

THOMAS P. DiNAPOLI
STATE COMPTROLLER



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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 8, 2009

Ms. Jamie Woodward
Acting Commissioner
Department of Taxation and Finance
W. A. Harriman Campus, Building 9
Albany, New York 12227

Re: Collection of Assessed Tax Liabilities
Report 2008-S-164

Dear Ms. Woodward:

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 audited the Department of Taxation and Finance (Department) to determine whether it follows established procedures to collect assessed tax liabilities owed to the State.

A. Background

The Department administers the State's tax laws and serves as the State's general tax collection agency. Article 41 of the New York State Tax Law requires the Commissioner of Taxation and Finance to prepare a statement that outlines the Department's process for enforcing the collection of unpaid taxes. Publication 125 outlines the Department's collection process and taxpayers' rights. Collection of tax liabilities is the responsibility of the Department's Collections and Civil Enforcement Division (Division). The Division's Collections Resolution Center utilizes an automated collection process called the Automated Telephone Collections (ATC) program that guides cases through various stages of collection. The Department strives to complete all tax collection cases within a 180-day period; however, cases may extend beyond 180 days with supervisor approval.

Once a taxpayer has an assessed tax liability, he/she has a right to appeal. After the appeal process, the tax liability becomes final and the Division creates a case and begins the collection process. The Division initially submits a bill to the taxpayer requesting payment within 30 days. The Division either attempts to collect full payment from the taxpayer or negotiates an installment payment plan, which allows the taxpayer to make monthly payments until the tax liability has been paid. According to the Department's Casework/Callback Training Manual, if contact or payment has not been made, the Division sends a second bill, which includes the original amount due, plus

penalties and interest. The taxpayer then has a maximum of 90 days to submit formal protest material to the Division before a warrant is issued.

The warrant is a legal notice filed in the judgment docket of a County Clerk's office in the taxpayer's county of residence, as well as with the New York State Department of State. The warrant creates a lien against any real property the debtor may own in the county of docketing for a period of ten years. The tax warrant is the Department's initial collection activity and is the prerequisite for any other collection activities. It stays on a taxpayer's personal credit history for 20 years, or for 7 years if it is satisfied, and may hinder an individual's ability to get a credit card or qualify for a mortgage. Once a tax warrant has been created and filed, the Department will attempt to seize the taxpayer's property, known as a levy. The most common levy is made on a taxpayer's bank account, which requires the bank to remove money from the account and submit it to the Department. The Department may also levy money that a third party owes the taxpayer, such as rent or a loan.

If the levy is unsuccessful at satisfying the warrant, the Department may create an income execution. Under an income execution, the Department requests the taxpayer to voluntarily submit 10 percent of his/her wages to the Department. If the taxpayer refuses to pay within 20 days of receiving the Department's notice, the taxpayer's employer will be ordered to withhold up to 10 percent of the person's gross wages and remit the amount to the Department.

If the warrant and the levy are unsuccessful, the Department can choose one of two options. First, the Department can inactivate the case as uncollectible. This occurs when the Department determines that the case is of low value or that the taxpayer lacks any viable financial resources. Inactive cases can be reactivated if additional information such as a financial source, is discovered. Secondly, it can pursue additional collection activities by assigning the case to one of the special collection units within the Division for follow-up action. These specialized units include Field Services, Bankruptcy, Vendor Collection, and Offset.

The Field Services unit consists of 11 district offices throughout the State. The field agents conduct in-depth investigations, which may include site visits to the taxpayer's home or place of business. During these visits, the agents may gather information about the taxpayer, collect payment of unpaid taxes, or assess the value of property to be seized to pay the tax liability.

The Bankruptcy unit attempts to collect payment through court petitions, if a taxpayer files for bankruptcy and has outstanding tax assessments. The Vendor Collection unit works with a third-party collection vendor hired by the Department to collect tax liabilities owed by certain taxpayers. The Offset unit will offset any payments that the State may owe the taxpayer, such as tax refunds or lottery winnings, and apply them against any unpaid taxes the individual owes the State.

The Division maintains all case information in the Department's Collection and Resources Tracking System (CARTS). CARTS is a mainframe-based system where Division staff enter all collection case data, including telephone correspondence, warrant and levy information, and payment information. CARTS also runs the ATC program.

As of December 31, 2008, the Division had 530,808 active cases in its inventory valued at \$2.5 billion, including accumulated interest and penalties. For the period April 1, 2008 through December 31, 2008, the Division completed 481,663 collection cases, with tax liabilities totaling \$2.8 billion. For these cases, the Division collected \$967.3 million, which includes accumulated interest and penalties.

B. Audit Scope, Objective and Methodology

Our audit covered the period April 1, 2008 through March 31, 2009. The objective of our audit was to determine whether the Department follows its established procedures to collect assessed tax liabilities owed to the State. To accomplish our audit objective, we interviewed Department officials, reviewed applicable sections of Federal and State laws and regulations, and examined the Department's relevant policies and procedures. We also extracted completed collection cases from the Department's CARTS system for the period April 1, 2008 through December 31, 2008 and reviewed case contact information for a stratified sample of cases. The cases were stratified between personal and business tax cases, as well as the final collection stage of each case (e.g., field office, call center). We then randomly selected 5 cases from each collection stage, for a total of 70 cases. After reviewing 5 field office cases, we determined that the high value of these cases warranted reviewing an additional 10 randomly-selected cases, resulting in an overall sample size of 80 cases.

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

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 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.

C. Results of Audit

Our audit determined that the Department followed its established procedures to collect assessed tax liabilities owed to the State.

During the period April 1, 2008 through December 31, 2008, the Department completed 481,663 collection cases with taxes, accumulated interest and penalties totaling \$2.8 billion. When working a collection case, the Division staff captures all case data into the CARTS system. Such data includes taxpayer contact information (e.g., telephone correspondence), warrant and levy information, payment information, and any other information pertinent to the case. We selected a sample of 80 cases completed between April 1, 2008 and December 31, 2008 to review and determine whether the cases followed the Division's collection procedures. The 80 cases had

assessed tax liabilities totaling \$550,934 and collections totaling \$478,984. For each sample case, we accessed the CARTS system and noted when the tax bill had been issued, when the warrant had been docketed at the County Clerk's office, whether the case had been levied for financial sources, and whether it had income executions. We also looked for any other collection action that might have been taken, depending on the case value (e.g., smaller cases could be inactivated after financial source levy and income execution). We found that, for each of the 80 cases, the Division had followed its collection procedures properly.

In addition, we found that the collection process is monitored by Department management through key performance measures. For the period April 1, 2008 through February 28, 2009, the Department exceeded target collections by 5.1 percent, collecting almost \$1.2 billion.

In the fall of 2009, the Division plans to implement its Case Identification Selection Scoring (CISS) System. CISS will provide the business intelligence to help the Division determine the best collection methods to use for each type of tax liability. This will allow Division management to manage its collection cases and increase the likelihood of collection by focusing the appropriate resources on each case. Under CISS, each collection case will no longer be subject to the same collection procedures. Instead, CISS will assign the collection method that has historically produced the best results for that type of liability.

A draft of this report was provided to Department officials for their review and comments. Their comments were considered in preparing this report and are included as Appendix A. Department officials were pleased with the results of the audit.

Major contributors to this report include Frank Houston, Albert Kee, Greg Petschke, Scott Heid, Thierry Demoly, and Donald Cosgrove.

We wish to thank the management and staff of the Department of Taxation and Finance for the courtesies and cooperation extended to our auditors during the audit.

Very truly yours,

Albert Kee
Audit Manager

cc: Tom Lukacs, Division of the Budget
James Brunt, Internal Audit Director



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
W A HARRIMAN CAMPUS
ALBANY, NY 12227

JAMIE WOODWARD
ACTING COMMISSIONER

September 11, 2009

Mr. Albert Kee
Audit Manager
Office of the State Comptroller
Division of State Government Accountability
123 William Street, 21st floor
New York, NY 10038

Dear Mr. Kee:

Thank you for the opportunity to comment on your draft audit report, "Collection of Assessed Tax Liabilities, (2008-S-164)."

As a Department, we have always been serious in our commitment to serve as the State's general tax collection agency and to enforce the collection of unpaid taxes.

We are especially pleased with your findings that the Department follows its established procedures to collect assessed tax liabilities owed to the State and that the collection process is monitored by Department management through key performance measures. We will continue to improve our collection methods and procedures with the implementation of our Case Identification Selection Scoring (CISS) system in the fall of 2009.

Again, thank you for the opportunity to comment and we value OSC's suggestions on ways to improve our collections.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Woodward".

Jamie Woodward
Acting Commissioner

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