



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

Division of State Government Accountability

Selected Employee Travel Expenses

Office of Court Administration



Report 2012-S-96

September 2013

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 April 1, 2008 to March 31, 2011.

Background

New York State's 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 lodging, meals, car rentals, transportation, fuel, and incidental costs such as airline baggage and travel agency fees. The Unified Court System (UCS) spent \$17,003,393 on travel expenses from April 1, 2008 through March 31, 2011. Of that amount, about \$3,482,478 (20 percent) was for charges on State-issued travel cards, and \$13,520,915 (80 percent), was for reimbursement to employees for travel expenses not charged to a travel card.

This audit 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, as well as on other outliers. As a result of this analysis, we examined the travel costs of one employee whose travel costs totaled \$115,797.

Key Findings

- We found that while the travel expenses for the one employee were supported, they need to be further reviewed to determine whether Internal Revenue Service "tax home" rules may apply and may result in taxable income.
- In addition, Judicial Travel Rules were sometimes not complied with.

Key Recommendations

- Work with the Comptroller's Division of Payroll, Accounting and Revenue Services to ensure that any necessary corrective action related to the potential taxable status of the employee's travel expense reimbursements is taken.
- Follow Judicial Travel Rules to ensure relevant apartment lease approvals and rental agreements are in effect.
- Ensure that reimbursements for rental payments are made after the employee makes payment.

Other Related Audits/Reports of Interest

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

**New York State
Office of the State Comptroller**

Division of State Government Accountability

September 4, 2013

Honorable A. Gail Prudenti
Chief Administrative Judge of the State of New York
Office of Court Administration
25 Beaver Street
New York, NY 10004

Dear Judge Prudenti,

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

Background

New York State's 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 lodging, meals, car rentals, transportation, fuel, and incidental costs such as airline baggage and travel agency fees.

The Unified Court System (UCS) is an independent branch of government, and not a State agency. UCS' mission is to promote the rule of law, and to serve the public by providing just and timely resolution of all matters before the courts. Article VI, Section 28 of the New York State Constitution vests the Chief Administrative Judge of the UCS, by delegation of the Chief Judge of the Court of Appeals, with the authority to supervise the administration and operation of the unified court system. As with other administrative functions, the Chief Administrative Judge has enacted travel rules for the UCS, including rules specifically applicable to judicial travel reimbursement (Judicial Travel Rules). The Office of Court Administration (OCA), under the direction of the Chief Administrative Judge, is responsible for directing and overseeing the administrative operation of all courts in the UCS. OCA has had enacted, and revised from time to time, detailed travel reimbursement procedures (Judicial Travel Procedures) to supplement the Judicial Travel Rules. The Judicial Travel Rules and Judicial Travel Procedures allow reimbursement rates that differ from those set by the United States General Services Administration (Federal rates).

UCS spent \$17,003,393 on travel expenses from April 1, 2008 through March 31, 2011. Of that amount, about \$3,482,478, or 20 percent, was for charges on State-issued travel cards, and \$13,520,915, or 80 percent, was for reimbursement to employees for travel expenses not charged to a travel card.

This audit 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, as well as on other outliers. As a result of this analysis, we examined the travel costs of one employee whose travel costs totaled in excess of \$100,000.

Audit Findings and Recommendations

We examined the travel costs of one employee whose long-term assignment to a New York City work location resulted in travel costs in excess of \$100,000, including lodging. We found that while the travel expenses for the one employee were supported, they need to be further reviewed to determine whether IRS “tax home” rules may apply and may result in taxable income. In addition, Judicial Travel Rules were sometimes not complied with.

Potential Tax Implications of Employee Work Location

“Official station” and “tax home” are each relevant to an analysis of travel expense reimbursements. Official station is set by the agency to determine when an employee is in travel status and, therefore, eligible for reimbursement of related travel expenses. In contrast, tax home (the general area of the employee’s main place of work) is used by the IRS to determine the taxability of travel expense reimbursement or deductibility of travel expenses incurred. Employer reimbursements for travel expenses 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, reimbursements for employee travel outside the area of their official station are generally not taxable. IRS rules provide that even temporary work assignments can trigger a change in tax home if work at the new location is expected to last more than one year. Further, 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.

We found the one employee reviewed was given an additional long-term assignment in New York City. If this additional long-term assignment effectuated a change in tax home status, reimbursement of travel expenses to the new location may trigger a potential taxability. We have referred this matter to the Comptroller’s Division of Payroll, Accounting and Revenue Services (which is responsible for wage reporting) so that the Division can work with OCA to determine all of the circumstances and implications of the work arrangement and can take any needed corrective action. OCA officials have already begun to work with the Comptroller’s staff in this regard.

Noncompliance With Judicial Travel Rules

While OCA has promulgated its own travel rules and set its own reimbursement rates including allowance for apartment rental expenses, we found instances where the one employee we audited did not adhere to Judicial Travel Rules.

The Judicial Travel Rules allow certain employees to be reimbursed the cost of renting an apartment under certain circumstances. This rental is allowed when the employee actually lodges overnight in the rented premises, provided that:

- prior approval of the rental arrangement is given by the Chief Administrator;
- a copy of the rental agreement is filed with the Chief Administrator;
- the total reimbursement of expenses allowed for lodging in any period does not exceed the rent for that period;
- the reimbursement would be made after the expense was initially paid by the employee; and
- where the amount paid as reimbursement during any one month exceeds the monthly rent, the excess amount can be used as an offset against the rent for the same premises for another month during which the amount payable as reimbursement was not sufficient to meet the monthly rent.

While more than \$90,000 was paid to this employee for lodging expenses attributable to an apartment (rent and utilities), there was no current approved rental agreement on file at the time of our review. In fact, both the approval and lease had expired on August 31, 2007, more than five years prior to our review. In OCA's response to our preliminary audit findings, they agree that the lease expired on August 31, 2007. However, the employee was permitted by the landlord to continue as a tenant on a month-to-month basis under the terms of the original lease agreement. OCA officials characterizes this as a "common arrangement." OCA officials state that this is beneficial to UCS in that the monthly rent was never increased and the arrangement can be terminated at any time based on the needs of the Court. They also state that this practice was long accepted by the court's administrative officer. We point out that this longstanding practice does not agree with written Judicial Travel Rules which were enacted by the Chief Administrative Judge. Also, there was nothing in the employee's file to document the current lease arrangement or that it had the approval of the Chief Administrative Judge.

Although the Judicial Travel Rules require reimbursement for the apartment rental to be made after the expense was initially paid by the employee (after the expense was incurred), we found three instances where payment was made to the employee for his monthly rent before the expense had actually been incurred or paid by the employee. This occurred because OCA accepted copies of personal checks that had not been negotiated as evidence of rental payment. Receipts from the landlord supported that the rent for the three months in question was subsequently paid.

Recommendations

1. Work with the Comptroller's Division of Payroll, Accounting and Revenue Services to ensure that any necessary corrective action related to the potential taxable status of the employee's travel expense reimbursements is taken.
2. Follow Judicial Travel Rules to ensure relevant apartment lease approvals and rental agreements are in effect.

3. Ensure that reimbursements for rental payments are made after the employee makes payment.

Audit Scope and Methodology

We selected one employee for audit with travel expenditures totaling \$115,797 during the period April 1, 2008 to March 31, 2011. The objectives of our audit were 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 objectives, we analyzed travel expenses incurred by and on behalf of the employee for the audit scope period. Our analysis identified one employee whose expenses ranked among the highest in the State.

As part of our examination, we obtained vouchers, receipts, and credit card statements for all transactions. We then verified that documentation supported the charges and showed the expenses incurred were for legitimate business purposes. We reviewed UCS and OCA internal policies and procedures and determined whether travel expenses selected for examination were approved and complied with this guidance.

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

This 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 OCA officials for their review and comment. OCA's response was considered in preparing this final report and is attached in its entirety to this report. In OCA's response they state that they look forward to working with the Comptroller's Division of Payroll, Accounting and Revenue Services to ensure that the Court System's rules and practices meet and maintain the highest standards.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Chief Administrative Judge 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 if the recommendations were not implemented, the reasons why.

Contributors to This Report

John Buyce, Audit Director
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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



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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

August 21, 2013

Mr. John Buyce, CPA, CIA
Audit Director
Office of the State Comptroller
110 State Street
Albany, New York 12236

Re: Audit Report 2012-S-96

Dear Mr. Buyce:

We have received and reviewed the Comptroller's Audit Report (Draft) on "Selected Employee Travel Expenses" in the Office of Court Administration. On behalf of the Chief Administrative Judge, I write to express our appreciation for the efforts made by your office in the course of the audit process. We look forward to working with the Comptroller's Division of Payroll, Accounting and Revenue Services in the future to ensure that the Court System's rules and practices meet and maintain the highest standards in this important area.

Thank you for your courtesies.

Very truly yours,

A handwritten signature in black ink, appearing to read "John W. McConnell".

John W. McConnell

cc: Hon. A. Gail Prudenti
Hon. Susanna Molina Rojas
Maureen McAlary
George Danyluk, CIA