP) membership is scheduled to vote on an agreement shortly. The tentative agreement reached with the CSEA and UUP includes an \$800 nonrecurring lump sum payment and salary increases of 2.5 percent in 2004-05, 2.75 percent in 2005-06, 3 percent in 2006-07, and a base salary increase of \$800 effective March 31, 2007 for CSEA and July 1, 2007 for UUP. If similar agreements are reached with the remaining unions, the General Fund cost would be approximately \$1.4 billion over the life of the agreement (the All Governmental Funds cost is \$2.2 billion).

### *Federal Issues*

The Federal government is currently auditing Medicaid claims submitted since 1993 under the School Supportive Health Services Program. At this point, these audits have not been finalized, and, as a result, the liability of the State and school districts for any disallowances cannot be determined. Federal regulations include an appeals process that could postpone repayment of any disallowances. The current Financial Plan assumes the Federal government will fully reimburse these costs.

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<sup>1</sup> Please see "Litigation" in this AIS Supplement for additional updated information.

In addition, through March 2004, a portion of Federal Medicaid payments related to School Supportive Health Services have been deferred by the Federal Centers for Medicare and Medicaid Services pending finalization of audits. Since the State has continued to reimburse local school districts for these costs, these Federal deferrals, if not resolved, could negatively impact the Financial Plan. Alternatively, if the State suspends reimbursement, local governments could be adversely affected.

In December 2003, the State received partial Federal approval of the Medicaid State Plan Amendment necessary to make disproportionate share hospital (DSH) payments over two years to public hospitals throughout the State, including the New York City Health and Hospital Corporation (HHC), SUNY and other State and county operated hospitals. Although full payment for SUNY and State-operated hospitals was secured with the initial approval, the State continues to seek Federal approval of the balance of anticipated payments totaling roughly \$1.3 billion for HHC and other county hospitals. Failure of the Federal government to approve these remaining payments in a timely manner will exacerbate the current adverse impact of these delays on the State's health care financing system.

### **Comparison of Year-End Results: DOB vs. Legislative Forecasts**

At the time of the 2003-04 Enacted Budget, DOB and the Legislature had considerably different estimates regarding the impact of legislative changes to the 2003-04 Executive Budget. The differences primarily focused on (1) the level of total spending that would occur in 2003-04, (2) whether the 2003-04 budget was balanced, and (3) the impact of the legislative budget changes on the size of the outyear budget gaps. The differences were so stark that the 2003-04 budget was enacted only after the Legislature overrode \$3.2 billion of gubernatorial vetoes. The following provides a recap of the original estimates compared to year-end results on these key points.

#### *Size of the 2003-04 All Governmental Funds Spending Budget*

<b>(\$ in billions)</b>	<b>Enacted DOB</b>	<b>Enacted Legislative</b>	<b>Year-End</b>
Total Spending	96.4	93.0	97.4

DOB's projection at the time of the Enacted Budget was that spending would total \$96.4 billion. In contrast, the Legislature reported spending would total roughly \$93 billion. Year-end results reported by the Comptroller show that spending totaled \$97.4 billion, nearly \$1 billion more than the original DOB estimates, and roughly \$4.4 billion above the original legislative estimates. The variance from the original DOB estimates are summarized in this Year-End Report, and primarily reflect the impact of Federal aid that became available after the budget was enacted. The Legislature did not report its spending projections at a comparable level of detail, making it impossible to identify the programs for which legislative spending estimates were too low. Based on legislative summary reports, the bulk of the higher spending above the original legislative estimates was in local assistance payments (\$4.8 billion).

#### *2003-04 General Fund Budget Balance*

<b>(\$ in millions)</b>	<b>DOB (Excl Fed)</b>	<b>Legislative (Excl Fed)</b>	<b>Year-End Results</b>	<b>Actual (with Federal aid)</b>
Surplus (Deficit)	(912)	1,000	(844)	308



DOB's projection at the time of the Enacted Budget was that the legislative changes to the Executive Budget would drive a budget imbalance of roughly \$900 million, but that additional Federal aid of \$1.15 billion approved after budget enactment would allow the State to end the fiscal year in balance. While the Legislature did not publish a precise estimate of operating results, public reports indicated that the Legislature believed the Enacted Budget would result in roughly a \$1 billion surplus (excluding the additional Federal aid) that would help to lower the 2004-05 budget gap. Based on 2003-04 results, the 2003-04 available surplus is \$308 million, after the benefit of the \$1.15 billion in extra Federal aid. Without the extra Federal aid the 2003-04 budget shortfall would have been roughly \$844 million (see the table on General Fund operating results earlier in this Year-End Report). As noted above, \$261 million of the State's surplus amount of \$308 million is already planned to support operations in 2004-05.

*Projected Outyear Budget Gaps*

2004-05 Projected Budget Gap			
	DOB	Legislative	DOB Latest Estimate
2004-05 Gap	\$5 to \$6 billion	\$2.3 billion	\$5 billion

DOB projected that legislative changes to the 2003-04 Executive Budget would increase the size of the outyear budget gaps to a range of \$5 billion to \$6 billion in 2004-05, and to \$6 billion to \$8 billion in 2005-06. The Legislature did not provide its outyear gap estimates in any published reports. However, in legislative debate prior to passage of the 2003-04 budget, the Assembly Majority indicated that it projected a 2004-05 outyear budget gap of \$2.3 billion. Based on the latest 2004-05 budget projections prior to Executive Budget recommendations to balance the budget, and after reflecting agreement on additional revenues from the consensus revenue process of \$150 million to \$500 million and new collective bargaining costs from pending labor agreements, the 2004-05 budget gap is roughly \$5 billion and the 2005-06 gap is roughly \$6.7 billion. The Governor's 2004-05 Executive Budget recommendations would completely balance the 2004-05 budget, and reduce the 2005-06 budget gap to roughly \$2.9 billion.

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**CASH FINANCIAL PLAN  
GENERAL FUND  
2003-2004  
(millions of dollars)**

	<u>Enacted</u>	<u>30-Day</u>	<u>Year-End</u>	<u>Year-End vs. Enacted</u>	<u>Year-End vs. 30-Day</u>
<b>Opening fund balance</b>	<u>815</u>	<u>815</u>	<u>815</u>	<u>0</u>	<u>0</u>
<b>Receipts:</b>					
Taxes:					
Personal income tax	16,285	15,750	15,774	(511)	24
User taxes and fees	8,007	7,939	7,979	(28)	40
Business taxes	3,498	3,365	3,413	(85)	48
Other taxes	771	784	768	(3)	(16)
Miscellaneous receipts	5,569	5,970	5,926	357	(44)
Federal Grants	0	645	645	645	0
Transfers from other funds:					
PIT in excess of Revenue Bond debt service	5,125	5,228	5,244	119	16
Sales tax in excess of LGAC debt service	1,853	1,957	1,971	118	14
Real estate taxes in excess of CW/CA debt service	202	288	307	105	19
All other	430	344	300	(130)	(44)
<b>Total receipts</b>	<u>41,740</u>	<u>42,270</u>	<u>42,326</u>	<u>586</u>	<u>56</u>
<b>Disbursements:</b>					
Grants to local governments	29,835	29,322	29,246	(589)	(76)
State operations	7,205	7,055	7,093	(112)	38
General State charges	3,232	3,257	3,247	15	(10)
Transfers to other funds:					
Debt service	1,583	1,468	1,474	(109)	6
Capital projects	255	227	243	(12)	16
Other purposes	627	742	762	135	20
<b>Total disbursements</b>	<u>42,737</u>	<u>42,071</u>	<u>42,065</u>	<u>(672)</u>	<u>(6)</u>
<b>Fiscal Management Plan/Federal Aid</b>	<u>912</u>	<u>See Note</u>	<u>See Note</u>	<u>N/A</u>	<u>N/A</u>
<b>Change in fund balance</b>	<u>(85)</u>	<u>199</u>	<u>262</u>	<u>347</u>	<u>63</u>
<b>Closing fund balance</b>	<u>730</u>	<u>1,014</u>	<u>1,077</u>	<u>347</u>	<u>63</u>
Tax Stabilization Reserve Fund	710	794	794	84	0
Contingency Reserve Fund	20	20	21	1	1
Community Projects Fund	0	200	262	262	62

NOTE: Federal aid of \$1.2 billion was received during the year. Of this amount, \$645 million is reflected as misc. receipts and \$506 million is reflected as lower General Fund spending in grants to local governments.

**CASH FINANCIAL PLAN  
GENERAL FUND  
2002-2003 and 2003-2004  
(millions of dollars)**

	<u>2002-2003</u>	<u>2003-2004</u>	<u>Annual Change</u>
<b>Opening fund balance</b>	<u>1,032</u>	<u>815</u>	<u>(217)</u>
<b>Receipts:</b>			
Taxes:			
Personal income tax	16,791	15,774	(1,017)
User taxes and fees	7,063	7,979	916
Business taxes	3,380	3,413	33
Other taxes	743	768	25
Miscellaneous receipts	2,091	5,926	3,835
Federal Grants	0	645	645
Transfers from other funds:			
PIT in excess of Revenue Bond debt service	4,215	5,244	1,029
Sales tax in excess of LGAC debt service	1,919	1,971	52
Real estate taxes in excess of CW/CA debt service	263	307	44
All other transfers	931	300	(631)
<b>Total receipts</b>	<u>37,396</u>	<u>42,326</u>	<u>4,930</u>
<b>Disbursements:</b>			
Grants to local governments	24,887	29,246	4,359
State operations	7,678	7,093	(585)
General State charges	2,699	3,247	548
Transfers to other funds:			
Debt service	1,496	1,474	(22)
Capital projects	166	243	77
Other purposes	687	762	75
<b>Total disbursements</b>	<u>37,613</u>	<u>42,065</u>	<u>4,452</u>
<b>Change in fund balance</b>	<u>(217)</u>	<u>262</u>	<u>479</u>
<b>Closing fund balance</b>	<u>815</u>	<u>1,077</u>	<u>262</u>
Tax Stabilization Reserve Fund	710	794	84
Contingency Reserve Fund	20	21	1
Community Projects Fund	85	262	177

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**CURRENT STATE RECEIPTS  
GENERAL FUND  
2002-2003 and 2003-2004  
(millions of dollars)**

	<u>2002-2003</u>	<u>2003-2004</u>	<u>Annual Change</u>
<b>Personal income tax</b>	16,791	15,774	(1,017)
<b>User taxes and fees</b>	7,063	7,979	916
Sales and use tax	6,328	7,241	913
Cigarette and tobacco taxes	446	419	(27)
Motor vehicle fees	67	82	15
Alcoholic beverages taxes	180	191	11
Alcoholic beverage control license fees	42	46	4
<b>Business taxes</b>	3,380	3,413	33
Corporation franchise tax	1,407	1,482	75
Corporation and utilities tax	860	715	(145)
Insurance taxes	704	930	226
Bank tax	409	286	(123)
<b>Other taxes</b>	743	768	25
Estate tax	701	732	31
Gift tax	7	4	(3)
Real property gains tax	5	4	(1)
Pari-mutuel taxes	29	27	(2)
Other taxes	1	1	(0)
<b>Total taxes</b>	<u>27,977</u>	<u>27,934</u>	<u>(43)</u>
<b>Miscellaneous receipts</b>	<u>2,091</u>	<u>5,926</u>	<u>3,835</u>
<b>Federal Grants</b>	<u>0</u>	<u>645</u>	<u>645</u>
<b>Total</b>	<u><u>30,068</u></u>	<u><u>34,505</u></u>	<u><u>4,437</u></u>

**GENERAL FUND  
PERSONAL INCOME TAX COMPONENTS  
2002-2003 and 2003-2004  
(millions of dollars)**

	<u>2002-2003</u>	<u>2003-2004</u>	<u>Annual Change</u>
Withholdings	19,959	21,986	2,027
Estimated Payments	4,855	5,159	304
Final Payments	1,334	1,313	(21)
Delinquencies	<u>796</u>	<u>631</u>	<u>(165)</u>
<b>Gross Collections</b>	26,944	29,089	2,145
State/City Offset	(288)	(261)	27
Refund Reserve	1,050	(597)	(1,647)
Refunds	<u>(4,008) (1)</u>	<u>(4,181) (2)</u>	<u>(173)</u>
<b>Reported Tax Collections</b>	23,698	24,050	352
STAR	(2,664)	(2,820)	(156)
RBTF	<u>(4,243)</u>	<u>(5,457)</u>	<u>(1,214)</u>
<b>General Fund</b>	<u><u>16,791</u></u>	<u><u>15,774</u></u>	<u><u>(1,018)</u></u>

Net personal income tax collections are affected by transactions in the tax refund reserve account. The tax refund reserve account is used to hold moneys designated to pay tax refunds. The Comptroller deposits receipts into this account at the discretion of the Commissioner of Taxation and Finance. The deposit of moneys into the account during a fiscal year has the effect of reducing receipts for the fiscal year, and the withdrawal of moneys from the account has the effect of increasing receipts in the fiscal year of withdrawal. The tax refund reserve account also includes amounts made available as a result of the LGAC financing program. Beginning in 1998-99, a portion of personal income tax collections is deposited directly in the School Tax Reduction (STAR) fund and used to make payments to reimburse local governments for their revenue decreases due to the STAR program.

*Note 1: Reflects the payment of the balance of refunds on 2001 liability and payment of \$960 million of calendar year 2002 refunds in the last quarter of the State's 2002-03 fiscal year and a balance in the Tax Refund Reserve Account of \$627 million.*

*Note 2: Reflects the payment of the balance of refunds on 2002 liability and payment of \$960 million of calendar year 2003 refunds in the last quarter of the State's 2003-04 fiscal year and a balance in the Tax Refund Reserve Account of \$1.2 billion.*

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**CASH FINANCIAL PLAN  
ALL GOVERNMENTAL FUNDS  
2003-2004  
(millions of dollars)**

	<u>General Fund</u>	<u>Special Revenue Funds</u>	<u>Capital Projects Funds</u>	<u>Debt Service Funds</u>	<u>(MEMO) Total</u>
<b>Opening fund balance</b>	815	1,039	(790)	158	1,222
<b>Receipts:</b>					
Taxes	27,934	4,442	1,756	8,122	42,254
Miscellaneous receipts	5,926	10,517	2,162	811	19,416
Federal grants	645	35,121	1,548	0	37,314
<b>Total receipts</b>	<u>34,505</u>	<u>50,080</u>	<u>5,466</u>	<u>8,933</u>	<u>98,984</u>
<b>Disbursements:</b>					
Grants to local governments	29,246	41,368	781	0	71,395
State operations	7,093	7,866	0	9	14,968
General State charges	3,247	601	0	0	3,848
Debt service	0	0	0	3,351	3,351
Capital projects	0	9	3,755	0	3,764
<b>Total disbursements</b>	<u>39,586</u>	<u>49,844</u>	<u>4,536</u>	<u>3,360</u>	<u>97,326</u>
<b>Other financing sources (uses):</b>					
Transfers from other funds	7,822	3,447	254	4,794	16,317
Transfers to other funds	(2,479)	(2,539)	(1,028)	(10,350)	(16,396)
Bond and note proceeds	0	0	139	0	139
<b>Net other financing sources (uses)</b>	<u>5,343</u>	<u>908</u>	<u>(635)</u>	<u>(5,556)</u>	<u>60</u>
<b>Change in fund balance</b>	<u>262</u>	<u>1,144</u>	<u>295</u>	<u>17</u>	<u>1,718</u>
<b>Closing fund balance</b>	<u>1,077</u>	<u>2,183</u>	<u>(495)</u>	<u>175</u>	<u>2,940</u>

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**CASH FINANCIAL PLAN  
ALL GOVERNMENTAL FUNDS  
2003-2004  
(millions of dollars)**

	<u>Enacted</u>	<u>30-Day</u>	<u>Year-End</u>	<b>Year-End vs. Enacted</b>	<b>Year-End vs. 30-Day</b>
<b>Opening fund balance</b>	<u>1,168</u>	<u>1,222</u>	<u>1,222</u>	<u>54</u>	<u>0</u>
<b>Receipts:</b>					
Taxes	42,672	42,127	42,254	(418)	127
Miscellaneous receipts	19,605	19,750	19,416	(189)	(334)
Federal grants	33,444	37,187	37,314	3,870	127
<b>Total receipts</b>	<u>95,721</u>	<u>99,064</u>	<u>98,984</u>	<u>3,263</u>	<u>(80)</u>
<b>Disbursements:</b>					
Grants to local governments	69,824	72,441	71,395	1,571	(1,046)
State operations	15,003	15,053	14,968	(35)	(85)
General State charges	3,808	3,842	3,848	40	6
Debt service	3,387	3,353	3,351	(36)	(2)
Capital projects	4,352	3,615	3,764	(588)	149
<b>Total disbursements</b>	<u>96,374</u>	<u>98,304</u>	<u>97,326</u>	<u>952</u>	<u>(978)</u>
<b>Other financing sources (uses):</b>					
Transfers from other funds	16,076	16,376	16,317	241	(59)
Transfers to other funds	(16,352)	(16,458)	(16,396)	(44)	62
Bond and note proceeds	248	248	139	(109)	(109)
<b>Net other financing sources (uses)</b>	<u>(28)</u>	<u>166</u>	<u>60</u>	<u>88</u>	<u>(106)</u>
<b>Fiscal Management Plan/Federal Aid</b>	<u>912</u>	<u>0</u>	<u>0</u>	<u>(912)</u>	<u>0</u>
<b>Change in fund balance</b>	<u>231</u>	<u>926</u>	<u>1,718</u>	<u>1,487</u>	<u>792</u>
<b>Closing fund balance</b>	<u>1,399</u>	<u>2,148</u>	<u>2,940</u>	<u>1,541</u>	<u>792</u>

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**CASH FINANCIAL PLAN  
ALL GOVERNMENTAL FUNDS  
2002-2003 and 2003-2004  
(millions of dollars)**

	<u>2002-2003</u>	<u>2003-2004</u>	<u>Annual Change</u>
<b>Opening fund balance</b>	<u>1,980</u>	<u>1,222</u>	<u>(758)</u>
<b>Receipts:</b>			
Taxes	40,676	42,254	1,578
Miscellaneous receipts	14,148	19,416	5,268
Federal grants	33,250	37,314	4,064
<b>Total receipts</b>	<u>88,074</u>	<u>98,984</u>	<u>10,910</u>
<b>Disbursements:</b>			
Grants to local governments	63,991	71,395	7,404
State operations	14,987	14,968	(19)
General State charges	3,241	3,848	607
Debt service	3,038	3,351	313
Capital projects	3,799	3,764	(35)
<b>Total disbursements</b>	<u>89,056</u>	<u>97,326</u>	<u>8,270</u>
<b>Other financing sources (uses):</b>			
Transfers from other funds	14,930	16,317	1,387
Transfers to other funds	(15,005)	(16,396)	(1,391)
Bond and note proceeds	245	139	(106)
<b>Net other financing sources (uses)</b>	<u>170</u>	<u>60</u>	<u>(110)</u>
<b>Change in fund balance</b>	<u>(812)</u>	<u>1,718</u>	<u>2,530</u>
<b>Closing fund balance</b>	<u>1,168</u>	<u>2,940</u>	<u>1,772</u>

The Special Revenue Funds opening fund balance has been increased by \$54 million to reflect the reclassification of the Expendable and Non-expendable Trust Funds from the Fiduciary fund type to the Special Revenue fund type pursuant to GASB 34.



## **PART II: Special Considerations**

The State Legislature has not enacted the annual budget for fiscal year 2004-05, which began on April 1, 2004. However, on March 31, 2004, it did enact the annual debt service bill, which includes appropriations for all State-supported, contingent-contractual, and certain other debt service obligations for the entire 2004-05 fiscal year.

To avoid service disruptions, the State enacted interim budget legislation on March 31, 2004 that extends certain revenue-raising authority and makes interim appropriations for certain State personal service costs, grants to local governments, and other items for the period from April 1 through May 9, 2004. Consistent with practices in prior years, the DOB expects that interim appropriations needed to continue State activities will continue to be authorized until the Legislature enacts the annual budget for the 2004-05 fiscal year. DOB can provide no assurance that the budget adopted by the Legislature will not differ materially and adversely from the 2004-05 Executive Budget Financial Plan projections set forth in the January 26, 2004 Update to the AIS.

### **PART III: The City of New York**

On April 26, 2004, the Mayor issued the 2004-05 Executive Budget and Four-Year Financial Plan for City Fiscal Years 2003-04 through 2007-08. The City projects a surplus of \$1.3 billion in the current fiscal year, a balanced budget for 2004-05, and a projected budget gap of \$3.8 billion in 2005-06.

*The official financial disclosure of The City of New York and financing entities issuing debt on its behalf is available by contacting Raymond J. Orlando, Director of Investor Relations, or contacting the New York City Office of Management and Budget, 75 Park Place, 6<sup>th</sup> Floor, New York, NY 10007, (212) 788-5875. The State assumes no liability or responsibility for any financial information reported by The City of New York.*

On February 12, 2004, the Office of the State Deputy Comptroller issued a report that concluded that New York City had overcome its most serious fiscal challenge since the 1970s, and that despite the budget risks cited in the report, New York City will end FY 2004 with a substantial budget surplus and should have little difficulty balancing the FY 2005 budget because it can draw upon reserves and other resources if needed. The report cautioned that continued progress toward recurring budget balance will depend on sustained economic improvement, an affordable labor agreement, and a reduction in the projected growth in nondiscretionary spending.

## **PART IV: Litigation**

### **Tobacco Master Settlement Agreement**

In *Freedom Holdings Inc. et al. v. Spitzer et ano.*, two cigarette importers brought an action in 2002 challenging portions of laws enacted by the State under the 1998 Tobacco Master Settlement Agreement (“MSA”) that New York and many other states entered into with the major tobacco manufacturers. The initial complaint alleged: (1) violations of the Commerce Clause of the United States Constitution; (2) the establishment of an “output cartel” in conflict with the Sherman Act; and (3) selective nonenforcement of the laws on Native American reservations in violation of the Equal Protection Clause of the United States Constitution. The United States District Court for the Southern District of New York granted defendants’ motion to dismiss the complaint for failure to state a cause of action. Plaintiffs appealed from this dismissal. In an opinion decided January 6, 2004, the United States Court of Appeals for the Second Circuit (1) affirmed the dismissal of the Commerce Clause claim; (2) reversed the dismissal of the Sherman Act claim; and (3) remanded the selective enforcement claim to the District Court for further proceedings. Plaintiffs have filed an amended complaint that also challenges the MSA itself (as well as other related State statutes) primarily on preemption grounds, and plaintiffs currently are seeking preliminary injunctive relief.

### **Local Government Assistance Corporation**

In *Local Government Assistance Corporation et al. v. Sales Tax Asset Receivable Corporation and The City of New York* (Supreme Court, Albany County), the petitioners challenge, inter alia, the constitutionality of Public Authorities Law section 3238-a, which requires LGAC to annually transfer \$170 million to The City of New York. Section 3238-a was enacted in 2003 as part of legislation (Part A4 of Chapter 62 and Part V of Chapter 63 of the Laws of 2003) authorizing the refinancing of debt incurred by the Municipal Assistance Corporation (the MAC Refinancing Act). By decision and order dated September 17, 2003, the court held that the MAC Refinancing Act was constitutional. Petitioners have appealed from the decision and order to the Appellate Division, Third Department. By decision and order entered August 27, 2003, the Appellate Division, Third Department granted a preliminary injunction restraining defendants, inter alia, from issuing any bonds pursuant to the MAC Refinancing Act pending appeal.

By memorandum and order entered March 4, 2004, the Appellate Division, Third Department, held that, to the extent that Public Authorities Law §3240 exempted payments made pursuant to Public Authorities Law 3238-a from the necessity of annual legislative appropriations, it violated the provisions of article VII, section 11 of the New York State Constitution. The Appellate Division then severed the offending portion of section 3240 and upheld the constitutionality of the remainder of the MAC Refinancing Act. Both parties have appealed from the March 4, 2004 memorandum and order to the Court of Appeals.

### **Medicaid**

Several cases challenge provisions of Chapter 81 of the Laws of 1995 which alter the nursing home Medicaid reimbursement methodology on and after April 1, 1995. Included are *New York State Health Facilities Association, et al., v. DeBuono, et al., St. Luke's Nursing Center, et al. v. DeBuono, et al., New York Association of Homes and Services for the Aging v. DeBuono, et al. (three cases), Healthcare Association of New York State v. DeBuono and Bayberry Nursing Home et al. v. Pataki, et al.* Plaintiffs allege that the changes in methodology have been adopted in violation of procedural and substantive requirements of State and Federal law.

In a decision dated June 3, 2003, involving seven consolidated cases (*Matter of St. James Nursing Home v. DeBuono*), the Supreme Court, Albany County, partially granted petitioners claims that the State violated the procedural requirements of the Boren Amendment and directed the State to recalculate the Medicaid rates associated with State Plan Amendment 95-23. The court dismissed petitioners' claims as to the Medicaid rates associated with State Plan Amendments 95-24 and 96-24. The State has appealed from this decision.

In related cases, *New York Association of Homes and Services for the Aging, Inc. v. Novello, et al.*, *Valley Health Services v. State and Charles T. Sitrin Health Care Center, Inc., et al.* v. *SONY, et al.*, plaintiffs seek judgments declaring as unconstitutional, under provisions of the Constitutions of the United States and the State, amendments to Public Health Law § 2907-d, enacted as part of Chapter 1 of the Laws of 2002, also known as the Health Care Workforce Recruitment & Retention Act of 2002, or "HCRA 2002," which impose a 6 percent assessment on nursing home gross receipts from patient care services and operating income. In a decision dated April 24, 2003, the Court granted summary judgment to defendants dismissing the *Sitrin* case. Plaintiffs appealed from this decision, but subsequently withdrew their appeal. Therefore, this case is concluded.

## **Empire Conversion**

In *Consumers Union of U.S., Inc. v. State*, plaintiffs challenge the constitutionality of those portions of Chapter 1 of the Laws of 2002 which relate to the authorization of the conversion of Empire Health Choice, d/b/a Empire Blue Cross and Blue Shield from a not-for-profit corporation to a for-profit corporation. Chapter 1 requires, in part, that upon such conversion, assets representing 95 percent of the fair market value of the not-for-profit corporation be transferred to a fund designated as the "public asset fund" to be used for the purpose set forth in § 7317 of the Insurance Law. The State and private defendants have separately moved to dismiss the complaint. On November 6, 2002, the Supreme Court, New York County, granted a temporary restraining order, directing that the proceeds from the initial public offering of the for-profit corporation be deposited with the State Comptroller in an interest-bearing account, pending the hearing of a motion for a preliminary injunction, which was returnable simultaneously with the motions to dismiss, on November 26, 2002.

By decision dated February 28, 2003, the Supreme Court, New York County, granted the defendants' motions to dismiss. In its decision, the court also granted plaintiffs leave to amend their complaint to assert a new cause of action and deferred decision on plaintiffs' motion for a preliminary injunction. The plaintiffs and defendants have appealed from the February 28, 2003 decision. Plaintiffs served an amended complaint on April 1, 2003. On April 15, 2003, the defendants moved to dismiss the amended complaint. By decision dated October 1, 2003, the court denied defendants' motions to dismiss, except for the motions to dismiss brought by the individually named members of the board of directors of Empire Healthchoice, Inc. The court also declined to vacate the temporary restraining order directing that the proceeds from the initial public offering of the for-profit corporation be deposited with the State Comptroller in an interest-bearing account. Plaintiffs have appealed from the February 28, 2003 decision. The defendants have appealed from the October 1, 2003 decision.