

THOMAS P. DiNAPOLI
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 27, 2021

Amanda Hiller
Acting Commissioner
Department of Taxation and Finance
William A. Harriman State Campus, Bldg. 9
Albany, NY 12227

Re: Administration and Collection of Real
Estate Transfer Taxes
Report 2021-F-10

Dear Ms. Hiller:

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 (Department) to implement the recommendations contained in our audit report, *Administration and Collection of Real Estate Transfer Taxes* (Report [2017-S-88](#)).

Background, Scope, and Objective

The Real Estate Transfer Tax (RETT), enacted in 1968 under Tax Law Article 31 as a tax on the transfer of real property, applies to sales or conveyances of New York real property or interests in real property when the consideration exceeds \$500, at a rate of \$2 for every \$500 of consideration exchanged. The base tax is generally paid by the seller (grantor), unless the seller is exempt from the tax or does not pay, in which case the buyer (grantee) must pay the tax. An additional RETT of 1% applies to conveyances of residential real property when the consideration is \$1 million or more and is often referred to as the "mansion tax," which is required to be paid by the buyer. A 2019 amendment to the tax law provides that when the buyer fails to pay the mansion tax, the seller is required to pay, and the tax then becomes the joint and several liability of the seller and the buyer. Beginning July 1, 2019, additional taxes apply to some conveyances of real property, or interests in real property, in New York City. RETT is generally paid during deed recording at county clerk offices, which then remit the tax to the Department. State RETT collections for each of the 2 State fiscal years ended March 31, 2021 and March 31, 2020 totaled about \$1.1 billion and \$949 million, respectively.

As of June 2021, 57 New York counties submit their RETT information to the Department in hard copy form; the five New York City counties, as well as Westchester County, submit this information electronically (Richmond County submits information in both hard copy and electronic forms).

Our initial audit, issued January 8, 2019, sought to determine if the Department had adequate systems and practices in place to allow it to effectively collect RETT, as required

by relevant law and regulation. The audit covered the period from January 16, 2016 through December 31, 2017.

The audit found the Department had – with certain exceptions – adequate systems and practices in place that allowed it to effectively administer and collect RETT, as required by relevant law and regulation. However, nearly all State counties submitted RETT information in hard copy form (vs. electronic submission) at the time of our audit, of which only a small portion was entered into an electronic system and capable of being analyzed. As a result, the Department's ability to efficiently and effectively analyze information to identify higher-risk transactions was limited. We also identified certain RETT errors in one of the Department's internal systems.

The objective of our follow-up was to assess the extent of implementation, as of July 28, 2021, of the two recommendations from our initial audit report.

Summary Conclusions and Status of Audit Recommendations

The Department has made significant progress in addressing the problems we identified in the initial audit report and has implemented both recommendations from the audit report.

Follow-Up Observations

Recommendation 1

Pursue options for collaborating with county recording officers to develop solutions for collecting RETT electronically.

Status – Implemented

Agency Action – Subsequent to our audit, the Department developed a legislative proposal to authorize an electronic filing solution that could be supported at the county level. The proposal, enacted with the passage of the State fiscal year 2022 Budget (Laws of 2021, Chapter 59, Part U), authorizes the Commissioner of Taxation and Finance to combine Forms RP-5217 (Real Property Transfer Report) and TP-584 (Real Estate Transfer Tax Return) into a consolidated real property transfer form and to implement an online system to e-file this form and pay the associated taxes and fees. County clerks will continue to receive the same fees they now collect (\$9 per RP-5217 and \$1 per TP-584) even though users of the online system will be e-filing the forms and paying the taxes and fees to the Department. Department officials stated that they believe this reform will greatly streamline the real property transfer process, while ensuring that the confidential portion of the RETT return remains subject to secrecy protections.

Department officials noted that the e-filing system would be optional for all parties who wish to continue to use the existing process, and that it would be available for those who currently file electronically.

Department officials also stated that they are completing the legislative implementation documentation that is required to work with the Office of Information Technology Services to advance this project while considering its priority given competing Department initiatives. They further stated that they recognize counties as a major stakeholder/partner in this project and believe their engagement will be pivotal to the requirements gathering process once the scope of the project is determined by Department leadership.

Recommendation 2

Ensure that planned improvements to existing systems address the issues identified in this report.

Status – Implemented

Agency Action – In our initial audit report, Department officials stated that they planned improvements for 2019 to address errors in RETT data identified in the report. During our follow-up review, they informed us that, in January 2019, the Department implemented a new processing platform for RETT, the Transaction Management System (TMS), which incorporates imaging, depository functionality, and data capture. According to a written description of TMS provided to us, the data capture function includes validation rules that address incorrect city name, incorrect county name, errors related to property condition, incorrect address, tax map errors, and extra zeroes in the payment field amount. Department officials noted that edits and validations take place in real time.

In addition, Department officials stated that they have a new system to identify data entry errors regarding payments. According to written procedures provided to us, the check amount is data-captured and then the payment amount from the RETT return form is data-captured on a transaction level. When the two amounts differ, a balancing station operator compares the dollar amount from the image of the check with the amount reported on the return and corrects any errors.

The Department's written procedures also describe a quality assurance process now in place in which all data-captured returns go through the verification and rule validation process mentioned above prior to posting the return data and image to the e-MPIRE processing system.

Major contributors to this report were Karen Bogucki, CGFM, and Andrew Davis.

We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Sharon L. Salembier, CPA, CFE
Audit Manager

cc: Judith Farnan-Farago