

New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Controls Over the Collection of the Public Safety Communications Surcharge

**Department of Taxation and
Finance**



Report 2016-S-84

October 2017

Executive Summary

Purpose

To determine if the Department of Taxation and Finance (Department) has adequate controls to ensure that all wireless telecommunication service providers (Providers) and devices subject to the Public Safety Communications Surcharge (Surcharge) are being identified: if Providers are billing, collecting, and remitting the appropriate amount of Surcharges to which the State is entitled; and if the Department acquires the names and contact information for, and appropriately pursues payment from, customers who have not paid the Surcharge to Providers. The audit covered the period from April 1, 2014 through January 31, 2017.

Background

The Department administers more than 40 State and local taxes and fees, including the Surcharge, which is imposed on wireless communications services provided to customers whose primary place of use is within New York State. Surcharge revenue is used to: support emergency operations, make improvements to 911 call centers, and enhance the capabilities of first responders at both the local level and the Division of State Police. Revenue is also used to fund Department of Homeland Security and Emergency Services grants to counties to meet the demands of new technology and implement required upgrades to call centers, such as the federal mandate for Next Generation 911 systems.

The current Surcharge applies to any two-way voice or data service that is interconnected with the public switched telephone network (i.e., landline) or otherwise provides access to emergency 911 communications, with the exception of prepaid wireless telephone services. The Surcharge is levied at a rate of \$1.20 per device per month. As part of the 2017-2018 State budget, the Legislature added a surcharge of \$0.90 to be imposed on prepaid cell phones at the point of sale. This surcharge becomes effective in December 2017. Examples of devices subject to the Surcharge include cell phones, two-way beepers, and tablets. A separate Enhanced 911 (E-911) Surcharge is imposed at the county level on a broader range of devices and services, but not all counties charge a separate surcharge. These funds are paid directly to the counties, not the State, and are not included in the scope of this audit. The Department responded it is in the process of developing new internal procedures and guidance to inform vendors about their new collection and reporting responsibilities, which will take effect December 1, 2017.

Each Provider that supplies qualifying wireless communications services in New York State is required to act as a State collection agent for the Surcharge. Providers are responsible for adding the Surcharge to customers' monthly bills and sending collected Surcharges to the Department's Tax Processing Center quarterly. Providers use a Public Safety Communication Surcharge (WCS-1) tax return to report the amounts collected and the amount of administrative allowance retained. Both the return and Surcharges must be remitted by March 15, June 15, September 15, and December 15 for the three preceding months. In addition, Providers are required to maintain a list of customers who refuse to pay the Surcharge, along with their contact information and the cumulative amount of Surcharge unpaid, and to provide this information to the Department upon request. Providers can retain an administrative allowance equal to 1.166 percent of the

Surcharges collected to cover their administrative costs, contingent on their timely reporting and remitting of Surcharges.

Seventeen Providers account for the majority of wireless services (about 98 percent) in New York State, with the remaining 2 percent comprised of hundreds of smaller Providers. In fiscal years 2014 and 2015, Providers remitted Surcharges totaling \$183.9 million and \$185.3 million, respectively, to the Department, and retained administration allowances totaling about \$2.2 million annually during our audit period.

Key Findings

- The Department has not established policies and systems to sufficiently ensure that Providers comply with the Tax Law and that the State receives all monies to which it is entitled. In particular, the Department does not have adequate controls to ensure that all eligible Providers supplying services in New York State collect, report, and remit the Surcharges for all eligible devices to the Department.
- The Department's database of Providers is incomplete, as it is based only on WCS-1 returns received. We compiled a list of Providers that remit the County E-911 Surcharge from the 41 counties that impose this charge. We compared this list to the Department's list of Providers from which it received Surcharge revenue during the audit period. Of 241 Providers identified through the counties, four were not on the Department's list. For the remaining 237 Providers, we could not readily discern if the services provided were wireless and therefore also subject to the state Surcharge.
- Providers are required to maintain a list of any customers who refuse to pay the Surcharge, along with their contact information and the cumulative amount of Surcharge unpaid, and to provide this information to the Department upon request. However, the Department has not requested customer information from the Providers and thus has limited knowledge of the fiscal impact related to non-compliance.

Key Recommendations

- Implement effective internal controls over the administration of Surcharges to ensure Providers are collecting and remitting the amounts to which the State is entitled, including (but not limited to):
 - Routinely analyzing WCS-1 returns for anomalies, investigating significant fluctuations, and following through with corrective actions as appropriate;
 - Performing routine audits on the accuracy and completeness of remittances reported on WCS-1 tax returns;
 - Monitoring Providers' WCS-1 returns for timeliness, for penalties and interest owed to the State for late filings, and recovering any improper administrative allowances; and
 - Requesting the names and contact information of customers who have not paid the Surcharge to determine if the fiscal risk is material.
- Establish proactive methods of communication with Providers to ensure they are aware of current Surcharge collection and remittance requirements and that their customer service policies are consistent and compliant with the Tax Law.

Other Related Audits/Reports of Interest

[Division of State Police: Cellular Surcharge Revenues \(2001-S-27\)](#)

[Department of State: Oversight of the Enhanced Wireless 911 Program \(2005-S-68\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

October 4, 2017

Ms. Nonie Manion
Executive Deputy Commissioner
Department of Taxation and Finance
William A. Harriman State Campus
Building 9
Albany, NY 12227

Dear Ms. Manion:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by doing so, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Controls Over the Collection of the Public Safety Communications Surcharge*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

Table of Contents

Background	6
Audit Findings and Recommendations	8
Identification of Providers	8
Verification of Provider-Reported Data	9
Penalties and Interest for Late or Inaccurate Filings	11
Requests for Information About Non-Paying Customers	11
Communication With Providers	11
Recommendations	12
Audit Scope, Objectives, and Methodology	12
Authority	13
Reporting Requirements	13
Contributors to This Report	15
Agency Comments	16
State Comptroller's Comments	19

State Government Accountability Contact Information:

Audit Director: Steve Goss

Phone: (518) 474-3271

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
 Division of State Government Accountability
 110 State Street, 11th Floor
 Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

As the tax processing agency for the State, the Department of Taxation and Finance (Department) is charged both with the efficient collection of tax revenues in support of State services and programs and with the duty to enforce New York's tax laws. The Department administers more than 40 State and local taxes and fees, including the Public Safety Communications Surcharge (Surcharge). The Surcharge is imposed on wireless communications services provided to customers whose primary place of use (i.e., their business or residential address) is within New York State. Surcharge revenue is used to: support emergency operations, make improvements to 911 call centers, and enhance the capabilities of first responders at the local level as well as the Division of State Police. Revenue is also used to fund Department of Homeland Security and Emergency Services (DHSES) grants to counties to help them meet the demands of new technology and implement required upgrades to call centers, such as the federal mandate for Next Generation 911 systems, allowing transmission of digital information (e.g., text, photos, videos) to call centers and improved GPS locator capabilities.

Based on Section 186-f of the Tax Law, the Surcharge applies to any two-way voice or data service that is interconnected with the public switched telephone network (i.e., landline) or otherwise provides access to emergency 911 communications, with the exception of prepaid wireless telephone services. The Surcharge is levied at a rate of \$1.20 per device per month. As part of the 2017-2018 State budget, the Legislature added a surcharge of \$0.90 to be imposed on prepaid cell phones at the point of sale. This surcharge becomes effective in December 2017. Examples of devices subject to the Surcharge include cell phones, two-way beepers, and tablets. The Tax Law also provides for a separate County Enhanced 911 (E-911) Surcharge to fund specific enhancements to that system. The County E-911 Surcharge is applied to a broader range of devices and is reported and paid directly to the counties, not to the State. Accordingly, the County E-911 Surcharge is not included in the scope of this audit.

Each wireless communications service provider (Provider) that supplies service in New York State is required to act as a State collection agent for the Surcharge. Providers are responsible for adding the Surcharge to customers' monthly bills and sending collected Surcharges quarterly to the Department's Tax Processing Center. In addition, Providers are required to maintain a list of customers who refuse to pay the Surcharge, along with their contact information and the cumulative amount of Surcharge unpaid, and to provide this information to the Department upon request. Providers can retain an administrative allowance equal to 1.166 percent of the Surcharges collected to cover their administrative costs, contingent on their timely reporting and remitting of Surcharges.

Providers use a Public Safety Communication Surcharge tax return (WCS-1) to report the amounts collected and the amount of administrative allowance retained. Currently, both the return and Surcharge payment must be submitted by March 15, June 15, September 15, and December 15 for the three preceding months. If Providers remit Surcharges late, the Department is required to assess interest (at the State-established rate) and penalties (up to 25 percent of the total Surcharge amount), and Providers are not permitted to retain the administrative allowance. The

Tax Processing Center records the receipt of Surcharges in its Miscellaneous Tax Processing System, files the hard copy WCS-1 returns, and electronically deposits the funds into the Statewide Public Safety Communications account for further allocation by the Office of the State Comptroller: 58.3 percent in an account for use by, among other entities, the Division of State Police and DHSES; and 41.7 percent in the State's General Fund.

Seventeen Providers account for the majority of wireless services (about 98 percent) in New York State, with the remaining 2 percent comprised of hundreds of smaller Providers. In fiscal years 2014 and 2015, Providers remitted Surcharges totaling \$183.9 million and \$185.3 million, respectively, to the Department, and retained administration allowances totaling about \$2.2 million annually during our audit period.

Audit Findings and Recommendations

As the State's general tax collection agency, the Department is tasked not only with collecting and processing tax revenues but also ensuring compliance with, and enforcing, New York's tax laws. In administering the Surcharge, however, the Department views itself as a tax processor only. Other than receiving, processing, and depositing remittances, the Department does not exercise additional oversight. Unlike landline telecommunications services in New York State, which are overseen by the Public Service Commission (PSC), there is no State regulatory agency directly responsible for overseeing wireless communications services. These services and Providers are instead regulated at the federal level by the Federal Communications Commission (FCC). Absent oversight by a State-appointed authority, the Department has not established policies and systems to sufficiently ensure that Providers comply with the Surcharge provisions of the Tax Law and, in turn, that the State receives all monies to which it is entitled.

For instance, we found the Department's database of Providers is incomplete, as it is based only on WCS-1 returns received, and does not necessarily capture all Providers that could potentially supply qualifying wireless services in the State. Also, the Department does not verify the accuracy of information that Providers self-report on their WCS-1 returns, nor does it monitor Providers' timeliness in submitting them. Further, since taking over Surcharge administration in 2009, the Department has not enforced the Tax Law requirements regarding assessing penalties and interest for late and inaccurate WCS-1 filings or ensured that ineligible Providers do not retain administrative allowances.

We also found there is some confusion among certain Providers as to which Surcharges they are required to collect and remit. This can be attributed, at least in part, to the Department's "limited reach" of communication. The Department uses its website as the sole means of disseminating critical information to Providers, which puts the onus on Providers to proactively seek the information themselves. While this method may suffice for the larger Providers, which have the processes and resources to ensure they fully comply with current policies, laws, and requirements, smaller Providers might require more direct communication to ensure they are adequately informed.

Identification of Providers

While the PSC maintains a registry of all landline telecommunication providers, no such registry exists for wireless service Providers. Without a reliable means to identify all Providers – especially in a burgeoning industry that is populated with hundreds of service providers – the Department does not have the means to monitor all potentially qualifying Providers and determine whether they are remitting Surcharges as required. Although the FCC does maintain a database of Providers by state, we found that its list of 108 Providers supplying service in New York State includes all wireless services (i.e., both prepaid and postpaid), and does not break down Providers by service.

To identify additional Providers that may not collect and remit the Surcharge as required, we compiled a list of Providers directly remitting the separate County E-911 Surcharge, which

we gathered from the 41 counties that impose this charge. We compared this listing to the Department's list of Providers from which it received Surcharge revenue during the audit period. Of 241 Providers identified through the counties, four were not on the Department's list. For the remaining 237 Providers, we could not readily discern whether the services supplied were wireless and therefore also subject to the State Surcharge, because the County E-911 Surcharge is also assessed on other services such as cable and landline telephone, prepaid wireless, and Voice Over Internet Protocol communications.

Clearly, some confusion exists among Providers as to which services are subject to the State Surcharge. A central registry of Providers would allow the Department to better inform all Providers of requirements and to follow up with Providers to ensure compliance. With the Department now administering the county-imposed surcharges, it will be in a better position to determine which Providers are supplying qualifying wireless services in each area.

Verification of Provider-Reported Data

The Department requires Providers to attest to the validity of the monthly activity data that they report on their quarterly WCS-1 returns, but does not routinely perform validity checks (verifications, reasonableness tests, or otherwise) on this self-reported information to help ensure the accuracy of Providers' remittances and retained administrative allowances. We reviewed Providers' WCS-1 returns for the period April 1, 2014 through October 15, 2016, and identified several Providers that reported significant fluctuations in both the number of devices reported, and amounts collected and remitted, across consecutive months and/or quarters – red flags that could signal potential misreporting. For instance, we found:

- Three large providers had significant payment fluctuations between quarters exceeding 10 percent; and
- For Provider 1 and Provider 2 in our table below, the quarterly returns contained monthly activity data that were particularly volatile during our audit period, especially in 2015, as illustrated in the following table.

Number of Devices Reported by Two Providers in 2015

Month	Provider 1		Provider 2	
	Devices Reported	Percentage Change	Devices Reported	Percentage Change
January	3,428,762	–	1,413,842	–
February	2,852,998	(16.79%)	1,236,693	(12.53%)
March	3,777,182	32.39%	1,594,014	28.89%
April	3,146,937	(16.69%)	1,600,565	0.41%
May	3,319,916	5.50%	1,471,683	(8.05%)
June	3,254,257	(1.98%)	1,218,467	(17.21%)
July	3,418,755	5.05%	1,725,280	41.59%
August	3,103,890	(9.21%)	1,470,099	(14.79%)
September	3,257,710	4.96%	1,348,838	(8.25%)
October	3,362,005	3.20%	1,467,572	8.80%
November	2,905,752	(13.57%)	1,254,803	(14.50%)
December	3,539,964	21.83%	1,447,373	15.35%

We note that the state of Maryland implemented a validity check as a best practice to help ensure the accuracy of Providers' remittance amounts and administrative allowances. Maryland includes a "Percentage Difference" section on its Surcharge remittance form that requires Providers to explain any fluctuations exceeding 10 percent between any two months. Additional controls such as this would provide greater assurance that the Surcharge amounts Providers remit, and the administrative allowances they retain, are reasonable and correct. For instance, the Department should:

- Routinely analyze the amounts being reported to spot anomalies and then investigate or request documentation from Providers to justify them; and
- Audit Providers' accounting records to determine if the amounts reported accurately reflect the amounts collected for the respective number of telecommunications devices.

At least one county in New York already conducts some audits to verify other payments that it directly receives for the similar, but separate, E-911 Surcharge that is imposed on a broader range of devices. In a December 2015 audit, the Nassau County Comptroller reported that at least one large Provider had retained 1 to 2 percent more of the E-911 payments than the rate established in the Tax Law. Since 2001, this practice resulted in the Provider keeping a total of \$466,919 in excess administrative allowances for just this one county.

We discussed our observations with Department officials, and they responded that they plan to audit Providers' Surcharge payments at the same time they audit the Providers' sales tax records. This will be an opportunity for the Department to also verify the accuracy of the administrative allowances that Providers retain.

Penalties and Interest for Late or Inaccurate Filings

Despite having administrative responsibility for the Surcharges since 2009, the Department has not established procedures to monitor Providers' WCS-1 returns for timely submission and thus has not billed any interest and penalties for late and inaccurate filings, as the Tax Law requires. Nor has it recovered any administration allowances improperly retained by late filing Providers. Because the four large Providers have well-developed internal processes that ensure timely filings, we determined this gap in oversight essentially applies only to the smaller Providers, which account for only about 2 percent of services. In response to our preliminary findings, Department officials stated they planned to start billing for penalties and interest, but it was not a high priority due to the low dollar amounts involved. The Department has since developed, and began implementing, procedures to bill Providers for late and inaccurate returns.

Requests for Information About Non-Paying Customers

According to the Tax Law, Providers have no legal obligation to enforce collection of the Surcharge from their customers. However, they are required to maintain a list of any customers who refuse to pay the Surcharge, along with their contact information and the cumulative amount of Surcharge unpaid, and to provide this information to the Department upon request. In the 15 years since taking over responsibility for the Surcharge, the Department has not requested this information from any of the Providers and thus has limited knowledge of the financial impact.

In addition, we found that some Providers have provisions in their Service Plan Agreements that, in effect, obviates them from their responsibility to collect and pay surcharges to the State and places the responsibility for remitting Surcharges directly on the customer. For example, according to its Terms and Conditions of Service, Provider 4 invoices customers for surcharges that represent "costs of complying with government programs such as ... Enhanced 911 service," but does not invoice taxes or government-imposed assessments, stating that "payment to the taxing or levying authority of any applicable taxes, surcharges and charges due from [the customer] are [the customer's] responsibility." Provider 4 was among the five Providers discussed earlier (see Identification of Providers section) that collected and remitted the County E-911 Surcharge, but not the State Surcharge. The Department should contact Provider 4 to ascertain whether it provides Surcharge-applicable services and should collect and remit Surcharge funds to the State, and assess whether there are any outstanding Surcharges and penalties and interest that should be collected from Provider 4 or its customers.

Communication With Providers

Given the evolving nature of the technology behind wireless telecommunications, the laws, regulations, and policies governing the industry are subject to ongoing revision. Effective communication of any such changes to Providers is essential to preempt potential confusion and misreporting, and to ensure that Providers' service policies are consistent and compliant with the Tax Law. The Department disseminates critical information to Providers through its website, posting memos and updates regularly to ensure the most current information is available. While

website postings are valuable, this primarily passive means of communication provides limited assurance that all stakeholders are adequately informed because the Department cannot rely on all Providers to proactively seek out information themselves. To ensure Providers are aware of all current Surcharge laws, regulations, and policies, the Department should also notify Providers directly.

According to Department officials, since they currently do not have a list of Providers that are required to remit the Surcharges or current contact information, communicating changes through its website is the best means to reach Providers. To ensure the best possible outcome, however, the Department should take the necessary steps to identify all Providers, including gathering contact information, and regularly send updates regarding requirements for collecting and remitting the Surcharges.

Recommendations

1. Implement more effective internal controls over the administration of Surcharges to ensure Providers are collecting and remitting the amounts to which the State is entitled, including, but not limited to:
 - Routinely analyzing WCS-1 returns for anomalies, investigating significant fluctuations, and following through with corrective actions as appropriate;
 - Performing routine audits on the accuracy and completeness of remittances reported on WCS-1 tax returns;
 - Monitoring Providers' WCS-1 returns for timeliness, billing for penalties and interest owed to the State for late filings, and recovering any improper administrative allowances; and
 - Requesting the names and contact information of customers who have not paid the Surcharge to determine if the fiscal impact is material.
2. Establish proactive methods of communication with Providers to ensure they are aware of current Surcharge collection and remittance requirements and that their customer service policies are consistent and compliant with the Tax Law.

Audit Scope, Objectives, and Methodology

Our audit objectives were to determine if the Department has adequate controls to ensure that all Providers and devices subject to the Surcharge are being identified; if Providers are billing, collecting, and remitting the appropriate amount of Surcharges to which the State is entitled; and if the Department acquires the names and contact information for, and appropriately pursues payment from, customers who have not paid the Surcharge to Providers. The audit covered the period from April 1, 2014 to January 31, 2017.

To accomplish our objectives and evaluate the relevant internal controls in place, we interviewed Department officials; observed the processing of quarterly WCS-1 tax returns at the Department's Tax Processing Center; and reviewed policies and procedures for remitting the Surcharges,

processing the returns, and billing for late and inaccurate remittances. We also reviewed the State laws and the Department's regulations relevant to the Surcharge.

To identify all wireless telecommunications Providers, we contacted other government agencies, including the Public Service Commission and the Federal Communication Commission, for possible lists. We also contacted 56 counties, and obtained 41 county lists of Providers remitting County E-911 Surcharges, which we then compared with the Department's list of Providers remitting State Surcharges. We analyzed data obtained from all quarterly returns sent to the Department during our audit period to determine fluctuations in information reported, and to identify late and inaccurate filings, and also reviewed related billings to Providers for accuracy and completeness. We researched various sources, including the Internet, to determine the types of services that Providers supplied in New York, and sent letters to ten of the largest Providers requesting more information. We also researched whether and how other states levy similar Surcharges on prepaid cellular services.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to Department officials for their review and formal comment. Their comments were considered in preparing this final report and are attached at the end in their entirety. In their response, officials acknowledge the report's findings and state they have taken steps to implement the report's recommendations. However, they did express concerns over the inclusion of some vendor information. We have modified the report to address the Department's concerns.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Taxation and Finance shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

Contributors to This Report

John F. Buyce, CPA, CIA, CFE, CGFM, Audit Director
Steve Goss, CIA, CGFM, Audit Director
Walter J. Irving, Audit Manager
Todd Seeberger, CIA, CFS, Audit Supervisor
Kathleen Hotaling, Examiner-in-Charge
Jeffrey Dormond, Senior Examiner
Philip Boyd, Staff Examiner
Mary Roylance, CIA, Audit Planning Coordinator
Robert Wolf, Assistant Audit Planning Coordinator
Mary McCoy, Senior Editor

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller
518-473-3596, tkim@osc.state.ny.us

Ken Shulman, Assistant Comptroller
518-473-0334, kshulman@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



**OFFICE OF PROCESSING AND
TAXPAYER SERVICES**

EDWARD CHASZCZEWSKI
Deputy Commissioner

July 31, 2017

Mr. John Buyce
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236-0001

RE: Controls Over the Collection of the Public Safety Communications Surcharge

Dear Mr. Buyce:

The Office of the State Comptroller (OSC) examined the Department of Taxation and Finance (DTF) Controls Over the Collection of the Public Safety Communications Surcharge (Surcharge) for the audit period covering April 1, 2014 through January 31, 2017. This letter responds to Draft Report 2016-S-84 and its Key Findings and Key Recommendations.

Initially, we are concerned that the draft report identifies four specific taxpayers by name, states that these "four providers" account for the majority of fee revenue and references these "four largest providers." In the final report, the names of these taxpayers be deleted so the information is not tied, and cannot be inferred to be tied, to any specific taxpayer. We also have concerns that the chart on page 10, which identifies specific taxpayers and also discloses periodic device volumes that may be considered proprietary. Any specific taxpayer should be referred to as "Provider #1," "Provider #2," etc., in the chart and elsewhere in the report.

In response to the specific recommendations in the draft report, the Department has the following comments:

Recommendation 1:

Implement more effective internal controls over the administration of Surcharges to ensure Providers are collecting and remitting the amounts to which the State is entitled, including but not limited to:

- Routinely analyzing WCS-1 returns for anomalies, investigating significant fluctuations, and following through with corrective actions as appropriate;
- Performing routine audits on the accuracy and completeness of remittances reported on WCS-1 tax returns;

<p>*</p> <p>Comment</p> <p>1</p>

- Monitoring Providers' WCS-1 returns for timeliness, billing for penalties and interest owed to the State for late filings recovering any improper administrative allowances; and
- Requesting the name and contact information of customers who have not paid the Surcharge to determine if the fiscal impact is material.

Department Response:

Currently, the Audit Division has the largest providers (17 individual entities), which account for 98% of the wireless services in NYS, under audit for Tax Law section 186-f Surcharges. The majority of the periods being covered start with the period ending February 2014. WCS-1 filings will be analyzed in the regular course of these audits; supporting documentation for WCS-1s has been requested and some has already been received. We also plan on verifying the accuracy of the administrative allowance and obtaining the list of those opting-out from the surcharge from companies under audit.

Deviation reporting, requests for explanations for such deviations, and analysis of the deviations and explanations, are not standard tax processing activities in a voluntary compliance tax regime. Rather, anomalies can be identified during an audit review and selection cycle to lessen the burden that would otherwise be placed on the entire filing population each filing period. Filing variations are not uncommon: differences in the number of days in a month, invoice due dates and customer payment dates within the reporting periods may explain a percentage of the variance identified by OSC. Also, there is no mention of other factors, such as holiday sales gains and manufacturer new product releases, that may also influence variances in surcharges collected. More importantly, tax return filings typically do not summarize period to period variances or explanation for deviations. Again, this is done more typically through traditional audit selection practices.

The authority to impose Surcharge penalties was made available to the Department starting in 2009 when legislation was passed applying the Article 27 corporation tax administrative provisions to the administration of the Surcharge. Once such authority was granted, the Department began to identify the necessary system changes that would be required to enable the billing of late or unpaid amounts, as well as denial and recovery of erroneous administrative fees claimed. The Department acknowledges that analysis and development of these billing system changes were delayed by other priorities. It should be noted, though, that the Department collected and deposited approximately \$500 million dollars of Surcharge during the scope of the audit period; while assessments aggregating to less than \$40,000 were not issued promptly upon the filing of the returns, these assessments amount to eight hundred thousandths of one percent of the collections within the scope period.

As noted by OSC, the Department has completed the necessary modifications to our automated billing system and addressed all prior billable conditions. The Department has procedures in place to process any billable items at the close of all future quarterly filing periods.

Recommendation 2:

Establish proactive methods of communication with Providers to ensure they are aware of current Surcharge collection and remittance requirements and that their customer service policies are consistent, and compliant, with the Tax Law.

* Comment 2

Department Response:

The Department communicates with taxpayers, tax preparers and industry groups routinely through technical bulletins, memorandums, and tax notices, all of which are posted to our website and dispatched via an email delivery service to multiple industry types and tax type lists we maintain for dissemination of information. The Department's website provides taxpayers, tax preparers and industry groups with comprehensive, timely and uniform guidance to all in need of instructions or forms to fulfill their filing obligations.

*
Comment
3

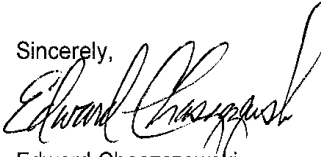
The enabling legislation for the Surcharge does not authorize the Department to establish a registration requirement. Absent a registration requirement, identification of the cellular providers for direct communication is not practical since, as noted in OSC's findings, there is no state or federal regulatory agency with direct oversight over wireless carriers.

The 2017-18 Enacted Budget significantly restructured and expanded the Surcharge by, among other things, adding a surcharge on pre-paid wireless services that will significantly expand the number of vendors who will now be responsible for remitting the Surcharge. The budget provisions also charge the Department with administering county-imposed surcharges, relieving them of the costly burden of administering the surcharges. The restructured Surcharge will be administered in accordance with Article 28 sales tax procedures, rather than Article 27 corporation tax procedures. The Department is developing new internal procedures and new guidance to inform and educate vendors about the changes to the Surcharge and their new collection and reporting responsibilities, which take effect December 1, 2017.

*
Comment
1

The Department would like to thank the OSC auditors for their professionalism during the conduct of this audit.

Sincerely,



Edward Chaszczewski

State Comptroller's Comments

1. The report has been revised to reflect the additional information.
2. We acknowledge that the Department collected \$500 million of the Surcharge during our scope period, while assessments aggregated to less than \$40,000. However, our review included the 2.8 years of our audit scope period. The Department had administration over the collection of assessments for over seven years and did not collect any assessments prior to our audit.
3. During the audit, Department officials responded that the Department does not send information to new providers. Rather, it is incumbent upon the providers to be aware of their responsibilities to file the Public Safety Communications Surcharge returns and remit the Surcharges. Department officials also stated that there is no direct outreach to the wireless providers, but there is a general phone number providers can call if they have questions. However, we identified only one technical memoranda bulletin issued in August 2009 relevant to the PSCS on the website. Therefore, OSC stands by its description that the Department has "Limited" outreach to wireless providers.