



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Selected Employee Travel Expenses

State Education Department



Executive Summary

Purpose

To determine whether the use of travel monies by selected government employees complied with rules and regulations and is free from fraud, waste, and abuse. The audit covers the period July 1, 2008 to August 14, 2013.

Background

New York State's executive agencies spend between \$100 million and \$150 million each year on travel expenses. These expenses, which are discretionary and under the control of agency management, include car rentals, meals, lodging, transportation, fuel, and incidental costs such as airline baggage and travel agency fees. As part of a statewide audit initiative to determine whether the use of travel money by selected government employees was appropriate, we audited travel expenses for the highest cost travelers in the State, each of whom incurred over \$100,000 in travel expenses during the three-year audit period, as well as other outliers.

As a result of our analysis, we examined the travel expenses of three State Education Department (Department) employees with outliers in the areas of train fare and fuel expense. We also reviewed and considered the possible tax implications of travel and work locations for one of the three employees. In total, we examined \$100,908 in travel costs associated with these three individuals.

Key Finding

- We found the travel expenses for two of the three Department employees selected for audit adhered to State travel rules and regulations. However, the travel expenses for one employee implicated the Internal Revenue Service "tax home" rules for 2009 and are taxable as income. As a result, the travel reimbursements made to the employee were reported to the taxing authorities and an amended W-2 was issued. The travel expenses for 2010 may also trigger the Internal Revenue Service "tax home" rules and may be taxable as income. If so, the travel reimbursements made to the employee may have to be reported to the taxing authorities and an amended W-2 issued.

Key Recommendation

- Work with the Comptroller's Division of Payroll, Accounting and Revenue Services to take any additional necessary corrective action related to the potential taxable status of employee travel expenses.

Other Related Audits/Reports of Interest

[Department of Labor: Selected Employee Travel Expenses \(2012-S-75\)](#)

[Office of Court Administration: Selected Employee Travel Expenses \(2012-S-96\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

November 1, 2013

Dr. John B. King, Jr.
Commissioner
State Education Department
89 Washington Avenue
Albany, NY 12234

Dear Commissioner King:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the State Education Department entitled *Selected Employee Travel Expenses*. The audit was performed 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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State Government Accountability Contact Information:

Audit Director: John Buyce

Phone: (518) 474-3271

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
 Division of State Government Accountability
 110 State Street, 11th Floor
 Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

New York State's executive agencies spend between \$100 million and \$150 million each year on travel expenses incurred by State employees in the course of performing their duties. These expenses, which are discretionary and under the control of agency management, include car rentals, meals, lodging, transportation, fuel, and incidental costs such as airline baggage and travel agency fees.

The mission of the State Education Department (Department) is to raise the knowledge, skill, and opportunity of all the people in New York. The Department spent \$10.4 million on travel expenses from April 1, 2008 through March 31, 2011. Of that amount, \$5.5 million, or 53 percent, was for reimbursements to employees for travel expenses and direct payments to vendors. The remaining \$4.9 million, or 47 percent, related to charges on State-issued travel cards.

This audit of the Department is part of a statewide initiative to determine whether the use of travel monies by selected government employees complied with rules and regulations and is free from fraud, waste and abuse. Auditors focused their audit efforts on the highest cost travelers in the State, each of whom incurred over \$100,000 in travel expenses during the three-year period ended March 31, 2011, and on other outliers. As a result of this analysis, we examined the travel costs of three Department employees with outliers in train fare and fuel expense. We also reviewed and considered the possible tax implications of travel and work locations for one of the three employees. In total, we examined \$100,908 in travel costs associated with these three individuals.

The Office of the State Comptroller sets rules and regulations for payment of expenses employees incur while traveling on official State business. The Comptroller's Travel Manual (Travel Manual) helps agencies and employees understand and apply the State's travel rules and regulations, and provides instructions for reimbursing expenses. In general, when traveling on official State business, only actual, necessary and reasonable business expenses will be reimbursed.

According to the Travel Manual, agencies are responsible for ensuring:

- all authorized travel is in the best interest of the State,
- all charges are actual, reasonable and necessary,
- all expenses comply with travel rules and regulations,
- the most economical method of travel is used in the best interest of the State,
- compliance with Internal Revenue Service (IRS) regulations,
- the official station of each employee is designated in the best interest of the State,
- employees obtain appropriate approvals prior to traveling, and exceptions or waivers are justified and necessary, and
- adequate funds are available for travel.

Audit Findings and Recommendation

We found the travel expenses for two of the three Department employees selected for audit adhered to State travel rules and regulations. However, the travel expenses for one employee implicated the Internal Revenue Service “tax home” rules for 2009 and are taxable as income. As a result, the travel reimbursements made to the employee were reported to the taxing authorities and an amended W-2 was issued. The travel expenses for 2010 may also trigger the Internal Revenue Service “tax home” rules and may be taxable as income. If so, the travel reimbursements made to the employee may have to be reported to the taxing authorities and an amended W-2 issued.

Potential Tax Implications of Employee Work Location

“Official station” and “tax home” are two distinct but related concepts that are relevant in determining both whether an employee is eligible for payment of work-related travel expenses and how these expenses are treated and reported to the taxing authorities. Official station is designated by the State agency to determine when an employee is in travel status and, therefore, eligible for payment of related travel expenses.

In contrast, tax home is used by the IRS to determine the taxability of travel expenses paid or the deductibility of travel expenses incurred. The IRS has issued guidance about tax home in its Fringe Benefit Guide for Federal, State and Local Governments (Guide). In most cases, an individual’s tax home is the general vicinity of his or her principal place of business, and includes the entire metropolitan area of the business. Identifying the tax home is crucial because only those employer-funded travel expenses that are incurred when an employee is away from his or her tax home are excludable from income. Employer-funded travel expenses incurred within the area of the employee’s tax home are generally taxable and considered additional compensation subject to withholding and other payroll taxes.

Usually, an employee’s official station is the same as his or her tax home, but this is not always the case. When the two locations are the same, expenses for employee travel outside the area of the official station are generally not taxable. But when an official station is designated that differs from an employee’s tax home, there may be adverse tax consequences to the employee. When employees have more than one regular place of business, their tax home is generally their main place of business, which is determined based on the following factors:

- the total time ordinarily spent in each place,
- the level of business activity that occurs in each place, and
- the significance of the amount of income derived from each place.

The Guide explains that some work assignments can trigger a change in tax home if work at a new location is expected to last more than one year. An indefinite assignment is one that is realistically expected to last, and does in fact last, more than one year. If an assignment is indefinite, the employee is considered to have moved his or her tax home to the new work location. According

to the Guide, “the employer must determine whether an assignment is realistically expected to last less than one year when the assignment begins.”

When necessary, corrected employee Wage and Tax Statements (W-2 Forms) may generally be issued up to three years after the due date of the affected person’s individual tax return for the year in which the expense was incurred. For example, adjustments related to travel expenses that should have been reported on an employee’s 2010 W-2 Form must generally be corrected by April 2014.

We identified circumstances that suggest the travel incurred by one employee triggered a change in the employee’s tax home from New York City to Albany. The employee in question, who resides in the New York City area, was appointed to a Department position in 2004. Department documents state that it was expected, at the time of appointment, that about 60 percent of the employee’s work time would be spent in Albany. Despite the expectation that Albany would be the employee’s main place of business, the Department designated New York City as the official station, which resulted in the employee being in travel status during trips to and from Albany. Department officials justified the decision, explaining that it was more cost effective, and therefore in the best interest of the State, to designate New York City as the official station than Albany. Their rationale was that a New York City official station would result in the employee being in travel status for the three work days in Albany per week, which would likely result in lower costs - in particular for lodging - than for the two work days in New York City if they had designated Albany as official station. The Department paid for or reimbursed the related expenses for these trips to Albany.

Department records indicate the employee’s travel was expected to significantly decrease toward the end of 2010 as a result of a change in job duties. The above circumstances illustrate the Department’s expectation that the employee’s main place of business, and likely the tax home, was Albany from the time of appointment until its stated expectations changed in late 2010. However, Department management didn’t report any of the employee’s travel expenses as taxable payments. When we communicated these findings with Department management, they emphasized the need for clarification and guidance in applying and interpreting the tax home provisions of the IRS Guide, especially those relating to assignments that are other than full-time. While the Department has provided a rationale in support of its official station designation, it is nonetheless still responsible to address possible tax home implications inherent in the employee’s work arrangements. The circumstances suggest the employee’s tax home was likely Albany as early as 2004 and for subsequent calendar and tax years until the expectation changed in late 2010. If the tax home is determined to be Albany, a significant portion of the related travel expenses paid for or on behalf of this employee may be income subject to applicable taxes which have not been previously withheld or paid.

Department officials have acknowledged their responsibility to address any deficiencies, and have been working with the Comptroller’s Division of Payroll, Accounting and Revenue Services (PARS), which is responsible for wage reporting, to determine whether changes are necessary to the wage reports filed for this employee in previous years. As a result of these discussions, an amended W-2 for 2009 was issued to the employee in 2013. The Department continues to work

with PARS to determine if adjustments are necessary for 2010 expenses incurred prior to the time that the travel expectations for this employee changed.

Recommendation

1. Work with the Comptroller's Division of Payroll, Accounting and Revenue Services to take any additional necessary corrective action related to the potential taxable status of employee travel expenses.

Audit Scope and Methodology

We audited selected travel expenses for three Department employees for the period April 1, 2008 to August 14, 2013. The objective of our audit was to determine whether the use of travel monies by selected government employees complied with rules and regulations and is free from fraud, waste, and abuse.

To accomplish our objective, we analyzed travel expenses incurred by and on behalf of State employees for the three years ended March 31, 2011. We also became familiar with the internal controls related to travel, and assessed their adequacy related to the limited transactions we tested. Our analysis identified three Department employees whose travel expenses included outliers in the areas of train fare and fuel expense. We examined these expenses, including reimbursements and credit card charges. We also reviewed and considered the possible tax implications of travel and work locations for one employee. We communicated our findings to Department personnel, and considered information they provided through August 14, 2013.

As part of our examination, we obtained Department data to verify support for travel payments for the period April 1, 2008 through March 31, 2011. This included determining whether the expenses incurred were for legitimate business purposes. We reviewed OSC procedures and determined the travel expenses selected for examination were approved and complied with this guidance. Finally, we matched timesheet and travel records to determine whether the employee was working on days for which travel expenses were claimed.

We conducted our performance audit in accordance with generally accepted government auditing standards. 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. 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.

Authority

The audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to Department officials for their review and comment. The Department's response was considered in preparing this final report and is attached in its entirety to the end of this report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Education shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

John Buyce, Audit Director
Melissa Little, Audit Manager
Nadine Morrell, Audit Supervisor
Sharon Salembier, Audit Supervisor
Rick Podagrosi, Examiner-in-Charge
Christian Butler, Staff Examiner

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Elliot Pagliaccio, Deputy Comptroller
518-473-3596, epagliaccio@osc.state.ny.us

Brian Mason, Acting Assistant Comptroller
518-473-0334, bmason@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,
NY 12234

DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
O: 518.473-4706
F: 518.474-5392

October 18, 2013

Sharon L Salembier, CPA, CFE
Office of the State Comptroller
110 State Street, 11th Floor
Albany, New York 12236

Re: Response: Audit Report 2012-S-97

Dear Ms. Salembier:

As requested, we are sending a written response to your audit findings concerning your audit of Selected Employee Travel Expenses of the Education Department. The bulletin(s) issued by OSC concerning the cited IRS provisions relating to the one-year rule did not include language concerning other than full-time work assignment scenarios. When the assignment of the Official Station of this particular individual was brought up in a previous OSC audit a few years ago, we were told that ultimately it is an agency decision. We provided the same justification and rationale for the decision as is included in this report and the issue was dropped. There was no mention at that time that the decision may have tax implications. As we have been saying throughout this audit process, we understand the clarification that is now being shared but feel that this information was not made available when these decisions were being made.

We believe we have shared with the auditors all the data that is pertinent to this audit but will be available to answer any additional questions that may arise to the extent that we have the information requested.

Sincerely,

A handwritten signature in black ink that reads "Sharon Cates-Williams".

Sharon Cates-Williams

c: Maria Guzman
Andrew Klippel