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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 21, 2023

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

Re: Sales Tax Vendor Registration Practices
Report 2023-F-5

Dear Acting Commissioner 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 recommendation contained in our audit report, *Sales Tax Vendor Registration Practices* (Report 2020-S-40).

Background, Scope, and Objective

The Department of Taxation and Finance (Department) is responsible for administering more than 40 State and local taxes, including the sales and use tax. Provisions of State Tax Law (Law) impose a tax on sales of tangible personal property and certain services, with some exemptions, and require vendors that make these sales to register for a Certificate of Authority (COA), collect the tax from customers, and remit the tax to the State.

New York's sales tax is imposed at a rate of 4%. Additional sales taxes are administered by the Department and imposed by localities and range from 3% to 4.875%, and in the Metropolitan Commuter Transportation District at 0.375%. The use tax is imposed on taxable items or services used in New York when a sales tax has not been paid. The Department may deny a COA in some circumstances, such as when a vendor submits an incomplete application or has unpaid tax debts. The Department may also assess penalties on vendors that make taxable sales without a COA.

Since the 1980s, the Law has defined a vendor to encompass anyone, including out-of-state sellers, that regularly or systematically solicits business to any person in the State. A 1992 U.S. Supreme Court ruling, *Quill Corp. v. North Dakota*, generally established that businesses needed to have some physical presence in a state to be liable for collecting sales tax pursuant to state law. However, in a 2018 decision, *South Dakota v. Wayfair, Inc.*, the Supreme Court eliminated the physical presence test. As a result of this later ruling, New York began enforcing its long-standing provision in the Law for vendors without a physical presence in the State that meet certain thresholds to register for a COA and collect sales tax. These vendors must register if they have both sold more than $500,000 of tangible personal property that was delivered in

New York and conducted more than 100 sales of tangible personal property delivered in New York during the immediately preceding four sales tax quarters.

The State share of sales and use tax collections is the second largest tax amount collected annually, and represented 13.9% of all taxes collected by the Department for the State fiscal year (SFY) ending March 31, 2022. Only personal income tax collections were higher, at 59.7% of tax revenues collected that year. Sales tax is also a significant source of revenue for localities. During SFY ending March 31, 2022, the Department distributed over $36.9 billion in sales and use taxes, with approximately $16.5 billion going to the State and over $20.4 billion going to localities. New York has generally experienced a trend of growing sales and use tax collections over the past decade.

The objective of our initial audit, issued October 14, 2021, was to determine whether the Department had taken steps to ensure that persons who are required to register as sales tax vendors, including those with no physical presence in the State, had done so. The audit covered vendors with a COA that was active at any time during the period June 1, 2018 to August 5, 2020, as well as applications for sales tax registration received by the Department from June 1, 2018 to August 5, 2020 and their application status as of November 20, 2020. We found that the Department had generally taken steps to ensure that entities required to register as sales tax vendors had done so; however, we also identified opportunities for improvement. We found vendors that were denied a COA yet continued to operate and likely make taxable sales, as well as unregistered vendors that submitted sales tax returns showing taxable sales. These findings were attributable, in part, to the lack of information-sharing among the Department's divisions and the lack of relevant follow-up.

The objective of our follow-up was to assess the extent of implementation, as of June 2023, of the recommendation included in our initial audit report.

Summary Conclusions and Status of Audit Recommendation

The Department has made progress addressing the issues we identified in the initial audit report, having implemented the one recommendation from that report.

Follow-Up Observations

Recommendation 1

Improve inter-Department communication and follow-up measures to:

- *Identify and address unauthorized sales activity among vendors for whom the Department denied a COA; and*
- *Provide better assurance that unregistered vendors that are notified of the conditions requiring them to register as sales tax vendors have done so where necessary.*

Status – Implemented

Agency Action – The Department has improved its inter-Department communication and follow-up measures to identify and address unauthorized sales activity among vendors that have been denied a COA (refused vendors) or that are unregistered but submitting sales tax returns (forced vendors). In December 2021, subsequent to our audit, the Department convened an interdivisional work group that resulted in the development of a new Sales Tax Vendor Dashboard (Dashboard), along with draft procedures that assist with identifying vendors with potentially unauthorized sales activity for further investigation. Quarterly, the Office of Data Analytics shares Dashboard information on forced and refused vendors with the Field Audit Management unit, which further identifies vendors that have reported taxable sales that are at or above established thresholds for potential unauthorized sales activity. Vendors at or above the thresholds are sent to the appropriate field offices for manual review. Since the implementation of the Dashboard and draft procedures, as of August 2022, the Department has identified refused vendors to be audited and forced vendors for further review at field offices. According to Department officials, they continue to evaluate and refine the procedures and expect to finalize them after the first round of audits is completed.

Additionally, according to Department officials, they're using Dashboard data to evaluate the effectiveness of vendor correspondence, and have identified certain instances where sales tax returns filed by unregistered vendors were not identified by the Department's system as exceptions and, therefore, did not provide an opportunity for the Department to notify them of the registration requirements. As a result, the Department is evaluating possible opportunities to expand communication efforts regarding registration requirements in response to a return being filed by an unregistered vendor.

Major contributors to this report were Brian Krawiecki, CIA; Ryan Gregory; and Brian O'Connor.

We thank the management and staff of the Department for the courtesy and cooperation extended to our auditors during this follow-up.

Very truly yours,

Sharon Salembier
Audit Manager

cc: Michael Ostermann, Office of Internal Audit & Quality Control