



Mary Taylor, CPA
Auditor of State

OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION

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Mary Taylor, CPA

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INDEPENDENT ACCOUNTANTS' REPORT

Alvin D. Jackson, M.D., Director
Ohio Department of Health
246 North High Street
Columbus, Ohio 43215

We have audited the financial statements of the governmental activities and Special Revenue Fund of the Ohio Tobacco Use Prevention and Control Foundation (the "Foundation"), State of Ohio, as of and for the period ended May 6, 2008, which collectively comprise the Foundation's basic financial statements, as listed in the table of contents. These financial statements are the responsibility of the Foundation's management. Our responsibility is to express opinions on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in the Comptroller General of the United States' *Government Auditing Standards*. Those standards require that we plan and perform the audit to reasonably assure whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinions.

As discussed in Note 1, the Foundation's financial statements present the financial position and changes in financial position of only the Ohio Tobacco Use Prevention and Control Foundation. They do not purport to, and do not, present fairly the financial position of the State of Ohio as of May 6, 2008, or the changes in its financial position and cash flows of its proprietary fund types for the period then ended in conformity with accounting principles generally accepted in the United States of America.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and Special Revenue Fund of the Ohio Tobacco Use Prevention and Control Foundation as of May 6, 2008, and the respective changes in financial position for the period July 1, 2007 through May 6, 2008, in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 2 to the financial statements, legislation abolished the Foundation and transferred most powers and certain assets and liabilities of the Foundation to the Ohio Department of Health, effective May 6, 2008. As such, the Foundation will not continue as a going concern.

In accordance with *Government Auditing Standards*, we have also issued our report dated February 24, 2009, on our consideration of the Foundation's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, grants, and other matters. While we did not opine on the internal control over financial reporting or on compliance, that report describes the scope of our testing in

internal control over financial reporting and compliance and the results of that testing. That report is an integral part of an audit performed in accordance with *Government Auditing Standards*. You should read it in conjunction with this report in assessing the results of our audit.

Management's Discussion and Analysis is not a required part of the basic financial statements, but is supplementary information the accounting principles generally accepted in the United States of America requires. We have applied certain limited procedures, consisting principally of inquiries of management regarding the methods of measuring and presenting the required supplementary information. However, we did not audit the information and express no opinion in it.

A handwritten signature in black ink that reads "Mary Taylor". The signature is written in a cursive, flowing style.

Mary Taylor, CPA
Auditor of State

February 24, 2009

**OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
MANAGEMENT'S DISCUSSION AND ANALYSIS
MAY 6, 2008
UNAUDITED**

HB 544 was passed by the General Assembly on May 6, 2008. This legislation, which became effective immediately upon passage, abolished the Ohio Tobacco Use Prevention and Control Foundation (the Foundation or OTPF) and ceded control of its assets, liabilities and on-going activities to the Ohio Department of Health. As a result, the accompanying financial statements are from the period July 1, 2007 through May 6, 2008, at which time control of the Foundation's activities, certain assets and liabilities were transferred to the Ohio Department of Health.

As a result, management of the Ohio Department of Health, part of the primary government of the State of Ohio, offers readers of the Foundation's financial statements this narrative overview and analysis of the financial activities of the Foundation for the period ended May 6, 2008. Readers are encouraged to consider the information presented herein in conjunction with the Foundation's financial statements, which begin on page 7 of this report.

The financial statements highlight the activities of the Foundation that are principally supported by investment income or by use of the principal portion of the endowment fund. Programs of the Foundation were intended to reduce and eliminate tobacco use in the State of Ohio. In this regard, the Foundation had seven specific goals as follows:

- Prevent youth tobacco use initiation
- Reduce youth tobacco use
- Reduce tobacco use among diverse and underserved populations, including those disproportionately affected by tobacco
- Reduce tobacco use among pregnant women
- Reduce exposure to secondhand tobacco smoke
- Reduce adult tobacco use
- Reduce smokeless tobacco use among youth and adults.

The financial arrangements of the Foundation were unlike those for most state agencies. The most significant difference was that the Foundation's assets were not appropriated by the General Assembly. Assets of the Foundation were under the direct control of the Foundation's governing board. The Foundation maintained two special revenue funds within the state's central accounting system (OAKS), OAKS Funds 5M80 and H870. Although appropriated, OAKS funds 5M80 and H870 are not major special revenue funds, and therefore, budgetary reporting is not required. The monies received, if any, from the Tobacco Master Settlement Agreement (MSA) were given to the Foundation and were deposited in the Foundation's endowment fund. The endowment fund is a "custodial fund", a certain type of fund permitted by state law. The fund is held in custody by the Treasurer of State, but is not, by law, part of the state treasury. The Foundation's assets were managed by the Foundation's governing board. The Foundation's board, not the Governor and not the General Assembly, determined its annual budget. The Foundation also managed the investment of its assets under limitations established by state law. This is a responsibility most state agencies do not have.

FINANCIAL HIGHLIGHTS

Key financial highlights for period July 1, 2007 through May 6, 2008 are as follows:

- The Foundation was abolished by an act of the General Assembly effective May 6, 2008, at which time certain assets, liabilities and activities of the Foundation were transferred to the Ohio Department of Health. The abolishment was recorded as an extraordinary item of \$266,755,027, reducing assets, liabilities and net assets to \$0. All information presented herein is as of the last day of the Foundation's existence.
- During the period ended May 6, 2008, \$12,726,584 of cessation and prevention grants were disbursed to over 70 grantees as follows:

**OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
MANAGEMENT'S DISCUSSION AND ANALYSIS
MAY 6, 2008
UNAUDITED**

- \$11,619,699-Community III Grants
 - \$ 500,000-State Agency Partnerships
 - \$ 423,758-Tobacco Public Policy Center
 - \$ 135,267-School Based Programs
 - \$ 47,860-Various other
-
- During the period ended May 6, 2008, the Foundation spent \$7,691,651 on Ohio Quits, a comprehensive statewide cessation program which utilizes a smoking quit line (1-800-934-4840 (or 1-800-QUIT NOW)), partners with employer groups and insurance providers and which provides NRT to qualified individuals. The quit line is operated through a contract with the National Jewish Medical and Research Center in Denver, Colorado. Over 36,000 Ohioans called the Ohio Quit Line in the current period while over 38,000 Ohioans have quit since the inception of the Quit Line.
 - During the period ended May 6, 2008, the Foundation spent \$6,963,508 in its counter-marketing efforts. This is an aggressive statewide media and counter-marketing campaign which utilizes youth empowerment messages and images to combat the nearly \$500 million dollars in marketing that tobacco manufacturers spend each year in Ohio. The goal is to de-normalize tobacco use among the general public, especially among the group most at risk for starting a tobacco habit – children and teens ages 11-15.
 - During the period ended May 6, 2008, administrative costs of the Foundation were \$704,723 or 2.34% of operating expenses.
 - During the period ended May 6, 2008, \$2,047,671 was spent with certified Ohio Minority Business Enterprise (MBE) companies.

OVERVIEW OF THE FINANCIAL STATEMENTS

This discussion and analysis is intended to serve as an introduction to the Foundation's basic financial statements. The Foundation's basic financial statements comprise two components: 1) financial statements, and 2) notes to the financial statements.

The Foundation follows governmental accounting principles, which means these statements are presented in a manner similar to other governmental units. The financial statements are designed to provide readers with a broad overview of the Foundation's finances in total. These statements offer short and long-term financial information about its activities.

The *Governmental Funds Balance Sheet / Statement of Net Assets* presents information on all of the Foundation's assets and liabilities, including information about the nature and amounts of investments and the Foundation's net assets at May 6, 2008, its date of termination.

The *Statement of Governmental Fund Revenues, Expenditures, and Changes in Fund Balance / Statement of Activities* present information showing the changes in the Foundation's net assets during the fiscal year. All changes in net assets are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future fiscal periods (e.g. earned but unused vacation leaves and accrued interest receivable).

FINANCIAL ANALYSIS OF THE FOUNDATION

The following is condensed financial information as of June 30, 2007 and May 6, 2008:

**OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
MANAGEMENT'S DISCUSSION AND ANALYSIS
MAY 6, 2008
UNAUDITED**

| | <u>June 30,</u> <u>2007</u> | <u>May 6,</u> <u>2008</u> | <u>%</u> <u>Change</u> |
|---------------------------------------|--------------------------------|------------------------------|---------------------------|
| Total Assets | \$301,899,120 | \$0 | (100.0%) |
| Total Liabilities | 3,920,017 | 0 | (100.0)% |
| Total Net Assets | <u>297,979,103</u> | <u>0</u> | <u>(100.0%)</u> |
| Revenues | | | |
| Tobacco Settlement | 0 | 0 | n/a |
| Investment income | 34,108,058 | (1,075,833) | (103.2)% |
| Donations/Grants | 0 | 0 | n/a |
| Total Revenues | <u>34,108,058</u> | <u>(1,075,833)</u> | <u>(103.2)%</u> |
| Operating Expenditures | <u>38,334,985</u> | <u>30,148,243</u> | <u>(21.4)%</u> |
| Net change before extraordinary items | <u>(4,226,927)</u> | <u>(31,224,076)</u> | <u>(638.7)%</u> |
| Extraordinary Items | 0 | (266,755,027) | n/a |
| Change in Net Assets | <u>(4,226,927)</u> | <u>(297,979,103)</u> | <u>(6949.5)%</u> |
| Ending Net Assets | <u>\$297,979,103</u> | <u>\$0</u> | <u>(100.0%)</u> |

The reasons for Significant Changes from fiscal year 2007 are as follows:

- The Foundation was abolished by an act of the General Assembly effective May 6, 2008, at which time certain assets, liabilities and activities of the Foundation were transferred to the Ohio Department of Health. The abolishment was recorded as an extraordinary item of \$266,755,027, reducing assets and liabilities to \$0.

ACCOMPLISHMENTS

During the period ended May 6, 2008, the Foundation provided cash payments of \$12,726,584 in grants to prevent and control the use of tobacco.

The Foundation spent \$7,691,651 for Ohio Quits, which is a comprehensive statewide tobacco cessation program which centers on the Ohio Tobacco Quitline which served over 36,000 Ohioans for the period ended May 6, 2008.

The Foundation funded a total of \$690,303 for evaluation and research activities. These funds were primarily spent with Case Western Reserve University to evaluate the effectiveness of the Foundation's tobacco prevention and cessation grants; with The Ohio State University to evaluate the effectiveness of the Foundation's sponsored cessation centers, with the University of Colorado to evaluate the effectiveness of the Ohio Quits program, and with the accounting and auditing firm of GBQ partners to perform financial reviews of the various prevention and cessation grants.

Finally the Foundation spent \$6,963,508 in its counter-marketing media campaign.

The Foundation at May 6, 2008, had authorized personnel strength of eighteen staff members with seventeen positions being filled at the date of termination.

CONTACTING THE FOUNDATION'S FINANCIAL MANAGEMENT

This financial report is designed to provide an overview of the Foundation's finances and its accountability for the money it receives. If you have questions about this report or need additional financial information, contact Kyle Dupler at (614) 644-1109 or at kyle.dupler@odh.ohio.gov.

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**OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
GOVERNMENTAL FUND BALANCE SHEET / STATEMENT OF NET ASSETS
AS OF MAY 6, 2008**

| | <u>Special Revenue Fund</u> | <u>Adjustments (See Note 3)</u> | <u>Statement of Net Assets</u> |
|--|---------------------------------|-------------------------------------|------------------------------------|
| Assets: | | | |
| Cash and cash equivalents..... | \$ - | \$ - | \$ - |
| Other cash equity with Treasurer of State..... | - | - | - |
| Investments at market value (cost \$264,867,441)..... | - | - | - |
| Accrued interest and dividends receivable..... | - | - | - |
| Collateral on lent securities..... | - | - | - |
| Prepaid employee health benefits..... | - | - | - |
| Capital assets, net of accumulated depreciation..... | - | - | - |
| Total Assets | <u>\$ -</u> | <u>\$ -</u> | <u>\$ -</u> |
| Liabilities: | | | |
| Accounts payable..... | \$ - | \$ - | \$ - |
| Personnel payable..... | - | - | - |
| Obligations under lent securities..... | - | - | - |
| Compensated absences:..... | | | |
| Due within one year..... | - | - | - |
| Due after one year..... | - | - | - |
| Total Liabilities | <u>-</u> | <u>-</u> | <u>-</u> |
| Fund Balance / Net Assets: | | | |
| Reserved for compensated absences..... | - | - | - |
| Reserved for employee health benefits..... | - | - | - |
| Fund balance unreserved..... | - | - | - |
| Total Fund Balance..... | <u>-</u> | <u>-</u> | <u>-</u> |
| Total liabilities and fund balance | <u>\$ -</u> | | |
| Net Assets: | | | |
| Invested in net capital assets, net of related debt..... | | - | - |
| Unrestricted..... | | - | - |
| Total net assets | | <u>\$ -</u> | <u>\$ -</u> |

The notes to the financial statements are an integral part of this statement.

**OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
STATEMENT OF GOVERNMENTAL FUND REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCE / STATEMENT OF ACTIVITIES
FOR THE FISCAL PERIOD JULY 1, 2007 THROUGH MAY 6, 2008**

| | <u>Special Revenue Fund</u> | <u>Adjustments (See Note 3)</u> | <u>Statement of Activities</u> |
|--|---------------------------------|-------------------------------------|------------------------------------|
| Revenues | | | |
| Investment income (loss)..... | \$ (1,075,833) | \$ - | \$ (1,075,833) |
| Other..... | - | - | - |
| Total Revenues..... | <u>(1,075,833)</u> | <u>-</u> | <u>(1,075,833)</u> |
| Expenditures / Expenses: | | | |
| Personnel costs..... | 1,344,425 | - | 1,344,425 |
| Contracts..... | 15,485,181 | - | 15,485,181 |
| Operating costs..... | 550,229 | - | 550,229 |
| Depreciation..... | - | 41,824 | 41,824 |
| Grants..... | 12,726,584 | - | 12,726,584 |
| Capital Outlay..... | 74,945 | (74,945) | - |
| Total Expenditures / Expenses..... | <u>30,181,364</u> | <u>(33,121)</u> | <u>30,148,243</u> |
| Excess (Deficit) of Revenues over Expenditures/Expenses before extraordinary items..... | | | |
| | (31,257,197) | | |
| Extraordinary Items - abolishment of Foundation..... | (266,836,412) | 81,385 | (266,755,027) |
| Excess (Deficit) of Revenues over Expenditures/Expenses after extraordinary items..... | | | |
| | (298,093,609) | 298,093,609 | |
| Change in net assets..... | | (297,979,103) | (297,979,103) |
| Fund Balance / Net Assets: | | | |
| Beginning Balance - July 1, 2007..... | 298,093,609 | (114,506) | 297,979,103 |
| Ending Balance - May 6, 2008..... | <u>\$ -</u> | <u>\$ -</u> | <u>\$ -</u> |

OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
NOTES TO THE FINANCIAL STATEMENTS
MAY 6, 2008

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Authorizing Legislation

The Tobacco Use Prevention and Control Foundation (the Foundation) was created by amended Senate Bill No. 192, effective June 2000, to develop a plan and to implement programs designed to decrease tobacco use in Ohio with emphasis on reducing the use of tobacco by youth, minority and regional populations, pregnant women, and other populations disproportionately affected by tobacco use. The plan shall cover a period of at least five years and be updated annually. The legislation describes a variety of means by which the Foundation is to develop its plan and carry out its charge.

Pursuant to its legislative mandate, the Foundation's Board was created in Ohio Revised Code (ORC) Section 183.04 and is enabled in ORC 183.04 through ORC 183.09 inclusive. The Foundation's Board was originally composed of twenty voting and four non-voting members as set forth in Section 183.04 of the Ohio Revised Code. Members included eight health professionals, health researchers, or representatives of health organizations; one person with experience in financial planning and accounting; one person with experience in media and mass marketing; seven individuals recommended one each by the following entities: the American Cancer Society, the American Heart Association, the American Lung Association, the Association of Hospitals and Health Systems, the Ohio State Medical Association, the Association of Ohio Health Commissioners, the Ohio Dental Association; three State officials (Director of Health, Executive Director of the Commission on Minority Health, and the Attorney General) sitting ex officio; and two members each from the House and Senate (non-voting).

SB 321 which was signed into law in June, 2006 eliminated the Attorney General as an ex officio board member which therefore reduced the number of voting members to nineteen.

On May 6, 2008, Sub. H.B. 544 was signed into law. This legislation, upon passage, abolished the Foundation and transferred most powers and certain assets and liabilities to the Ohio Department of Health. The legislation called for the liquidation of the endowment fund and the transfer of the lesser of 14.8 per cent of the proceeds from the liquidation or \$40,000,000 to the state treasury to the Ohio Department of Health to carry out tobacco prevention and cessation programs. The remaining funds were to be transferred to the state treasury for use in the Governor's Economic Stimulus Package, specifically into the Jobs Fund (Fund 5Z30). In connection with this and prior legislation, several lawsuits have been filed and, as a result, all funds of the Foundation are currently being frozen by the court. The disposition of these legal matters is undetermined as of the date of this report.

Method of Operation

The Foundation's mission was to implement or provide funding through grants to private or public agencies to carry out research and programs related to tobacco use prevention and cessation. The Foundation was charged to establish an objective process to determine which research and program proposals to fund. The Foundation was also responsible for adopting rules under Chapter 119 of the Ohio Revised Code regarding conflicts of interest in the research and programs which it funded.

To carry out the duties of the Foundation, a separate endowment fund (Tobacco Use Prevention and Control Endowment Fund) was created in the custody of the Treasurer of State but which is not part of the State Treasury. Legislation required the endowment fund to consist of funds disbursed to it through the Foundation's Tobacco Use Prevention and Control Trust Fund (Fund H87), grants and donations made to the Foundation, and investment earnings of the endowment fund. The endowment fund was used by the Foundation to carry out its legislative mandate. The Foundation was the trustee of the endowment fund and the Treasurer of State paid disbursements only upon instruments duly authorized by the Foundation's Board of Trustees or its designee. The endowment fund, however, was not a trust fund.

The endowment fund was to be used to pay all Foundation expenditures such as staff salaries, equipment purchases, rental payments and program expenses. The legislation also defined the Foundation's employees as State employees, which as a result required the State of Ohio to establish an appropriation line item (Central Accounting

OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
NOTES TO THE FINANCIAL STATEMENTS
MAY 6, 2008

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

System Fund-OAKS 5M80-Tobacco Use Prevention and Control Operating Expenses fund) to provide for the Foundation's payroll. This amount was then reimbursed by and through the Foundation's endowment fund. For the fiscal years ended June 30 2008 and 2007, the amounts appropriated were \$1,717,159 and \$1,659,091, respectively. As of May 6, 2008, the number of employees authorized was eighteen with seventeen positions being filled. The majority of the Foundation's assets were required to be maintained in the endowment fund, an un-appropriated account, which was monitored by the Foundation. Payroll costs were less than 4.0% of the Foundation's total reported expenditures and less than 0.005 of the total net assets; therefore, no budgetary comparison information is provided.

At the request of the Foundation, the Treasurer of State selected and contracted with one or more investment managers to invest all money credited to the fund that was not currently needed for carrying out the functions of the Foundation.

The accompanying financial statements of the Tobacco Use Prevention and Control Foundation present the financial position and results of operations of the Foundation. The financial statements, as of May 6, 2008 and for the ten months and six days then ended, conform with accounting principles generally accepted in the United States of America as applied to governments. The Governmental Accounting Standards Board (GASB) is the standard-setting body for establishing governmental accounting and financial reporting principles. The GASB's Codification of Governmental Accounting and Financial reporting Standards (GASB Codification) documents these principles. The Foundation's significant accounting policies are as follows:

A. Reporting Entity

Within the State of Ohio's Comprehensive Annual Financial Report, the Foundation is included as part of the primary government. The Foundation's management believes these financial statements present all activities for which the Foundation is financially responsible.

B. Government-Wide and Fund Financial Statements

In accordance with GASB Statement 34, the Foundation has presented government-wide financial statements (the Statement of Net Assets and the Statement of Activities). These statements are required to report all non-fiduciary activities. Government-wide accounting is designed to provide a more comprehensive view of the Foundation's operations and financial position as a single economic entity.

Fund financial statements are also provided for the Foundation's governmental fund. Fund accounting is designed to demonstrate legal compliance and to aid financial management by segregating transactions relating to certain functions or activities.

As allowed by GASB Statement 34 for entities engaged in a single governmental program, the Foundation has chosen to present its fund financial statements with its government-wide statements. This was accomplished by using a columnar format that reconciles individual line items of fund financial data to government-wide data in a separate column.

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Under this measurement focus, operating statements present increases (i.e., revenues) and decreases (i.e., expenditures) in net assets. Revenues are recorded when earned and expenditures are recorded when a liability is incurred, regardless of the timing of related cash flows.

The accounting and financial reporting treatment applied to a fund is determined by its measurement focus. Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Under this measurement focus, operating statements present increases (i.e., revenues) and decreases (i.e., expenditures) in net current assets, and unreserved fund balance is a measure of available expendable resources.

**OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
NOTES TO THE FINANCIAL STATEMENTS
MAY 6, 2008**

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Under the modified accrual basis of accounting, the Foundation recognizes revenues when susceptible to accrual (i.e., when they are “measurable and available”). “Measurable” means the amount of the transaction is determinable, and “available” means the amount is collectible within the current period or soon enough thereafter to pay liabilities of the current period. The Foundation considers revenues as available when collected within 60 days after year-end. Under the modified accrual basis, expenditures are recorded when related liabilities are incurred, which are recognized as expenditures when due.

Significant sources susceptible to accrual under the modified accrual basis of accounting include tobacco settlement revenues, investment income and vendor payments.

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.

The Foundation uses a special revenue fund to report its financial position and results of operations. The special revenue fund is an independent fiscal and accounting entity with a self-balancing set of accounts, which accounts for revenue sources that are legally restricted to specific purpose expenditures. Two separate accounts exist within the special revenue fund; these are the Tobacco Use Prevention and Control Endowment Fund and the Tobacco Use Prevention and Control Operating Expense Fund. These accounts are described within Note 1, Method of Operations.

D. Revenues

Tobacco settlement revenues comprised the Foundation’s primary sources of revenues. These revenues were derived from the 1998 Master Settlement Agreement (MSA) which was entered into by the State of Ohio, along with numerous other states, against major tobacco product manufacturers. The MSA stipulates the conditions and calculations to be applied in order for each state to receive its annual allotments. Ohio Revised Code Section 183.02 required all payments received by the State to be deposited into the Treasurer of State’s Tobacco Master Settlement Agreement Fund and the payments and related interest are to be distributed by the Office of Budget and Management in accordance with the distribution schedule. Revised Code Section 183.02 (C) stipulated the payments to the Foundation from the Agreement shall be as follows:

| <u>Year</u> | <u>Amount or Percentage</u> |
|-------------------------------|-----------------------------|
| 2000 (First Payment Credited) | \$104,855,223 |
| 2000 (Net Amount Credited) | 70.30% |
| 2001 | 62.84% |
| 2002 | 61.41% |
| 2003 | 63.24% |
| 2004 | 66.65% |
| 2005 | 66.24% |
| 2006 | 65.97% |
| 2012 | 0.00% |

Before fiscal year 2012 begins, the Foundation was to have reported to the Governor and Legislature the progress the Foundation has made towards its goals and whether a need for additional funding still exists. At that point, the Governor and Legislature would decide future funding to the Foundation. Funding estimates for receiving monies under the Master Settlement Agreement were initially only projected through the year 2025; however, under the terms of the MSA payments from the tobacco product manufacturers are to continue into perpetuity.

In June 2007, HB 119 was signed into law. This legislation provided for the state to securitize all foreseeable future MSA payments such that no additional payments are to be received by the Foundation, including those previously diverted payments that were promised to be repaid in the fiscal year 2012 and beyond.

**OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
NOTES TO THE FINANCIAL STATEMENTS
MAY 6, 2008**

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

On May 6, 2008, Sub. H.B. 544 was signed into law. This legislation, upon passage, abolished the Foundation and transferred most powers and certain assets and liabilities to the Ohio Department of Health. The legislation called for the liquidation of the endowment fund and the transfer of the lesser of 14.8 per cent of the proceeds from the liquidation or \$40,000,000 to the state treasury for use by Ohio Department of Health to carry out tobacco prevention and cessation programs. The remaining funds were to be transferred to the state treasury for use in the Governor's Economic Stimulus Package, specifically into the Jobs Fund (Fund 5Z30). In connection with this and prior legislation, several law suits have been filed and, as a result, all funds of the Foundation are currently being frozen by the court. The disposition of these legal matters is undetermined as of the date of this report.

E. Expenditures and Accounts Payable

Grants

For the period ended May 6, 2008 \$12,726,584 of tobacco prevention and cessation grants were disbursed. These grants expired at June 30, 2008.

Contracts

The Foundation entered into several contracts to carry out the programs of the Foundation. The two primary contracts were for the counter-marketing campaign (\$6,963,508) and for Ohio Quits (\$7,691,651), the Foundation's comprehensive tobacco cessation program. These contracts were terminated by the Ohio Department of Health at June 30, 2008.

Administrative Expenditures

Administrative expenditures include expenditures not directly attributable to the programmatic aspect of the Foundation. These include salary and wages of non-program personnel, and the proportionate share of all expenses related to the general administration of the Foundation. Ohio Revised Code Section 183.30 (A) requires that no more than five percent of the total expenditures within a fiscal year shall be for administrative purposes. Actual administrative expenditures for period ended May 6, 2008 were 2.34% of total expenditures.

F. Self-Insurance

The State of Ohio serves as the Foundation's primary government and is self-insured for claims covered under its traditional healthcare plan, vehicle liability, public fidelity blanket bonds, property losses, and tort liability. Additionally, the State of Ohio participates in a public entity risk pool that covers liabilities associated with claims submitted to the Bureau of Workers' Compensation.

2. EXTRAORDINARY ITEM: ABOLISHMENT OF THE FOUNDATION

House Bill 544 was enacted by the General Assembly of Ohio and became effective immediately when it was signed on May 6, 2008. This legislation abolished the Foundation and transferred most powers and certain assets and liabilities to the Ohio Department of Health. The legislation called for the liquidation of the endowment fund and the transfer of the lesser of 14.8 per cent of the proceeds from the liquidation or \$40,000,000 to the state treasury to the Ohio Department of Health to carry out tobacco prevention and cessation programs. The remaining funds were to be transferred to the state treasury for use in the Governor's Economic Stimulus Package, specifically into the Jobs Fund (Fund 5Z30). As mentioned in Note 4 there is ongoing litigation to determine the legality of transferring all of the remaining liquidation proceeds to the Jobs Fund.

**OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
NOTES TO THE FINANCIAL STATEMENTS
MAY 6, 2008**

2. EXTRAORDINARY ITEM: ABOLISHMENT OF THE FOUNDATION (Continued)

Prior to the abolishment of the Foundation, the assets and liabilities of the Foundation were as follows:

| | <u>Special Revenue Fund</u> | <u>Adjustments (See Note 3)</u> | <u>Statement of Net Assets</u> |
|--|---------------------------------|-------------------------------------|------------------------------------|
| Assets: | | | |
| Cash and cash equivalents..... | \$ 3,670,820 | \$ - | \$ 3,670,820 |
| Other cash equity with Treasurer of State..... | 47,269 | - | 47,269 |
| Investments at market value (cost \$264,867,441)..... | 266,477,800 | - | 266,477,800 |
| Accrued interest and dividends receivable..... | - | - | - |
| Collateral on lent securities..... | 411,261 | - | 411,261 |
| Prepaid employee health benefits..... | 6,700 | - | 6,700 |
| Capital assets, net of accumulated depreciation..... | - | 117,570 | 117,570 |
| Total Assets | <u>\$ 270,613,850</u> | <u>\$ 117,570</u> | <u>\$ 270,731,420</u> |
| Liabilities: | | | |
| Accounts payable..... | \$ 3,267,672 | \$ - | \$ 3,267,672 |
| Personnel payable..... | 98,505 | - | 98,505 |
| Obligations under lent securities..... | 411,261 | - | 411,261 |
| Compensated absences: | | | |
| Due within one year..... | - | 28,227 | 28,227 |
| Due after one year..... | - | 170,728 | 170,728 |
| Total Liabilities | <u>3,777,438</u> | <u>198,955</u> | <u>3,976,393</u> |
| Fund Balance / Net Assets: | | | |
| Reserved for compensated absences..... | 47,269 | (47,269) | - |
| Reserved for employee health benefits..... | 6,700 | (6,700) | - |
| Fund balance unreserved..... | 266,782,443 | (266,782,443) | - |
| Total Fund Balance..... | <u>266,836,412</u> | <u>(266,836,412)</u> | <u>-</u> |
| Total liabilities and fund balance | <u>\$ 270,613,850</u> | | |
| Net Assets: | | | |
| Invested in net capital assets, net of related debt..... | | 117,570 | 117,570 |
| Unrestricted..... | | 266,637,457 | 266,637,457 |
| Total net assets | | <u>\$ 266,755,027</u> | <u>\$ 266,755,027</u> |

3. EXPLANATION OF DIFFERENCES BETWEEN THE GOVERNMENTAL FUND AND GOVERNMENT-WIDE FINANCIAL STATEMENTS

Before recording the extraordinary item, the Total "Fund Balance" of the Foundation's governmental fund on the Governmental Fund Balance Sheet differs from "Total Net Assets" of the governmental activities reported in the Statement of Net Assets; see Note 2. However, after recording the extraordinary item, there are no differences. The "Excess (deficit) of Revenues over Expenditures / Expenses" of the Foundation's governmental fund on the Statement of Governmental Fund Revenues, Expenditures, and Changes in Fund balance differs from the Foundation's change in net assets on the Statement of Activities. These differences primarily result from the long-term economic focus of the government-wide statements versus the current financial resources of the governmental fund statements.

The following is a detailed description of the amounts included in the "Adjustments" column of the accompanying financial statements (after recording the extraordinary item):

Statement of Revenues, Expenditures, and Change in Fund Balance/Statement of Activities

Capital Outlay

The special revenue fund reports capital outlays as expenditures. However, for the Statement of Activities column, the cost of those assets is allocated over their estimated useful lives as depreciation expense.....

\$(74,945)

**OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
NOTES TO THE FINANCIAL STATEMENTS
MAY 6, 2008**

3. EXPLANATION OF DIFFERENCES BETWEEN THE GOVERNMENTAL FUND AND GOVERNMENT-WIDE FINANCIAL STATEMENTS (Continued)

Depreciation

For the Statement of Activities column, the cost of capital assets is allocated over the assets' estimated useful lives as depreciation expense. No depreciation expense is recorded for the special revenue fund..... \$ 41,824

Extraordinary Items

The adjustment for extraordinary items is the net result of variances in the treatment of two asset types on the Governmental Fund Balance Sheet versus the Statement of Net Assets prior to recording the extraordinary items, as follows:..... \$ 81,385

Capital assets used in governmental activities are not financial resources and, therefore, are not reported in the special revenue fund; however, capital assets are reported in the Statement of Net Assets column.....\$117,570

No liability for compensated absences is reported in the special revenue fund because the liability is not expected to be liquidated with expendable available financial resources. However, long-term liabilities are reported in the Statement of Net Assets column.....\$198,955

4. CONTINGENCIES

As of May 6, 2008, there were several lawsuits involving the Foundation (Plaintiff), the Treasurer of State (the Defendant) and the American Legacy Foundation. As a result of the litigation, all the assets of the Endowment Fund were frozen by the court and as of the date of this report the disposition of that litigation is unknown.

As allowed by vote of the Foundation's Board of Trustees at the April 4, 2008 meeting, the Foundation entered into an agreement with the American Legacy Foundation (ALF) to transfer \$190 million to ALF to carry out the mission of the Tobacco Foundation and fulfill the board's fiduciary duties.

On April 9, 2008, the Board of Trustees filed a lawsuit for a temporary restraining order to prevent the Treasurer of State from transferring funds out of the Foundation's Endowment Fund. The action was prompted by legislation passed by the General Assembly to transfer approximately \$200 million dollars from the Foundation to be used in an economic stimulus package. The case litigation, *Board of Trustees of the Tobacco Use Prevention and Control Foundation, et al., v. Richard Cordray, et al*, Franklin County Court of Common Please Case No. 08 CV 005363, was later consolidated with another case, *Miller, et al. v. State of Ohio, et al.*, Franklin County Court of Common Please Case No. 08 CV 07691, and is pending a resolution.

The Court denied the Foundation's request for a restraining order but did freeze the funds so that they couldn't "be moved, expended, disbursed, re-appropriated, and/or transferred until further order of this Court." The Foundation was abolished on May 6, 2008, by the General Assembly. The American Legacy Foundation intervened as a plaintiff in the lawsuit, seeking to enforce two alleged agreements with the Foundation to transfer \$190 million of tobacco funds to the ALF.

Subsequent orders by the Court allowed specified amounts to be released "to pay contractual or other legally binding obligations entered into by the Plaintiff prior to April 8, 2008," at the request of the Plaintiff and as supported with sufficient documentation. The Court also allowed the Treasurer to convert, in a prudent manner, the securities of the Foundation's Endowment Fund into more liquid and secure investments, as long as the proceeds remained in the Fund. The Treasurer liquidated all investments by June 26, 2008. As of that date, the total cash balance, including proceeds from the liquidated investments, was \$271,071,362.



Mary Taylor, CPA

Auditor of State

INDEPENDENT ACCOUNTANTS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS REQUIRED BY *GOVERNMENT AUDITING STANDARDS*

Alvin D. Jackson, M.D., Director
Ohio Department of Health
246 North High Street
Columbus, Ohio 43215

We have audited the financial statements of the governmental activities and Special Revenue Fund of the Ohio Tobacco Use Prevention and Control Foundation (the "Foundation"), State of Ohio, as of and for the period ended May 6, 2008, which collectively comprise the Foundation's basic financial statements and have issued our report thereon dated February 24, 2009, wherein we noted the Foundation was abolished effective May 6, 2008, and will not continue as a going concern. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in the Comptroller General of the United States' *Government Auditing Standards*.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Foundation's internal control over financial reporting as a basis for designing our audit procedures for expressing our opinions on the financial statements, but not to opine on the effectiveness of the Foundation's internal control over financial reporting. Accordingly, we have not opined on the effectiveness of the Foundation's internal control over financial reporting.

A control deficiency exists when the design or operation of a control does not allow management or employees, in performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the Foundation's ability to initiate, authorize, record, process, or report financial data reliably in accordance with its applicable accounting basis, such that there is more than a remote likelihood that the Foundation's internal control will not prevent or detect a more-than-inconsequential financial statement misstatement.

A material weakness is a significant deficiency, or combination of significant deficiencies resulting in more than a remote likelihood that the Foundation's internal control will not prevent or detect a material financial statement misstatement.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all internal control deficiencies that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider material weaknesses, as defined above.

We noted a certain matter that we reported to the Ohio Department of Health's management in a separate letter dated February 24, 2009.

Compliance and Other Matters

As part of reasonably assuring whether the Foundation's financial statements are free of material misstatement, we tested its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could directly and materially affect the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and accordingly, we do not express an opinion. The results of our tests disclosed no instances of noncompliance or other matters we must report under *Government Auditing Standards*.

We intend this report solely for the information and use of the Ohio Department of Health, the State of Ohio management, and the Ohio General Assembly. We intend it for no one other than these specified parties.

A handwritten signature in black ink that reads "Mary Taylor". The signature is written in a cursive, flowing style.

Mary Taylor, CPA
Auditor of State

February 24, 2009



Mary Taylor, CPA
Auditor of State

**OHIO TOBACCO USE PREVENTION AND CONTROL FOUNDATION
FRANKLIN COUNTY**

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

**CERTIFIED
MARCH 12, 2009**