

## **Golden LEAF Return of \$24.6 Million Overpayment**

Authorized in S.L. 1999-2 and established by charter in 1999, the Golden LEAF Foundation (Long-term Economic Advancement Foundation) is a nonprofit organization formed for the purpose of receiving 50% of North Carolina's annual Master Settlement Agreement (MSA) payment. A 15-member board appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives oversees Foundation operations.

Golden LEAF received 50% of the State's annual MSA payments until FY 2011-12. The General Assembly diverted \$17.6 million and \$24.3 million in MSA funds from Golden LEAF during FY 2011-12 and FY 2012-13, respectively. S.L. 2013-360 directs all future MSA payments to the General Fund.

In early 2013, the Attorney General's Office concluded litigation regarding disputed funds held by tobacco manufacturers. Each year, tobacco manufacturers are permitted to withhold disputed funds that would have otherwise been distributed as part of the MSA. Funds disputed by tobacco manufacturers are deposited into a Disputed Payment Account (DPA)<sup>1</sup>.

In Section 6.11(d) of S.L. 2011-145, the General Assembly directed that any funds released from the DPA for the benefit of the State to be deposited into the General Fund, however, due to administrative incapability of the MSA administrator (Pricewaterhouse Coopers) to separate DPA and MSA payments, one-half of the funds released from the DPA were sent to Golden LEAF.

MSA and DPA payments were made in April 2013 with a total distribution to North Carolina in the amount of \$211.2 million. Payments were divided equally between the General Fund and Golden LEAF. Pricewaterhouse Coopers subsequently issued documentation indicating that the total DPA distribution to North Carolina was \$119.5 million.

Golden LEAF has submitted three payments to the General Fund:

- 1) \$17.6 million (fulfills S.L. 2011-145 diversion)
- 2) \$24.3 million (fulfills S.L. 2012-145 diversion)
- 3) \$35.1 million (partial submission of DPA settlement funds)

Based upon legislative staff and the Attorney General's Office review of the DPA settlement, \$24,639,357 in funds received by Golden LEAF remain due to the General Fund.

The Golden LEAF Foundation remains an independent nonprofit organization with net assets valued in excess of \$700 million as of June 30, 2012.

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<sup>1</sup> The Disputed Payments Account is an interest-bearing escrow account into which Participating MSA Manufacturers may deposit "disputed" payments. A disputed payment occurs when the manufacturer disagrees with the auditor on the required MSA payment. Once the dispute is settled, the funds are distributed to the prevailing party (i.e. returned to the manufacturer or distributed to the states). Regardless of whether a manufacturer deposits funds into this Disputed Payments Account, if the dispute is resolved in the states' favor, the manufacturers would owe the states withheld funds plus interest.