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OFFICE OF THE STATE COMPTROLLER

October 15, 2019

Mr. Michael R. Schmidt
Commissioner
Department of Taxation and Finance
William A. Harriman State Campus, Bldg. 9
Albany, NY 12227

Re: Controls Over Unclaimed Bottle
Deposits
Report 2019-F-6

Dear Mr. Schmidt:

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, we have followed up on the actions taken by officials of the Department of Taxation and Finance to implement the recommendations contained in our audit report, *Controls Over Unclaimed Bottle Deposits* (Report [2016-S-96](#)), issued December 19, 2017.

Background, Scope, and Objective

As the tax processing agency for the State, the Department of Taxation and Finance (Department) is charged with the efficient collection of tax revenues in support of State services and programs while acting with integrity and fairness in the administration of State tax laws. The Department is responsible for enforcing certain aspects of the New York State Returnable Container Act (Act), also known as the "Bottle Bill." The Act requires every deposit initiator to register with the Department and collect a 5 cent deposit from consumers on containers of less than one gallon of many beverages sold in the State, such as soft drinks and beer. Consumers may then return their empty beverage containers to a dealer or redemption center to get their deposit back. Deposit initiators are required under the Act to establish an interest-bearing refund value account (bank account) for the sole purpose of refunding deposits. The Act also requires that registered deposit initiators keep track of deposits collected, remit 80 percent of any unclaimed bottle deposits to the Department quarterly, and also report the deposits, withdrawals, interest earned, and ending balance of the bank account on a quarterly basis. The Department has the authority to penalize deposit initiators that fail to register or file quarterly reports. The Act requires all unclaimed deposits collected by the Department to be deposited in the State's General Fund. The Department collected \$117.7 million and \$112.9 million in unclaimed

bottle deposits in State fiscal years ending March 31, 2018 and 2017, respectively.

Our initial audit report, which covered the period April 1, 2014 through February 6, 2017, sought to determine whether the Department was enforcing deposit initiator registration and reporting requirements and collecting and depositing the unclaimed bottle funds into the General Fund. We found that the Department deposited all funds received into the General Fund as required. However, it did not assess penalties on 39 deposit initiators that failed to file required quarterly reports nor did it assess penalties on those who filed late, and took little action to improve compliance. Further, the Department did not have procedures in place to verify data in the quarterly reports, and our analysis identified multiple red flags in the data that were potential indicators of material errors and/or fraudulent reporting.

The objective of our follow-up review was to assess the extent of implementation, as of July 2, 2019, of the five recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

We found that the Department has implemented four recommendations and partially implemented one recommendation from our initial audit report.

Follow-Up Observations

Recommendation 1

Assess penalties on initiators that fail to file quarterly reports.

Status – Partially Implemented

Agency Action – Subsequent to our initial audit, the Department's Business Tax Bureau created an electronic template for staff to calculate penalties and has directed its Information Technology Services group to develop appropriate penalty billing codes within the Department's electronic system. The penalty assessment process is still in the testing phase, and, according to Department officials, billing language is still being finalized.

Recommendation 2

Implement steps to improve monitoring of deposit initiator reporting, including those that are registered but do not file quarterly reports and those that report no deposit collections but report distributing redemptions.

Status – Implemented

Agency Action – According to Department officials, since the issuance of our initial audit report, the Transaction Field Audit Bureau (TFAB) has begun comparing lists of registered deposit initiator non-filers with other relevant databases to identify anomalies. Personnel then consider this information in deciding whether to visit a deposit initiator and review supporting documentation for quarterly report data.

TFAB officials stated that their efforts have allowed them to identify additional risks, which they have incorporated into their audit selection guidelines, and, in some cases, to identify additional amounts due from deposit initiators.

Recommendation 3

Take corrective action to improve the penalty process, including automating the penalty assessment process and implementing procedures to ensure penalties are assessed for all deposit initiators that file late reports.

Status – Implemented

Agency Action – The Department has implemented procedures that now require a second-level supervisory review to ensure appropriate penalties are imposed for all late filers. This additional review mitigates the risk that penalties are not properly calculated and/or assessed for late filers. Although the penalty assessment process has not been automated as recommended in our initial audit report, the additional review is a compensating control that we concluded meets the objective of this recommendation.

Recommendations 4 and 5

These recommendations were deleted from the initial audit report.

Recommendation 6

Review the red flags that we identified in our report and take appropriate corrective action, such as requesting supporting documentation or conducting investigations.

Status – Implemented

Agency Action – Department officials stated that they have analyzed the red flags identified in our initial audit, followed up with deposit initiators who submitted questionable quarterly report data, and adjusted their audit selection guidelines based on the resulting information. According to officials, audit selection guidelines are updated regularly to reflect the results of the TFAB's analysis and conclusions regarding additional indicators of risk. They also informed us that, since the issuance of our initial audit report, they have conducted ten audits of deposit initiators and are on track to perform another eight to ten audits this year.

Recommendation 7

Require deposit initiators to submit supporting documentation with their quarterly reports to support their reported amounts.

Status – Implemented

Agency Action – Since our initial audit, the Department has updated its website guidance to deposit initiators to include more detailed information about record-keeping

requirements. And, though the Department does not require initiators to submit supporting documentation with their quarterly reports (citing the potential for it to be a burden to both the Department and initiators), it does review this support if it chooses to audit the initiator. Two of these audits conducted since our initial audit identified almost \$48,000 in additional funds owed to the Department.

Major contributors to this report were Sharon Salembier, Karen Bogucki, Marisa Sutliff, and Ryan Gregory.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issue discussed in this report. We thank Department management and staff for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Sharon L. Salembier, CPA, CFE
Audit Manager

cc: Division of the Budget
Judy Farnan-Farago, Department of Taxation and Finance