



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

Division of State Government Accountability

Selected Employee Travel Expenses

Department of Labor



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.

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. The Department of Labor (Department) spent \$6.7 million on travel expenses from April 1, 2008 through March 31, 2011. Of that amount, \$6.3 million was for reimbursements to employees for travel expenses and direct payments to vendors. The other \$400,000 related to charges on State-issued travel cards. 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, as well as on other outliers. As a result of this analysis, we examined the travel costs of one Albany-based Department employee whose long-term assignment to a New York City work location resulted in travel costs exceeding \$100,000. In total, we examined \$156,124 in travel costs associated with this employee's assignment.

Key Findings

- There was a lack of contemporaneous documentation to establish whether the official station of the selected employee was in the best interest of the State.
- The Department may also have incorrectly failed to report taxable travel expenses to Federal and State taxing authorities for the two calendar years 2010 and 2011. We have referred this matter to the Comptroller's Division of Payroll, Accounting and Revenue Services to work with the Department to take any corrective action needed.

Key Recommendations

- Ensure that each employee's official station is established in compliance with State travel rules and is in the best interest of the State.
- Ensure that each employee's tax home is properly determined in compliance with law and regulation. Where appropriate, adjust withholdings and revise or amend prior year tax information reported to the employee and third parties, such as the Internal Revenue Service.

Other Related Audits/Reports of Interest

[SUNY College at Cobleskill: Selected Employee Travel Expenses \(2012-S-143\)](#)

[SUNY College at Oneonta: Selected Employee Travel Expenses \(2012-S-145\)](#)

State of New York
Office of State Comptroller

Division of State Government Accountability

June 4, 2013

Peter M. Rivera
Commissioner
Department of Labor
W.A. Harriman Campus, Building 12
Albany, NY 12240

Dear Commissioner Rivera:

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 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 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 Department's mission is to protect workers, assist the unemployed and connect job seekers to jobs. The Department spent \$6.7 million on travel expenses from April 1, 2008 through March 31, 2011. Of that amount, \$6.3 million (94 percent) was for reimbursements to employees for travel expenses and direct payments to vendors. The remaining \$400,000 related to charges on State-issued travel cards.

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.

This audit at 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, as well as on other outliers. As a result of this analysis, we examined the travel costs of one Albany-based Department employee whose long-term assignment to a New York City work location resulted in travel costs exceeding \$100,000. We expanded our review to include all of calendar years 2008 and 2011. In total, we examined \$156,124 in travel costs associated with this employee's long-term assignment.

Audit Findings and Recommendations

The travel expenses for the one Department employee selected for audit was not supported with contemporaneous documentation establishing that the employee's official station was in the best interest of the State. In addition, the Department may have incorrectly failed to report as much as \$128,000 in travel expenses to taxing authorities.

Official Station Was Incorrect

An employee's official station is a term for his or her usual work location. It is designated by the agency to determine when an employee is in travel status and must be established in the best interest of the State. Employees are in travel status, and therefore eligible for payment or reimbursement of travel expenses, when they are more than 35 miles from both their official station and their home. The Department employee whose expenses we reviewed had an official station in Albany.

In 2008, the employee was assigned to oversee a \$25 million building renovation project for property the Department owned in Brooklyn. The project also involved temporary relocation of employees to other leased space and had an expected duration of 26 months according to internal correspondence from March 2008, which the Department provided. Department officials told us that, prior to this assignment, the employee had been responsible for overseeing the physical operation of the Department's offices in New York City and Long Island, and had usually traveled to those locations two days per week. As a result of this additional assignment, officials said they anticipated the employee would usually need to be in the New York City area three days per week and on certain weekends, especially when staff moves were occurring.

Officials explained that they considered this an unusual situation and that, due to the employee's prior experience and expertise managing the Department's New York City properties, they felt he was the person best suited for the job. They added that it was in the best interest of the State for Albany to remain the official station for the employee. Nevertheless, at the time of our audit the Department did not provide contemporaneous documentation fully analyzing and supporting that this decision was in the best interest of the State.

(In response to our audit, Department officials provided a thorough explanation of why it was in the best interest of the State for the official station of the employee to remain in Albany).

Auditor's Comments: We acknowledge the Department's draft audit report response supporting why it was in the best interest of the State to maintain the Albany official station for the employee. However, we reiterate that the decision should have been supported with contemporaneous documentation.

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 determined by the agency and serves to determine whether an employee is in travel status and eligible for payment or reimbursement of related travel expenses. In contrast, tax home is used by the Internal Revenue Service (IRS) to describe the general area where a taxpayer's main place of work is located, regardless of where he or she resides. Employer payments 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. However, 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.

As previously discussed, at the time the employee was assigned to this project in March 2008, the Department anticipated his work location would primarily be in the New York City area and his assignment there would exceed one year. Regardless of whether the Department changed this employee's official station, these circumstances suggest that the assignment triggered a change in the employee's tax home from Albany to New York City, which should have resulted in a corresponding change to report related travel expense reimbursements as taxable income. Department officials told us they were unaware of these possible tax implications and, as a result, did not report any of the employee's expense payments as taxable income.

We determined that a significant portion of the 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. In addition, because the Department provided a fleet vehicle for some of the employee's transportation related to the New York City work, the expenses associated with that vehicle, which we did not audit, may represent additional taxable amounts. Our examination shows that the Department paid travel expenses totaling about \$128,000 to or on behalf of this employee during the last three calendar years for which tax reports have already been filed (2009, 2010 and 2011). Since the 2010 and 2011 tax years are still open for collection and amendment, we have referred this matter to the Comptroller's Division of Payroll, Accounting and Revenue Services (which is responsible for wage reporting) to determine the implications of the work arrangement and to work with the Department to take any corrective action needed.

Recommendations

1. Ensure that each employee's official station is established in compliance with State travel rules and is in the best interest of the State.
2. Ensure that each employee's tax home is properly determined in compliance with law and regulation. Where appropriate, adjust withholdings and revise or amend prior year tax information reported to the employee and third parties, such as the Internal Revenue Service.

Audit Scope and Methodology

We audited selected travel expenses for one Department employee for the period April 1, 2008 to March 31, 2011. We also reviewed and considered the possible tax implications of the employee's work assignment for the period January 2008 through December 2011. We considered additional information we received through November 15, 2012. 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. Our analysis identified one Department employee whose expenses ranked among the highest in the State. We examined this employee's travel expenses, including reimbursements and credit card charges.

As part of our examination, we obtained travel vouchers, receipts, and credit card statements for all selected transactions. We then verified that documentation supported the charges and showed the expenses incurred were for legitimate business purposes. We reviewed the Department's internal policies and procedures and determined that the travel expenses selected for examination were approved and complied with this guidance, as well as with OSC procedures. Finally, we matched timesheet and travel records to ensure the traveler was working on days for which he claimed travel expenses, and reviewed E-ZPass records, where applicable, to match against travel vouchers.

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

We provided a draft copy of this report to Department of Labor officials for their review and formal comment. We considered their comments in preparing this report. In their response, Department officials did not address the issue of the employee's tax home. However, they are currently working with legal staff representing the Comptroller's Division of Payroll, Accounting and Revenue Services to determine the extent that the employee's wage and tax reports (W-2s) need to be amended and reissued. In addition, officials put forth a comprehensive written statement of the reasons why it was in the best interest of the State to assign this employee to the project without changing his official station. A copy of the Department's response is included in its entirety at 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 the Department of Labor 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.

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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



New York State Department of Labor

Andrew M. Cuomo, Governor

Peter M. Rivera, Commissioner

March 22, 2013

John Buyce, Audit Director
Office of the State Comptroller
Division of State Government Accountability
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Albany, New York 12236-0001

Dear Mr. Buyce:

This is in response to your letter dated January 4, 2013, regarding Draft Report 2012-S-75 containing OSC's audit entitled Selected Employee Travel Expenses.

The draft audit report that you have presented us with contains two issues: the designation of our employee's official station and the employee's "Tax Home."¹ This response deals only with the first issue.

The draft report includes a finding that states "[t]he travel expenses for the one Department employee selected for audit did not adhere to State travel rules and regulations because the official station was not established in the best interest of the State." The Department of Labor (Department) agrees that it is the agency's duty to designate the official station, and that the "best interests of the State" provides the applicable standard, 2 NYCRR sections 8.0(a)(4 and 8.2(a)(1), but strongly disagrees with OSC's conclusion that, in this case, the Department failed to designate the official station in the best interests of the state.

*
Comment
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OSC has not expressly defined the term "best interests of the state" in its regulations or authorized guidelines, but its definition of the term "official station" makes it clear that the underlying concern is that designations be based on interests of the state, not the employee, with an eye towards controlling, rather than maximizing, costs "(1) The official station of every employee shall be designated by the head of the agency. Such designation shall be in the best interests of the state and not for the convenience of an employee or to maximize travel expense reimbursement." 2 NYCRR Section 8.2(a)(1) (Official station defined). As shown below, the Department's designation of the official station in this case was not for the convenience of an employee, or to maximize travel reimbursement; it was in the best interests of the State in managing the costs and quality of a federally funded reconstruction project.

OSC has also supplemented its regulatory definition of "official station" to clarify that "An employee's official station is a term for his or her usual work location." (OSC Travel Manual (9/1/2008) at page 2.) However, the term "usual" is not defined. Over a short period of time, a "usual" work location for an employee can vary dramatically.

¹ The question of where the employee in question's Tax Home was located is being dealt with by John Dalton in your Counsel's Office. Accordingly, we do not address it here.

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* See State Comptroller's Comments, page 18.

Neither the regulations nor the Travel Manual require that agencies revisit official station designations during the course of an assignment. Rather, the regulations speak in terms of a designation made by the agency that is then subject to review by OSC (2 NYCRR Section 8.2(a)(1)) and the Travel Manual devotes an entire section to the subject of extended travel and frequent trips to a single location with no mention of an obligation on the part of the agency to revisit, reassess or review the designation of official station during the course of such travel or trips: “When an employee is in travel status over an extended period of time or makes frequent trips to a single location, lodging may be obtained at a non-traditional hotel or motel such as an apartment...” (OSC Travel Manual at page 7).

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Comment
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If OSC seeks to impose a new obligation on agencies to reassess official station designations during the course of an extended assignment that requires employees to work at multiple locations, and to cite any failure to do so as a failure to adhere to travel rules and regulations, it should propose a standard and provide agencies and the public with prior notice and an opportunity to comment on that standard. The standard implicitly embraced by OSC in its audit in this case assumes that the Department must continually reassess designations based on calendar year periods that stand on their own. As stated above, there is no written requirement to reassess designations during the course of an assignment. The use of calendar years is at odds with the methodology used by the State in other investigations. (See the NYS Office of Inspector General’s Final Report, dated July 21, 2008, concerning the State Liquor Authority’s Executive Director of Enforcement.)² The Department does not accept the audit assumption that each reassessment period must stand on its own because that suggests that official stations should flip flop back and forth with each new period. This would make managing the workforce impossible in unusual situations like the instant one.

Contrary to these guidelines, in section XIII.6 of your Guide to Financial Operations, OSC indicates that the “employee’s official stations should be consistent with the employee’s tax home.” Viewed in context, that quote appears to state a general observation for staff assigned to implement the State Financial System, rather than a directive to agency heads in making their designations of official stations. While in most cases we would agree, the tests for these two concepts are completely different, and so will not always provide the same result. Accordingly, we shall focus on the employee’s Official Station, and only mention tax home when absolutely necessary.

Throughout his 20 year career with our Agency the employee in question had multiple responsibilities that were performed at his official station in Albany, including:

1. The receipt of work requests from Department offices all across the State: These requests were for such tasks as delivering furnishings and equipment to offices, pulling surplus equipment from such offices, re-arranging furniture or equipment within offices, picking up records to be delivered to archives, and picking up records destined for confidential destruction.

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Comment
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² Available online at [http://www.ig.ny.gov/pdfs/Worker's%20Jamesville-to-Albany%20Commute%20Costs%20State%20Nearly%20\\$30,000.pdf](http://www.ig.ny.gov/pdfs/Worker's%20Jamesville-to-Albany%20Commute%20Costs%20State%20Nearly%20$30,000.pdf)

2. Supervising a crew of laborers, whose official stations were all located in Albany: The employee would set up and direct the schedules of a crew of laborers that he supervised in response to the above mentioned work requests. Given that the Department's main office and nearly half of the Department's staff work in the Albany area, the majority of these work requests pertain to offices located in the Capital Region.
3. The employee in question was also responsible for coordinating the physical relocation of Department offices all across the State, and the labor that his staff would devote to such office relocation projects. Thus, he would routinely meet with the Department's other Albany based Property Managers (each responsible for different regions) to plan and implement the work associated with projects that originated in all regions of the State.
4. He assisted other Albany based property management staff in planning office layouts and/or renovation projects that were to occur in their regions of the State.
5. He attended weekly project status meetings with his Albany based supervisors.

In addition to the above Albany based functions, a small portion of the targeted employee's time was devoted to traveling to our offices in the New York City and Long Island regions to perform on site property management work at each of our six locations in New York City and nine locations on Long Island. This downstate assignment (NYC and Long Island) was gradually added to this individual's overall responsibilities as we phased out a downstate property management office. The elimination of that office (several years before this project began) allowed us to provide the same service with existing staff (mainly the subject individual) while achieving personnel cost savings by eliminating two positions (a grade 22 and a grade 6) through attrition and save approximately \$150,000 annually in personnel costs.

The employee in question was promoted on August 8, 1996 to the position from which he eventually retired. In reviewing the law, the regulations, and all of the OSC guidelines relative to the assignment of an employee's official station, we find nothing that requires the reassessment of that assignment absent employee promotion or employee reassignment. In this case there was no change in civil service titles, and the employee was not subject to a permanent reassignment of duties. This employee had been assigned the responsibility for managing the Department's downstate property for a number of years before this project came to be. NYC was where this renovation project was. It was, therefore, natural that this employee would manage this project.

In addition to the project falling within the geographic boundary that was part of this individual's responsibilities, the employee possessed the skill sets we required for managing this \$20 million dollar, federally funded, renovation project, which was one of the largest capital improvement projects the Department has ever taken on. Before this individual began his employment with DOL, he managed a number of commercial office spaces in the private sector, including the complete build out of office and commercial space as well as the day to day management of numerous properties. He started out at DOL working on construction projects around the State because of his extensive background, and because of his ability to get the jobs done. His early track record at DOL proved that he was the right person to take over the New York City and Long Island locations, where demands and regulations are even more stringent. He was also already very familiar with the operational requirements of our program offices that would

eventually occupy the renovated space. Consequently, he was well positioned to design the space to be functionally sound, and could do so in a more efficient and timely manner than someone that did not possess such knowledge. Further, he had the foresight and genuine interest in incorporating energy efficiencies into the design, and did extensive study on how the building could achieve these savings.

The Department is not in the habit of periodically re-assigning employee's official stations absent some significant change, generally a change in Civil Service titles. While IRS law provides standards for determining whether an employee's assignment to a remote work location may trigger a change in the employee's Tax Home, and those standards depend on whether the assignment is to a single location, or multiple locations, OSC guidelines provide no direction vis-à-vis when an assignment to multiple work locations should trigger a change in the official station, and certainly never mentions any time frames that a Department need keep in mind. Rather, the standard remains "best interests" of the State. Not only was the targeted employee the most qualified to see this project through, he saved us money and delayed his retirement because the hired outside contractors on the project were not meeting their schedules. This employee's work was not only in the State's best interests, the employee went above and beyond his responsibilities to protect our interests.

When the renovation project in Brooklyn began, we did not remove any of the responsibilities listed above from the subject individual. He was still required to perform work in the Albany area, and the renovation project was envisioned as simply one additional responsibility. It was not the only project the employee was working on by far. Further, at that point in time, we could not have envisioned a scenario where the employee's downstate travel would increase enough to make the NYC area this employee's primary work location.

Consequently, when the employee took on the added responsibility of the Schermerhorn renovation, it did not give rise to any thought of reassessing the employee's official station. Historically, the employee's official station was his "usual" work location in Albany, where he lived with his family in a residence he never changed, and there was no expectation that this assignment would change that. As detailed above, the Albany location also was in the best interest of the State and Department from a cost, supervisory, project management, and business process standpoint. Accordingly, this one additional project (the Schermerhorn renovation project) was not so substantial as to require a change in the employee's official station designation.

From a time well before the onset of this project, on the first and last days of this employee's trips out-of-town he would routinely report to the main office in Albany (early in the morning on departure days and in the afternoon on return days) to handle work assignments. This did not change during the course of the Schermerhorn project. While he was in route to and from the downstate region, he was often on the phone handling other non-New York City responsibilities, directing his Albany based subordinate staff, discussing work requests with various office managers across the state, or other property projects with other Department property management staff.

While he was in NYC, he also would make day trips out to our Long Island locations to handle property management responsibilities in that area. As the project progressed, these side trips

waned, but the employee almost always reported to Building 12 in Albany at the start and end of each trip to handle other non-project related responsibilities. He also continued to conduct business on his phone on non-project related initiatives while he was traveling between different Department properties. Consequently, we always considered his time in route to and from NYC as time spent working in Albany.

Nonetheless, your office calculated both the individual's departure day and his return day as full days worked in New York City. We find this interpretation of the facts to be unreasonable, as it does not acknowledge the time spent working in-route or working in Albany on those two travel days. We contend your calculations for NYC time would drop significantly when those factors are considered.

If we utilize the methodology suggested by OSC Associate Counsel John Dalton, i.e. treating the travel days as nullities, the work performed by our employee never crosses over to where it constitutes a majority of his work until the final year of the project and the employee's fifteenth year in this same job title.

If on the other hand we utilize the methodology suggested by our Counsel, i.e. treating the employee as working in the city where he sleeps, we get different numbers from the Dalton paradigm, but we still only cross the 50% threshold during the final year (2011) of the project. On his departure day we can concur that his day should be treated as a NYC work day, ignoring that a portion of his day was spent in Albany or in route, as the travel to NYC was necessary to conduct his NYC based work. However, using the same reasoning in a consistent manner, we argue that the return day, would have to be considered an Albany work day, as it included work in Albany and the travel to Albany was necessary in order to conduct his Albany based assignments on that day and any succeeding day, until his next departure for NYC.

We believe that either of these two methodologies of accounting for work performed on travel days provides a better, more accurate, and more consistent approach to determining that individual's duty station on his travel days than the methodologies employed in the several different audit spreadsheets that your office has produced. Further, and perhaps more importantly, these methodologies are consistent with our own observations that at least through the end of 2010, our employee was still primarily located and working in Albany.

In addition to the practical, financial, and professional value added benefits the State reaped because of the targeted employee's dedication, there were factors beyond any of our control that led to the employee's extensive time spent on this project. As CY 2011 began, a notable issue arose at the Brooklyn site involving the Metropolitan Transit Authority (MTA). Three years into the project, the MTA (which operates a subway tunnel directly beneath the building) determined that our building was too heavy, based on current codes, and that we had to install additional steel on our building's frame in order to support the overall load and in so doing put less stress on the subway tunnel beneath our building. This resulted in the Department having to engage in an extensive redesign of the building's support skeleton. Installing the additional steel reinforcement demanded by the MTA required a great deal of new structural design work and a significant and costly change order. The change order required the stripping of the inside and outside walls on the exterior of the building, the installation of the aforementioned steel, and the installation of new interior and exterior walls.

This issue, basically a new, unforeseen project, directly led to substantially increased travel for our employee in 2011. The Department did not envision that this increase in time spent in NYC would last a substantial period of time. At the point in time when the MTA issue arose, we anticipated that the project would be substantially complete by July 2011. However, as the year progressed the additional work associated with the MTA issue dragged out and by June 2011, the overall project began to fall behind schedule. It was at this point that the estimated substantial completion date was pushed back, first to September 2011, then subsequently the target date was again pushed back, this time to November 2011.

The unanticipated and unforeseen additional work did require the individual to spend more time in NYC than originally envisioned, but, as stated previously, we never concluded, or even considered the possibility, that this arrangement was not in the best interests of the State. Given that we had no other State Employee who could handle this work, and given that we would consider it unconscionable to try to transfer this employee to NYC even if Civil Service rules would allow it—which Civil Service rules do not (Civil Service rules would require the person with lowest seniority to move), the only option left for us would have been to stop the project and do a search for a contractor, or hire an NYC based employee, to take over responsibility for the project from our employee. Either option would have had to have shut the project down for several months while we hired/contracted out the work and then trained this individual to do the work. This was unacceptable.

The Department had moved its staff to a temporary leased facility while the Schermerhorn Street building was rehabbed. The Department had a date certain to vacate the temporary location of January 31, 2012. If the Schermerhorn location was not available in time to allow staff to move out of the temporary site, the staff would have had to have been moved to yet another temporary location at great expense to the State (we were paying \$45,000 per month for the temporary space under extremely favorable terms that we'd be unlikely to duplicate if we had to find another temporary space). Further, the rent plus the cost of an additional move would have dwarfed the extra costs of continuing to use our Albany based employee to complete this project.

It should be noted here that the employee in question was looking to retire during this period of time, and it was only through our diligent efforts to convince him to stay that we avoided the above scenario.

In late 2011, the contractor and OGS were pushing the Department to allow the substantial completion date of the project to be pushed back again, well into 2012. This type of delay was also unacceptable to the Department, due to the aforementioned temporary lease situation. By having our employee oversee this project, he was able to push all parties to complete the remaining work in November and December 2011 so that our staff could move back into Schermerhorn and vacate the temporary space on time.

Accordingly, by staying on, the employee in question was highly instrumental in assuring substantial completion by late December 2011, and saved the Department hundreds of thousands of dollars in additional spending.

We are absolutely certain that we would not have met the deadline without this employee's efforts.

He retired after the renovation achieved substantial completion and the building was reoccupied; however, there were still numerous “punch list” items left for the contractor to complete. As we had no other staff member with this employee’s expertise, it was left to staff members from the OGS Design and Construction unit to close out this project with the contractor.

It was envisioned that the contractor could complete the remaining punch list work in two months. However, because OGS did not have staff with the expertise to close out these items, this process has been slower than it would have been with our employee in place. It has now been over 14 months since the Schermerhorn building was re-occupied and we still have more than 80 items on the punch list. Further, these punch list items involve relatively straight-forward tasks, unlike many of the difficult issues our employee encountered on this project.

It can reasonably be assumed that had our employee not been managing this project, and ensured that re-occupancy occurred on time, we would still be renting leased space for our staff.

At the cost we were paying, that total alone would now be at \$650,000 and counting. However, due to unique circumstances, we were paying rent at our former temporary location under terms that could only be considered below-market and could not be duplicated – raising our rent costs significantly. Further, due to the fact that we had no choice but to vacate the space we were in by January 31, 2012, we would have incurred significant additional costs to locate, build out, and move our staff to a new temporary location. Accordingly, we feel that this, more than anything, proves that our decision to have our employee complete this project in 2011, when his time on the job exceeded 50%, was absolutely necessary and correct in order to meet the best interests of the state.

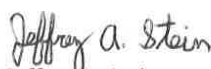
In summary:

1. The Department’s designation of Albany as this employee’s “official station” in August of 1996 was correct;
2. It is clear that over the 1996-2012 time frame, the best interests of the State would not have been served by altering that designation;
3. Even if we look at best interests of the State over the 2008-2012 project time frame, it is clear that the employee’s official station was very much in the best interests of the State;
4. The employee took on the federally funded renovation assignment in good faith, at his employer’s direction;
5. This individual did not spend more than half of his time working in NYC during CY2009 and CY2010;
6. The additional MTA work that arose in CY2011 was essentially an unforeseen new project;
7. When this “new project” began it was not envisioned to last more than a few months;

8. As time went on, the project began to fall behind schedule due to factors beyond the Department's control. If the project was to be brought in as quickly as possible, it needed the employee in question to finish the project;
9. The individual in question desired to retire and the Department had to use its considerable influence to convince him to stay and complete the project;
10. Clearly, it was not in the best interests of the State to have allowed this employee to retire, as the loss of his leadership on the project would have resulted in hundreds of thousands of dollars in additional costs to the State;
11. Given that by the time we might have discovered that an issue existed with this individual's Tax Home it would have been towards the very end of the project, rather than the beginning or middle, and changing this individual's official station would have resulted in his immediate retirement, which would not have served the best interests of the state in completing this project and relocating workers;
12. We continue to assert that keeping this individual's official station in Albany was in, and remained in, the best interests of the State right up until the end of his employment with the Department.

Accordingly, based on the information presented above, the Department believes that OSC should reconsider their draft findings and conclude that the Department did comply with the rules concerning the designation of this employee's official station and that the employee's official station properly continued to be Albany until his retirement.

Sincerely,


Jeffrey A. Stein
Principal Auditor

cc: Commissioner Rivera
Mario Musolino
Pico Ben-Amotz
Roger Bailie

State Comptroller's Comments

1. We have revised our audit report to conclude that contemporaneous documentation was not provided to establish that a determination of official station that was in the best interest of the State was not made at the time of the assignment.
2. Our report does not state that the Department must revisit an official station determination.
3. We acknowledge that the comments and analysis provided by the Department in response to the draft audit report provide for a reasonable explanation that the designated official station of the employee was in the best interest of the State.