



Warren County

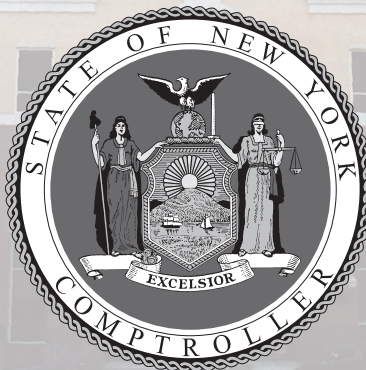
Occupancy Tax and Weights and Measures

Report of Examination

Period Covered:

January 1, 2014 – March 31, 2016

2016M-346



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

March 2017

Dear County Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board of Supervisors governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of Warren County, entitled Occupancy Tax and Weights and Measures. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Warren County (County), located in the southeastern Adirondack region, encompasses 940 square miles and has a population of more than 63,000. The elected 20-member Board of Supervisors (Board) governs the County. As the legislative and executive branches, they are responsible for overseeing the financial operations of the County, including the development and adoption of fiscal policies and procedures. In 2015, the County's expenditures for all funds totaled approximately \$144 million.

New York State Tax Law authorizes the County to collect a 4 percent occupancy tax on all receipts associated with providing lodging to tourists who stay in the County. The law permits exemptions for governmental business and charitable purposes, including religious exemptions. The County Treasurer (Treasurer) is responsible for overseeing the County's finances, including the administration of occupancy tax. The Treasurer's office uses two of its employees to help with the administration of occupancy tax in addition to their other job duties. The Treasurer's office received \$90,000 each year in 2014 and 2015 for administration of the occupancy tax. The County collected approximately \$3.8 million of occupancy tax in 2014 and \$4.1 million in 2015.

The Department of Weights and Measures (Department) is responsible for protecting consumers by inspecting certain weighing and measuring devices, performing packaged commodity inspections and verifying pricing and scanning accuracy, as provided by New York State Codes, Rules and Regulations (Regulations) and New York State Agriculture and Markets Law (Law).¹ Department duties include maintaining up-to-date inventories of retail businesses for both inspection and price testing purposes and documenting inspection and test results. The County has one employee, the Director of Weights and Measures (Director), to oversee and run the Department. The Director has the authority to impose fines on businesses in violation of the Law. In 2015, the Department's expenditures were approximately \$88,000, including salaries and employee benefits of approximately \$78,000. The Department collected approximately \$8,500 in fines and other revenues during 2014 and \$5,300 during 2015.

Scope and Objectives

The objectives of our audit were to assess oversight of the occupancy tax and the procedures in place to ensure compliance with weights and measures laws for the period January 1, 2014 through March 31, 2016. We extended our scope back to January 1, 2013 to review taxable sales. Our audit addressed the following related questions:

¹ Regulations require that certain devices used to weigh and measure commodities that are sold on the basis of their weight, volume or size be inspected and tested for accuracy at least once a year. The Law provides that certain packaged commodities may be subject to inspection to help ensure that the packages contain the amount of the commodity indicated on the label.

- Were County procedures over the collection and disbursement of occupancy tax sufficient?
- Did the County inspect and test weighing and measuring devices used to price goods in accordance with regulations, accurately account for fees/fines and investigate consumer complaints in a timely manner?

Audit Results

While the procedures in place for the processing of occupancy taxes paid to the County were sufficient, the Treasurer could improve oversight by implementing procedures to ensure that establishments are paying the correct amounts. Procedures should include an analysis to compare the total taxable sales for lodging accommodations² as reported by the New York State Department of Taxation and Finance to what was reported to the County. We found variances that indicate the County possibly could have collected an additional \$1.9 million in occupancy tax revenue. In addition, procedures should include steps to identify lodging facilities that are not registered with the County. We identified 16 lodging facilities not registered with the County that should have been remitting occupancy tax. For 12 of these businesses, we estimated the County could have collected approximately \$101,000 for the period June through August 2015.

We also found that the Director did not conduct inspections of all potentially eligible businesses in the County. In 2015, the Director reported in the annual report to New York State that the Department tested 1,232 devices. However, the documentation maintained by the Director showed only 756 devices had been tested. Also on the 2015 report, the Director reported collecting \$2,115 in fees for these inspections. Based on our review of the inspection forms, he should have reported \$3,180 in fees. Because of the lack of documentation available, in June 2016 we visited 20 judgmentally selected businesses with gas pumps and located in the southern part of the County to determine if the Director had performed a valid inspection of each device. We found two of the locations were inspected in 2016, six were inspected in 2015 and 12 were inspected prior to 2015. Four of these 12 locations had inspection stickers dated prior to 2014. When the Director does not inspect weighing and measuring devices annually to ensure they are working properly, the consumer is at risk of paying more than necessary for purchases.

Comments of County Officials

The results of our audit and recommendations have been discussed with County officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, County officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on issues raised in the County's response letter.

² The taxable sales for lodging accommodations is available to the public on the State's website at data.ny.gov.

Introduction

Background

Warren County (County), located in the southeastern Adirondack region, encompasses 940 square miles and has a population of more than 63,000. The elected 20-member Board of Supervisors (Board) governs the County. As the legislative and executive branches, they are responsible for overseeing the financial operations of the County, including the development and adoption of fiscal policies and procedures. In 2015, the County's expenditures for all funds totaled approximately \$144 million.

New York State Tax Law authorizes the County to collect a 4 percent occupancy tax on all receipts associated with providing lodging to tourists who stay in the County. The law permits exemptions for governmental business and charitable purposes, including religious exemptions. The County Treasurer (Treasurer) is responsible for overseeing the County's finances, including the administration of occupancy tax. The Treasurer's office uses two of its employees to help with the administration of occupancy tax in addition to their other job responsibilities. The Treasurer's office received \$90,000 each year in 2014 and 2015 for administration of the occupancy tax. The County collected approximately \$3.8 and \$4.1 million of occupancy tax in 2014 and 2015, respectively.

The Department of Weights and Measures (Department) is responsible for protecting consumers by inspecting certain weighing and measuring devices, performing packaged commodity inspections and verifying pricing and scanning accuracy, as provided by New York State Codes, Rules and Regulations (Regulations) and New York State Agriculture and Markets Law (Law).³ Department duties include maintaining up-to-date inventories of retail businesses for both inspection and price testing purposes and documenting inspection and test results. The Support Service Committee is responsible for overseeing the Department. The New York State Department of Agriculture and Markets, through its subdivision, the State Bureau of Weights and Measures (State Bureau), is available to assist the Department to achieve its goals and also provides oversight of the Department's operations. The Department shares the responsibility for performing these inspections with the State Bureau. The State Bureau inspects selected specialized weighing/measuring devices,

³ Regulations require that certain devices used to weigh and measure commodities that are sold on the basis of their weight, volume or size be inspected and tested for accuracy at least once a year. The Law provides that certain packaged commodities may be subject to inspection to help ensure that the packages contain the amount of the commodity indicated on the label.

such as large scales and pumps for gasoline and diesel fuels sold by distribution terminals. In addition to performing the specialized inspections, the State Bureau provides training to the Department.

The County has one employee, the Director of Weights and Measures (Director), to oversee and run the Department. The Director has the authority to impose fines on businesses in violation of the Law. In 2015 the Department's expenditures were approximately \$88,000, including expenditures for salaries and employee benefits of approximately \$78,000. The Department collected approximately \$8,500 in fees and other revenue in 2014 and \$5,300 in 2015.

Objectives

The objectives of our audit were to assess oversight of the occupancy tax and compliance with weights and measures laws. Our audit addressed the following related questions:

- Were County procedures over the collection and disbursement of occupancy tax sufficient?
- Did the County inspect and test weighing and measuring devices used to price goods in accordance with regulations, accurately account for fees/fines and investigate consumer complaints in a timely manner?

Scope and Methodology

We examined the County's oversight of the occupancy tax and weights and measures for the period January 1, 2014 through March 31, 2016. We extended our scope back to January 1, 2013 to review taxable sales.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

Comments of County Officials and Corrective Action

The results of our audit and recommendations have been discussed with County officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, County officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on issues raised in the County's response letter.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the County Administrator's office.

Occupancy Tax

New York State Tax Law authorizes the County to collect a 4 percent occupancy tax on receipts associated with providing lodging⁴ to tourists who stay in the County. The County disburses all of the tax collected, less the amount provided for administering⁵ the tax, to its city, towns and village for the promotion of tourist activities. The Treasurer is responsible for ensuring that lodging establishments turn over the appropriate amounts of occupancy tax to the County and that the occupancy tax is disbursed as authorized by the Board.

While the procedures in place for the collection and disbursement of occupancy taxes paid to the County were sufficient, the Treasurer could improve oversight by implementing procedures to ensure that establishments are paying the correct amounts. Procedures should include an analysis to compare the total taxable sales for lodging accommodations⁶ as reported by the State Tax Department to what was reported to the County. We found variances that indicate the County possibly could have collected an additional \$1.9 million in occupancy tax revenue (Figure 2). In addition, procedures should include steps to identify lodging facilities that are not registered with the County. We identified 16 lodging facilities not registered with the County that should have been remitting occupancy tax. For 12 of these businesses, we estimated the County could have collected approximately \$101,000 for the period June through August 2015.

Collection and Enforcement

The Treasurer is responsible for ensuring all occupancy taxes due to the County are received. To do this, he should have procedures to make sure that each establishment is charging, collecting and submitting occupancy tax to the County properly. The Treasurer should ensure occupancy tax forms are completed accurately so the information filed can be used for oversight purposes. He should also establish procedures to determine if exemptions claimed by the establishments are accurate. Lastly, the Treasurer should have procedures to determine if the required establishments are registered and submitting occupancy tax.

The Treasurer's Office collected approximately \$3.8 million in occupancy tax in 2014 and \$4.1 million in 2015. While the procedures

⁴ For room or rooms in a hotel or motel, except that such tax shall not be imposed upon (a) a permanent resident of a hotel or motel or (b) housekeeping cottages having less than four rentable units

⁵ The Treasurer's Office can retain up to 3 percent of the revenue collected for the administration of this tax.

⁶ The taxable sales for lodging accommodations is available to the public on the State's website at data.ny.gov.

over the collection of the taxes paid to the County were sufficient, the Treasurer's office did not implement procedures to ensure registered establishments were collecting and remitting all of the required occupancy tax and that exemptions being claimed were proper. In addition, the Treasurer did not institute adequate procedures to identify establishments that should be registered and collecting and remitting occupancy tax to the County.

Accuracy of Returns — A local law established by the County authorizes the Treasurer to obtain supporting documentation from lodging operators, and to request information from the New York State Department of Taxation and Finance and the United States Department of The Treasury. The Treasurer's office did not obtain any of this information to verify the accuracy of the returns filed with the County. This local law also requires all operators to maintain complete records for the taxable and exempt sales that are submitted on their returns. The Treasurer did not require lodging operators to submit documentation with their returns to support the taxable and exempt sales as reported.

The Treasurer's office compared the current year's occupancy tax revenues to the prior year's occupancy revenues to see if the County's occupancy tax revenue was increasing or decreasing. However, there is no analysis done on individual filers to identify trends for lodging facilities, and no comparison of individual filers' taxable sales as reported on their New York State Sales Tax returns. In addition, the Treasurer's office did not compare the total taxable sales for lodging accommodations as reported by the Tax Department to what was reported to the County.

We obtained the amount of taxable sales reported to the State as "traveler accommodations" for the County for 2013 through 2015. This data could include purchases of meals and services that some of the lodging facilities provide to their guests which would not be included in sales subject to occupancy tax. For example, if the facility has a restaurant, a room guest could have charged the cost of a meal to their room, which would have been included in the taxable sales reported to the State, but not the County. However, the overall sales tax information is a valuable resource to determine if the taxable sales information reported to the County is reasonable. We compared this to the total taxable sales as reported to the County on the occupancy tax returns and found variances that indicate the County possibly could have collected an additional \$1.9 million in occupancy tax revenue.

Figure 1: Taxable Sales Reported to New York State

Year	Traveler Accommodations Sales Reported to NYS	Sales Reported to the County	Variance
2015	\$119,856,499	\$103,709,424	\$16,147,075
2014	\$111,393,016	\$94,540,563	\$16,852,453
2013	\$107,404,447	\$92,684,550	\$14,719,897
Total	\$338,653,962	\$290,934,537	\$47,719,425

Figure 2: Occupancy Tax Based on Sales Reported to New York State

Year	Occupancy Tax Based on Sales Reported to NYS ^a	County Occupancy Tax Received	Variance
2015	\$4,794,260	\$4,148,377	\$645,883
2014	\$4,455,721	\$3,781,623	\$674,098
2013	\$4,296,178	\$3,707,382	\$588,796
Total	\$13,546,158	\$11,637,381	\$1,908,777

^a For each of the three years presented, we estimated the occupancy tax that the County could have collected using the "Traveler Accommodations Sales Reported to NYS" multiplied by the County's Occupancy Tax rate of 4 percent.

Because we cannot confirm the accuracy of the sales tax reported or determine the amount of sales included that is not subject to occupancy tax, we performed an additional analysis⁷ to see if the County collected a reasonable amount of occupancy tax during the peak of the tourist season. We selected the 20 highest quarterly occupancy tax payments received by the County for the period of June through August 2015.⁸ Using a 80 percent occupancy rate⁹ for each of these lodging establishments, we calculated taxable sales of approximately \$25.5 million during the three peak lodging months. The taxable sales on the occupancy tax returns reported to the County for these establishments were only \$19.6 million, which is a 61 percent occupancy rate. Therefore, we estimate the County possibly could have collected an additional \$237,000 in occupancy tax from those 20 establishments.¹⁰ Based on this quarterly analysis, we consider the estimate of approximately \$645,900 in lost revenue for the entire year of 2015 to be reasonable.

Because the Treasurer did not require lodging facilities to submit supporting documentation for exempt sales with their occupancy tax returns, County officials cannot determine if the occupancy tax returns filed with them were accurate. Therefore, we compared the

⁷ See methodology section for explanation of analysis.

⁸ Lodging establishments are required to file their occupancy tax returns on a quarterly or monthly basis. The filing and the reporting periods of the occupancy returns follow the same requirements as State sales tax.

⁹ The County has a large tourist population in the summer months and the Treasurer agreed the 80 percent occupancy rate is reasonable for the larger lodging facilities.

¹⁰ At the end of our fieldwork, there were 234 active lodging facilities registered with the County.

exempt sales¹¹ reported by these same lodging establishments on their June through August 2014 and 2015 occupancy tax returns. For these 20 establishments, in 2015, total exempt sales increased by approximately \$621,000, or 51 percent, from 2014. More specifically, two of these establishments had a combined increase in exempt sales of approximately \$528,000, or 43 percent, in 2015. This increase could have been the result of one of the lodging facilities now selling time shares instead of offering weekly rentals. County officials would not be able to determine the validity of this information since the Treasurer did not require these facilities to submit supporting documentation with their returns.

Because of this significant change in exempt sales, we selected an additional sample of the 10 highest monthly filers for the month of February 2015 and did the same comparison to February 2014. We found that exempt sales decreased by approximately \$26,000 or 19 percent. The lack of supporting documentation increased the risk that lodging establishments could be misreporting the amount of exempt sales on their occupancy tax returns filed with the County.

Lodging Facilities — The local law established by the County authorizes the Treasurer to obtain supporting documentation from lodging operators. The Treasurer’s office did not obtain any of this information to determine if the lodging facilities were exempt from filing a return with the County. We reviewed a variety of sources listing establishments which host overnight accommodations and vacation rentals and concluded that the County’s list of registrants was not complete. We found 16 lodging facilities were not registered with the County that should have been collecting and remitting occupancy tax to the County. For 12 of these businesses, we determined the number of rooms in the establishments and nights available for occupancy during the quarter of June through August 2015. We also calculated a reasonable room cost¹² for each of these businesses. Using a 80 percent occupancy rate, we estimate¹³ that the County could have collected approximately \$101,000 in occupancy tax from the 12 businesses for this period.

The Treasurer told us his office does not have enough staff to oversee occupancy tax collections. However, his office received \$90,000 in both 2014 and 2015 for the administration of occupancy tax and a portion of that money could be used to address staffing issues. Without proper oversight, establishments may not be collecting and turning over the proper amount of tax to the County, which would

¹¹ Exempt sales are not subject to the 4 percent occupancy tax.

¹² We added the highest and lowest cost for lodging available as of July 18, 2016 and divided by two.

¹³ See methodology section for a detailed explanation of analysis.

result in the County distributing less money to its city, towns and village to promote tourism.

Disbursements

The Board should have signed agreements with the County's city, towns and village to govern the disbursement of occupancy tax moneys to them. In addition, the Board should adopt a policy that provides guidelines for the funding of events held by various vendors. The Treasurer is responsible for disbursing all occupancy taxes received by the County. The County Auditor and tourism department are responsible to ensure occupancy tax disbursements to the County's municipalities and vendors are properly authorized by the Board.

The Board has signed agreements with the County's municipalities that specify the amount of occupancy tax to be disbursed to them. The Board also adopted a policy that provided specific guidelines for the funding of events held in the County. In addition, the County has a tourism department which promotes these events and the local vendors.

The County received approximately \$4.1 million occupancy tax in 2015. The Treasurer properly disbursed approximately \$1.2 million to the County's municipalities in 2015 and paid approximately \$250,000 in 2015 to the various vendors for events as approved by the Board. In addition, the Treasurer's office received \$90,000 of occupancy tax money in 2015 for the administration of the tax. The remaining \$2.6 million was used to promote tourism in the County.

Recommendation

1. The Treasurer should strengthen oversight of the enforcement and reporting of occupancy tax and related exemptions. Such oversight could include:
 - Establishing written procedures to ensure registered establishments are levying and remitting all occupancy tax and that exemptions claimed are proper;
 - Requiring establishments to submit supporting documentation for exemptions claimed in the occupancy tax forms;
 - Conducting trend analyses using occupancy tax forms or other sources such as sales tax amounts;
 - Updating the County's list of lodging registrants;
 - Periodically reviewing new and established businesses that are not filing an occupancy tax return with the County; and
 - Collecting unpaid occupancy tax from established businesses that have not registered with the County.

Weights and Measures

Various laws and regulations help ensure that consumers can rely on the accuracy of certain vendor scales and other weighing and measuring devices and can expect to pay advertised prices for their purchases. County officials are responsible for ensuring that the Department is adequately protecting consumers by inspecting certain weighing and measuring devices, performing packaged commodity inspections and verifying pricing and scanning accuracy, as provided by Law. The Department's duties include maintaining up-to-date inventories of retail businesses for both inspection and price testing purposes and documenting inspection and test results. It is also important that the Department maintains complete records of the complaints it receives and the actions it takes to address them, so consumers can be confident that their concerns are investigated and resolved.

The Director did not conduct inspections of all potentially eligible businesses in the County. The Director can enhance consumer protection by maintaining up-to-date inventories of retail businesses for both inspection and price testing purposes and by documenting inspection and test results.

Inspecting Devices and Testing Prices

The Director is responsible for protecting consumers by inspecting weighing and measuring devices and verifying pricing accuracy, as required by Law and Regulations.

Weights and Measures Inspections — Regulations¹⁴ require that all devices used to weigh and measure commodities that are sold on the basis of their weight, volume or size be inspected and tested for accuracy at least once a year and that a sticker be affixed to show the month and year the inspection took place. Such devices include weighing devices, petroleum dispensing devices, volumetric measures (e.g., milk tanks), linear measures and linear measuring devices (e.g., fabric, wire) and timing devices (e.g., timed vacuums at car washes). In addition, packaged commodities are subject to inspection to ensure that the packages contain the amount of the commodity indicated on the label. Gasoline and diesel fuels sold for use in motor vehicles are subject to inspection to ensure that the fuels meet certain quality standards and are properly labeled for sale.

The Board passed a resolution in 2009 to charge a \$5 inspection fee for each device tested. However, the Department does not have written policies and procedures that specify how many item pricing inspections for each retail store should be conducted or the number

¹⁴ Administrative and General Requirements, New York State Weights and Measures Regulations, 1 NYCRR Part 220, Issued June 16, 2015

of retail stores that should be inspected. Without such policies and procedures, County officials may not be able to ensure that retail stores within their oversight authority have accurate item pricing.

We reviewed the 2014 and 2015 annual reports filed by the Director with the State Bureau. The Director reported that he issued fines for violations with packaged commodities and fuel quality standards in these years. We compared the fines listed on the annual report to the cash receipts the Director remitted to the Treasurer's office. In 2014, the Director issued a fine totaling \$1,800 to one business. The Treasurer's office received all the fines for that year.

In 2015 the County reported six occurrences from five businesses that failed inspection for packaged commodities and fuel quality standards. The County issued two fines that totaled \$1,650 to one of the businesses for packaged commodities. The Treasurer's office received \$1,350 in fines in 2015, a variance of \$300 from the amount of fines levied. The Director did not keep any supporting documentation for any of the inspections for packaged commodities and fuel quality standards that were reported in 2014 and 2015.

The Director also reported the devices he tested at various businesses. We compared the devices listed on the annual report to the inspection reports maintained by him to determine if the number of inspections reported were accurate and if the applicable fees reported to the State were accurate and collected by the County. We found discrepancies from the annual reports filed with the State Bureau in 2014 and 2015 and the documentation maintained by the Director. For example, in 2014 he reported testing 1,005 devices; however, there was only documentation to support that 721 devices had been tested. In 2015 he reported 1,232 devices had been tested but his documentation showed that only 756 devices had been tested.

Also on the 2014 report, the Director reported collecting \$2,865 in fees for inspections, yet, based on our review of the inspection forms, he should have collected and reported \$3,325 in fees. On the 2015 report, he reported collecting \$2,115 in fees for inspections. However, based on our review of the inspection forms, he should have collected and reported \$3,180 in fees.

We asked the Director why there was a variance between the inspection forms on file and what was reported to the State Bureau. The Director stated he did not use an inspection form for businesses when a fee was not charged.¹⁵ However, we reviewed inspection forms where a fee was not charged. He also told us he used "sticky notes" to keep track

¹⁵ The County does not charge a fee for the inspection of devices at doctors' offices, schools and new businesses. The County performs these types of inspections without cost.

of the places he inspected during the year and used these to compile the annual report filed with the State Bureau. The Director stated the Support Service Committee that oversees the Department never requested any reports from him or monitored his work. As a result, he was not aware that he needed to keep the supporting documentation for all the devices tested.¹⁶

We visited 20 judgmentally selected businesses with gas pumps located in the southern part of the County¹⁷ in June 2016 to determine if the Director had performed a valid inspection of each device. We found two of the locations were inspected in 2016, six were inspected in 2015 and 12 were inspected prior to 2015. Four of these 12 locations had inspection stickers dated prior to 2014. The Director told us that he does not have time to inspect all devices that are required by statute.

Price Accuracy Testing — The Law requires that vendors make pricing scanning devices (checkout scanners that read product UPC codes) available for inspection by the County. To comply with retail pricing standards in the Regulations, the price of 98 percent of the items in a selected sample of vendor items must be accurate; that is, the scanned price must match the publicly advertised price. The County reported on its annual report to the State Bureau that it completed four price accuracy tests for 2014 and two in 2015. Since the Director did not keep records of the testing that was completed, there is no evidence that the vendor samples met the 98 percent accurate standard.

The Law does not require the Department to do price accuracy testing, only that the price scanning devices be available for inspection. The Law also does not prescribe the frequency of testing. However, good business practices call for the County to test pricing accuracy devices on a more frequent basis and to keep the supporting documentation for such tests being completed. Regular testing is a valuable practice that protects consumers. When these tests are not conducted on a regular basis, consumers are at higher risk of overpaying for purchases.

Inventory of Business — Regulations require the County to follow certain practices and procedures to obtain reasonable assurance that it is adequately protecting consumers by conducting all required device inspections. Regulations require the County to report annually on the number of business establishments in the County, the devices that are subject to inspection and the results of the inspections. The County must also provide evaluations of businesses' progress in remedying any noted deficiencies and report enforcement actions, if necessary. To provide for comprehensive reporting to the State, the County should

¹⁶ It could not be determined if any of this money was collected, due to the lack of recordkeeping.

¹⁷ The locations included Warrensburg, Lake Luzerne, Glens Falls and Queensbury.

have an up-to-date inventory list of all retail stores and all weighing and measuring devices in these stores to help ensure complete testing coverage. The County could use the same inventory of businesses to select locations for tests of pricing accuracy.

We found the County did not have an up-to-date inventory of all businesses and lacked adequate documentation to support most of the Department's annual testing. The Director told us that the County relies on the Department's presence throughout the County and on the complaint system to track the inventory of businesses and devices. County officials cannot ensure that the Department performs all inspections required by Law unless it maintains an up-to-date list of businesses and devices.

Consumer Complaints

The County should have procedures in place to receive and track consumer complaints and should address all complaints in a timely manner. Regulations require the County to maintain a complete record of all complaints received and the results of the complaints investigated.

The County did not have documentation to support the number of complaints it reported as being received and the actions taken to address them. However, subsequent to our audit fieldwork, the Director provided us with documentation for the complaints, the nature of the complaints and how long it took him to address them.

Recommendations

County Officials should:

2. Establish written policies and procedures stating the annual number of item pricing and scanner accuracy inspections the Director should conduct for each retail store. All retail stores should have an item pricing and scanning accuracy inspection at least annually.
3. Establish written policies and procedures stating the number of packaged commodity inspections that the Director should conduct for each retail store. The policy should provide guidance on how often a store should be inspected and when a follow-up inspection is necessary.

The Director should:

4. Implement systems to ensure the inventory of businesses is up-to-date for devices used for weighing, measuring and pricing accuracy.

5. Maintain records documenting all inspections conducted for pricing and scanner accuracy and packaged commodities.
6. Maintain records listing all business in the County that are subject to device inspections.

APPENDIX A

RESPONSE FROM COUNTY OFFICIALS

The County officials' response to this audit can be found on the following pages.

WARREN COUNTY
OFFICE OF THE COUNTY ADMINISTRATOR

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March 2, 2017

Jeffrey P. Leonard, Chief Examiner
Office of the State Comptroller
Division of Local Government and
School Accountability
One Broad Street Plaza
Glens Falls, New York 12801

Re: Warren County Occupancy Tax and Weight and Measures
Report of Examination - 1/1/2014 - 3/31/2016

Dear Mr. Leonard:

Please accept this letter as Warren County's response to your office's Report of Examination of Warren County's Occupancy Tax and Weights and Measures covering the period of January 1, 2014 through March 31, 2016.

On behalf of Warren County, the findings set forth in your Office's report are accepted.

Audit Results – Occupancy Tax

While the procedures in place for the processing of occupancy taxes paid to the County were sufficient, the Treasurer could improve oversight by implementing procedures to ensure that establishments are paying the correct amounts. Procedures should include an analysis to compare the total taxable sales for lodging accommodations as reported by the Tax Department to what was reported to the County. We found variances that indicate the County possibly could have collected an additional \$1.9 million in occupancy tax revenue. In addition, procedures should include steps to identify lodging facilities that are not registered with the County. We identified 16 lodging facilities not registered with the County that should have been remitting occupancy tax. For 12 of these businesses, we estimated the County could have collected approximately \$101,000 for the period June through August 2015.

Response:

We agree that we should improve oversight over the processing of occupancy taxes. We disagree with the analysis based on sales tax reporting that concludes that lodging facilities in the County may have underpaid \$1.9 million in occupancy tax revenue over a three year period starting with 2013. As noted in the report, the sales tax data reported to New York as "traveler accommodations" could include purchases of meals and services that are not subject to occupancy tax. We interviewed 21 lodging facilities and noted that an average of 52% of the amount of sales reported as "traveler accommodations" was not subject to occupancy tax. Since there could be a significant amount reported as "traveler accommodations" that is not subject to occupancy tax, we do not feel that this type of analysis will be a reliable tool.

See
Note 1
Page 21

As noted in the report, an additional analysis was performed by the State Comptroller because they could not confirm the accuracy of the sales tax reported or determine the amount of sales included that is not subject to occupancy tax. This analysis attempted to recalculate the occupancy tax that should have been collected for 20 lodging units using average room rates and occupancy rates for the period of June through August 2015 and produced a variance of \$237,000 in occupancy taxes. We

performed our own analysis on these same 20 lodging facilities using information from an industry trend analysis report and calculated only a \$38,000 variance.

See
Note 2
Page 21

Of the 12 reviewed lodging facilities that were identified as not being registered with the County that should have been remitting occupancy tax, two of them have been filing under a different name and five of them have been determined by us as not being subject to occupancy tax.

See
Note 3
Page 21

Warren County is committed to constantly reviewing and improving upon all aspects of its administration and internal controls and therefore appreciates the recommendations made by your office and respond as follows:

Recommendation No. 1.

- **Establish written procedures to ensure registered establishments are levying and remitting all occupancy tax and that exemptions claimed are proper.** We will be conducting periodic reviews of a sample of lodging facilities starting in the fall of 2017. We will be reviewing accounting records, sales tax returns and exemption forms to determine the accuracy of the filed occupancy tax returns. We are currently working on written procedures.
- **Requiring establishments to submit supporting documentation for exemptions claimed in the occupancy tax forms.** We require lodging facilities to maintain this documentation at their premises and will require them to send us copies when the establishment is selected for a review by our department.
- **Conducting trend analysis using occupancy tax forms or other sources such as sales tax amounts.** We will be using sales tax reports, average room rates and average occupancy rates as part of our review of individual lodging facilities.
- **Update the County's list of lodging registrants.** Annually we will compare the Lake George Area Travel Guide, and the Lake George Regional Chamber of Commerce's list of lodging properties to the current list of registered lodging properties we have. If there are any properties in those directories that are not registered with the county, a site visit will be done by the Treasurer to determine if the property should be collecting Occupancy Tax.
- **Periodic review of new and established businesses that are not filing an occupancy tax return with the County.** We already had an established procedure to track each business that is registered to ensure that they file occupancy tax returns as required. Any delinquent returns are followed up by contacting the business for payment and in some cases, the County Attorney is requested to become involved to file any necessary legal action. We also currently review the Tourism travel guide to review for any businesses that are not currently registered with the County. We will conduct periodic reviews in the future on the internet to search for lodging facilities in Warren County that may not be registered.
- **Collecting unpaid occupancy tax from established businesses that have not registered with the County.** We have recently sent out letters to these establishments requesting that they register and start collecting occupancy tax.

Audit Results – Weights and Measures

We also found that the Director did not conduct inspections of all potentially eligible businesses in the County. In 2015, the Director reported in the annual report to New York State that the Department tested 1,232 devices. However, the documentation maintained by the Director showed only 756 devices had been tested. Also on the 2015 report, the Director reported collecting \$2,115 in fees for these inspections. Based on our review of the inspection forms, he should have reported \$3,180 in fees. Because of the lack of documentation available, in June 2016 we visited 20 judgmentally selected businesses with gas pumps and located in the southern part of the County to determine if the Director had performed a valid inspection of each device. We found two of the locations were inspected in 2016, six were inspected in 2015 and 12 were inspected prior to 2015. Four of these 12 locations had inspection stickers dated prior to 2014. When the Director does not inspect weighing and measuring devices annually to ensure they are working properly, the consumer is at risk of paying more than necessary for purchases.

The Warren County Department of Weights & Measures acknowledges that not all potentially eligible businesses and devices were inspected within the calendar year and affixed with the yearly vinyl seals. However, in an effort to maintain consumer protection, certain categories were indeed inspected at 100% compliance. (For example: all scales and registers in county supermarkets were inspected.) Going forward, beginning in 2017, improved record keeping, new equipment and the implementation of new safety procedures, this situation will be corrected. All categories of devices will be inspected annually. This plan is currently being followed.

The discrepancies between the Annual Report submitted by the department and the official device inspection and test reports can be explained by the inclusion of inspections done on devices outside of (fee bearing) Annual Inspections. These miscellaneous inspections were kept track of by inner office notes and reported on the Annual Report. Such inspections, which include but are not limited to: labelling inspections, complaint investigations, repeat device inspections, inspections during the Petroleum Quality Program, or inspections completed at the behest of NYS Weights and Measures. These additional inspections will no longer be reported on the Annual Report, but kept track of with improved office record keeping.

Certain anomalies in the Annual Report lead to further confusion. The submission date for the Report is on or about January 31st of the following year. However, all fees and revenues may not have been collected by this date. For example, for 2015, the fee

income of \$2,115 as reported on the Annual Report was understated and later finalized as \$3,395.00 for that year. Improved record keeping has been implemented to document receipt of all fee income but there really is no solution to this variable.

There are a few other variables between records kept by Warren County versus the NYS Annual Report and this office will work to resolve these. An example is the inclusion of over 130 'weights' listed as "devices" on the Report but not inspected in this category.

Regarding Pricing Accuracy Regulations, it should be noted that the inspection of pricing devices (as suggested) is nowhere required in the law. Also, enforcement of NYS Pricing Accuracy Regulation is not a required action of any county Weights & Measures office. That said, Warren County Weights & Measures does indeed attempt to enforce parts of the law to most benefit county consumers. To enact the Audit recommendations of inspections and record keeping regarding Pricing Accuracy, would require additional personnel and increased budgetary obligations.

Recommendation No. 2

Establish written policies and procedures stating the annual number of item pricing and scanner accuracy inspections the Director should conduct for each retail store. All retail stores should have item pricing and scanning accuracy inspections at least annually. The County will review the policies and procedures for annual inspections.

Recommendation No. 3

Establish written policies and procedures stating the number of packaged commodity inspections that the Director should conduct for each retail store. The policy should provide guidance on how often a store should be inspected and when a follow-up inspection is necessary. The County will review the policies and procedures for packaged commodity inspections and follow-up inspections

Recommendations No. 4, No. 5 and No. 6

No. 4 - Implement systems to ensure the inventory of businesses is up-to-date for devices used for weighing, measuring and pricing accuracy. No. 5 – Maintain records documenting all inspections conducted for pricing and scanner accuracy and packaged commodities. No. 6 – Maintain records listing all business in the County that are subject to device inspections. The Weights and Measures department already maintains records and an inventory of all businesses subject to device inspections, identifying information, device listing according to category and most recent inspection dates. This inventory of businesses is listed according to the town or city they are located in. These records are updated continuously as inspections occur.

The County will be finalizing its various policies and procedures applicable to Occupancy Tax and Weights and Measures. The County will furnish a formal action plan in the near future.

Finally, on behalf of the County, I want to thank your office for the Report. I also want to acknowledge the work of your Examiners. These individuals were not only knowledgeable and professional, but also very helpful.

Very truly yours,

Kevin B. Geraghty,
Warren County Acting Administrator

KBG:kmm

cc: Ronald Conover, Chairman Warren County Board of Supervisors
Michael Swan, Warren County Treasurer
Robert V. Lynch II, Deputy Treasurer
Herbert Levin, Director Weights and Measures

APPENDIX B

OSC COMMENTS ON THE COUNTY'S RESPONSE

Note 1

Taxable sales reported to the State can provide the County with useful information to begin verifying the amount subject to occupancy tax. The County cannot be certain if the total sales being reported or the amount of sales excluded from occupancy tax as “travel accommodations” is accurate without reviewing the records of the lodging facilities.

Note 2

In response to our draft report, the County provided us with an industry trend analysis report on lodging facilities for the same three years we reviewed. The report calculates total revenue subject to occupancy tax of approximately \$399 million for the years 2013 through 2015, which is \$60 million more than the taxable sales reported to the State. The County reported revenue of approximately \$299 million for these same three years and had not examined what comprised this variance.

Note 3

The County adopted specific criteria for what qualifies a lodging facility to be required to collect and remit occupancy tax. The 12 lodging facilities we found during our audit fieldwork met this criteria and none of these facilities were registered under a different name during our audit period.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

To achieve our audit objectives and obtain valid evidence, we performed the following procedures:

For Occupancy Tax:

- We identified the total amount of taxable sales and purchases for the industry of traveler accommodation for the County reported to the New York State Department of Taxation and Finance for collections made during the years 2013, 2014 and 2015 and applied the County occupancy tax rate of 4 percent to the taxable sales and purchases to calculate the amount of occupancy tax that should have been paid to the County. We then identified the actual occupancy tax received by the County during these years. We compared the actual collections made by the County to our calculation.
- We compared the “Active Business” listing (listing) received from the Treasurer’s office to the lists of lodging on the County’s tourism website. We eliminated the establishments that were listed on both the listing and on the website. For the establishments that were on the website, but not on the listing, we did an internet search to determine what type of lodging they provided. We compared the “Warren County Occupancy Tax Law Informational Memorandum” for housekeeping cottages with the criteria outlined in this memo to determine if occupancy tax should have been charged by the vendors and remitted to the County.
- We researched the hotels and motels in our sample to determine the number of rooms in them, and we used the hotel sites or reservation booking sites to determine the high and low cost of rooms available during our period of review (we used the date of July 18, 2015). We then calculated the median¹⁸ room cost and determined the number of nights available for occupancy during the quarter of June through August 2015. Using an 80 percent occupancy rate we calculated estimated sales. Using the estimated sales for that period, we calculated the amount of occupancy tax that could have been paid to the County.
- We selected 20 quarterly occupancy tax filings from the 20 establishments with the largest amount of occupancy tax reported for the June through August 2015. We researched the hotels and motels in our sample to determine the number of rooms in them, and we used the hotel site or reservation booking sites to determine the high and low cost of rooms available during our period of review (we used the date of July 18, 2016). We then calculated the median¹⁹ room cost and determined the number of nights available for occupancy during the quarter June through August 2015. Using an 80 percent occupancy rate we calculated estimated sales. Using the estimated sales for the period, we calculated the amount of occupancy taxes that could have been paid to the County. We identified total sales, net sales and tax exempt sales from occupancy and calculated the change between 2014 and 2015. We then determined if there was any supporting documentation for the tax exempt sales submitted by the hotel and motels to the County.

¹⁸ Used the highest and lowest cost available and divided by two.

¹⁹ Ibid.

- We selected a biased judgmental sample of 10 monthly occupancy tax filers. We selected the 10 hotels and motels with the largest occupancy tax reported for the month of February 2015. We reviewed the February 2014 and 2015 occupancy tax returns for these establishments. We identified total sales, net sales and tax exempt sales from occupancy and calculated the change between 2014 and 2015. We then determined if there was any supporting documentation for the tax exempt sales submitted by the hotels and motels to the County.

For Weights and Measures:

- We made site visits to 20 vendor locations throughout the County. We selected these locations on a judgmental basis to determine if the inspection stickers were current and consistent with county documentation.
- We reviewed all inspection reports for the years 2014 and 2015 to determine if the inspections took place, and we traced the reports to fees and fines collected by the County. We compared the information from the annual report filed with the State Bureau to this information.
- We reviewed consumer complaints as filed on the annual report with the State Bureau and complaint documentation.

We conducted this performance audit in accordance with GAGAS. 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.

APPENDIX D

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