

Department of Taxation and Finance

Collection of Petroleum Business Tax and Motor Fuel Excise Tax

Report 2018-S-28 | May 2020

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the Department of Taxation and Finance (Department) has systems and practices in place that allow it to appropriately collect Petroleum Business Tax and Motor Fuel Excise Tax, as required by relevant law and regulation. Our audit covered the period January 1, 2016 to January 31, 2019.

About the Program

Petroleum Business Tax (PBT) is paid by petroleum businesses for certain types of fuel and is imposed at a cents-per-gallon rate at different points in the distribution chain (e.g., at importation into the State or on the first sale or use in the State), depending on the product involved. Fuels subject to PBT include motor fuel and highway diesel motor fuel, among others. Effective January 1, 2020, the PBT rate, which is adjusted annually based on the change in the Producer Price Index for refined petroleum products, is 17.4 cents per gallon, down from 17.7 cents in 2019. Certain sales, such as those to federal, state, and local governments, are exempt from the tax.

New York also has a Motor Fuel Excise Tax (MFT) on gasoline and similar motor fuels that is imposed when motor fuel is first produced or imported or when diesel fuel is first sold or used in the State. Effective January 1, 2020, the MFT rate is 8.0 cents per gallon. An additional .05 cent-per-gallon petroleum testing fee is imposed on gasoline and similar motor fuels. For the two State Fiscal Years ended March 31, 2019 and 2018, PBT collections totaled \$1.17 billion and \$1.09 billion, respectively; MFT collections for the same two years totaled \$528.1 million and \$512.5 million, respectively.

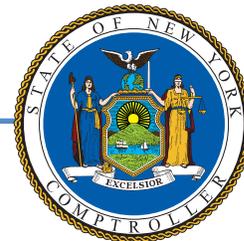
A portion of revenues from PBT and MFT is used to support investment in the State's mass transportation systems, including highways and bridges. The Department jointly administers the two taxes, which are reported on the same series of tax forms. Diesel and motor fuel distributors must be registered with the Department to legally conduct petroleum transactions in the State. They may also be required to provide collateral security in an amount provided for in statute or determined by the Department. Distributors whose combined PBT and MFT liability exceeds \$5 million for the Department's reference period must enroll in its PrompTax electronic filing and payment program and prepay a portion of each month's tax liability. As of June 2018, there were 1,658 businesses registered with the Department as distributors, retailers, and in other capacities.

Key Findings

- We found that the Department does not review distributors' existing collateral security amounts to determine if they continue to be appropriate based on Department criteria.
- We identified distributors that – despite Department notification – were not enrolled in PrompTax and were not prepaying their PBT and/or MFT tax liability as required.

Key Recommendations

- Using a risk-based approach, revisit collateral security amounts to determine if they are appropriate, and adjust them as warranted.
- Assess whether distributors that are required to enroll in PrompTax are complying with applicable requirements, and take appropriate follow-up action as needed.



Office of the New York State Comptroller Division of State Government Accountability

May 20, 2020

Michael Schmidt
Commissioner
Department of Taxation and Finance
William A. Harriman State Campus, Bldg. 9
Albany, NY 12227

Dear Mr. Schmidt:

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 doing so, 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 Department of Taxation and Finance entitled *Collection of Petroleum Business Tax and Motor Fuel Excise Tax*. 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,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Department	Department of Taxation and Finance	<i>Auditee</i>
MFT	Motor Fuel Excise Tax	<i>Key Term</i>
PBT	Petroleum Business Tax	<i>Key Term</i>
SFY	State Fiscal Year	<i>Key Term</i>

Background

The mission of the Department of Taxation and Finance (Department) is to efficiently collect tax revenues in support of State services and programs while acting with integrity and fairness in administering State tax laws. Among the five general business taxes collected by the Department is the Petroleum Business Tax (PBT), which was enacted in 1983 under State Tax Law Article 13-A. PBT, which includes a tax and a supplemental tax, is paid by registered distributors of applicable types of fuel at a rate that is adjusted annually. The PBT rate is 17.4 cents per gallon effective January 1, 2020, down from 17.7 cents in 2019. Fuels subject to PBT include motor fuel, aviation gasoline, various non-highway diesel motor fuels, and residual petroleum products.

PBT is imposed at different points in the distribution chain, depending on the type of product involved. For example, for motor fuel that will be used or sold within the State, PBT is imposed upon the fuel's importation into the State. For highway diesel motor fuel, it's imposed on the first sale or use of the fuel in the State, whereas for non-highway diesel motor fuel and residual oil, it's imposed on final sale or use of the product in New York. Transactions exempt from PBT include, for example, sales to federal, state, and local governments and sales of certain types of residential heating fuel.

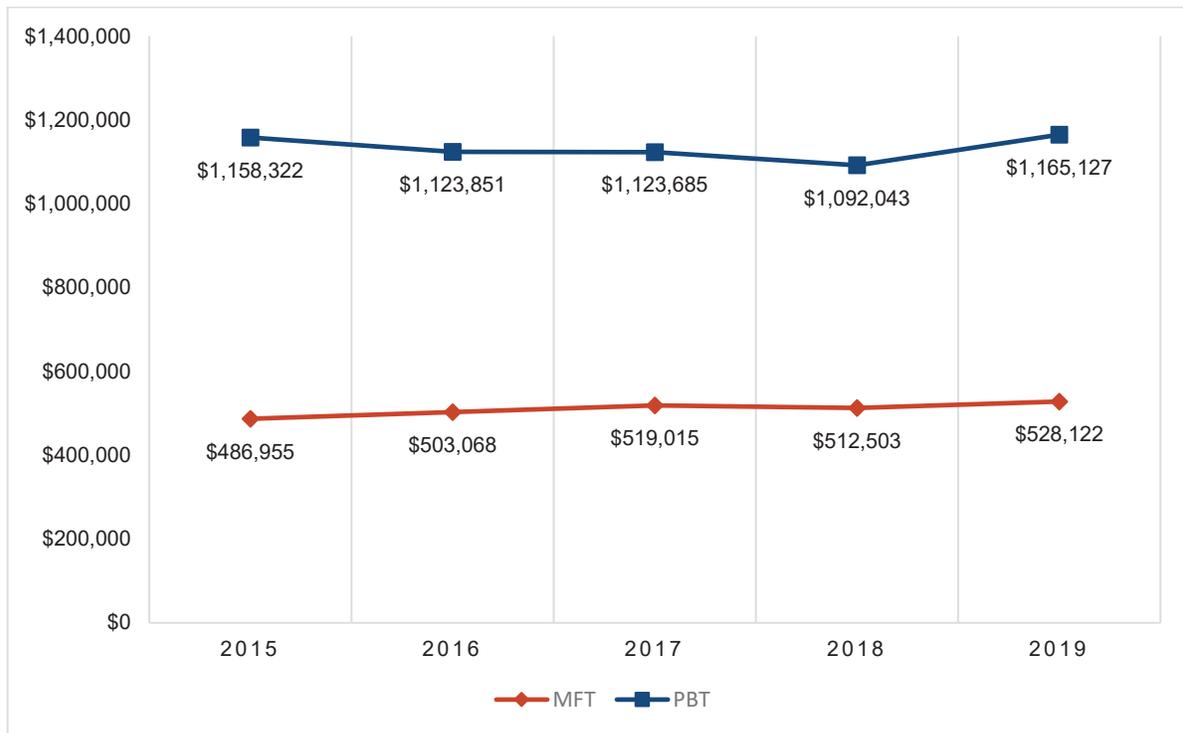
New York also has an excise tax on gasoline and similar motor fuels (Motor Fuel Excise Tax or MFT), established under State Tax Law Article 12-A, that is imposed when motor fuel is first produced or imported or when diesel fuel is first sold or used in the State. MFT is also imposed at a cents-per-gallon rate, currently 8.0 cents per gallon; an additional .05 cent-per-gallon petroleum testing fee is imposed on gasoline and similar motor fuels. The MFT was enacted in 1929 as a use tax on gasoline to fund the cost of building highways by those using them. Besides gasoline, fuels subject to MFT include compressed natural gas, E85, highway diesel motor fuel, and certain other fuels. If a distributor pays PBT and/or MFT and then later sells the fuel to an exempt purchaser (whose purchase price includes the tax), the purchaser may apply to the Department for a refund of tax paid.

The Department administers PBT and MFT, which are also reported by taxpayers on the same series of tax forms. As of June 2018, there were 1,658 businesses registered with the Department as distributors, retailers, importing transporters, terminal operators, residual petroleum products businesses, or aviation fuel businesses, with the majority of these types collecting PBT and/or MFT.

Both the PBT and MFT support transportation investment in New York. About 97 percent of the combined revenues from the two taxes are designated for deposit to two trust funds. The Dedicated Highway and Bridge Trust Fund receives 63 percent, and the Dedicated Mass Transportation Trust Fund receives 34 percent. Of the money received by the Dedicated Mass Transportation Trust Fund, 85 percent is allocated to the New York City Transit Authority and its subsidiaries, and 15 percent is allocated to the Long Island and Metro North Railroads. The remaining 3 percent, which also flows to the Dedicated Mass Transportation Trust Fund, is distributed, subject to appropriation, to mass transit operating agencies that do not receive funds from the Metropolitan Transportation Authority Dedicated Tax Fund. For the two State

Fiscal Years (SFY) ended March 31, 2019 and 2018, PBT collections totaled \$1.17 billion and \$1.09 billion, respectively; MFT collections for the same two years totaled \$528.1 million and \$512.5 million, respectively. The chart below depicts Department collections for the two tax types for the previous five SFYs.

PBT and MFT Collections by SFY (in thousands)



Audit Findings and Recommendations

The Department generally has systems and practices in place that allow it to appropriately collect PBT and MFT, as required by relevant law and regulation. However, we also identified two areas for improvement: the Department could benefit from reviewing distributors' collateral security amounts for appropriateness, and from enhanced monitoring of taxpayer compliance with its PrompTax electronic filing and payment program requirements.

Distributor Registration and Collateral Security

Distributor Registration

Diesel and motor fuel distributors are required to register with the Department to legally sell, transfer, use, import, produce, or dispose of motor fuel, diesel fuel, or residual petroleum products in the State. Distributors registering for the first time, as well as registered distributors seeking to change their registration type or transfer ownership of one or more registrations, must submit an application to the Department. Applicants must report the type(s) of petroleum business activities they're engaged in and the prior business activities of owners and other key parties. Most applicants must also submit financial statements. The Department posts a monthly list of registered petroleum businesses, in addition to recently canceled or recently surrendered licenses, on its website.

The Department has established policies and procedures that include verifying applications' completeness and applicants' compliance status. For example, Department personnel check their registration database for existing licenses, owners/officers' registrations, and businesses they are affiliated with, along with the applicants' liabilities. We reviewed the applications of 25 registered distributors and found the applications were complete and accurately reflected applicants' compliance status.

Using Internet research, we also compiled a list of airports located in the State and selected 52 smaller airports (i.e., those with .25 percent or less of total U.S. passenger boardings) to determine if they were appropriately registered and filing required tax returns, where applicable. Of the 52 airports, 7 were not required to register because they either were not selling fuel or were selling fuel on which the tax had already been paid. Of the 45 airports subject to registration requirements, we determined that 44 were appropriately registered. We were unable to determine the status of the remaining airport, which operates seasonally and was closed at the time, but Department officials said they would continue to follow up.

Collateral Security

Registered distributors of certain fuels may be required to post collateral security. We found that the Department does not review distributors' existing collateral security amounts to determine if they continue to be appropriate based on Department criteria.

There are two security scenarios: security required by relevant law and regulation

(statutory security) and discretionary security. For example, a distributor applying for a motor fuel registration is generally required by statute and regulation to file a bond or provide other acceptable collateral security with a value of at least \$50,000, whereas an importing/exporting transporter is subject to a statutory security amount of \$2,000. In contrast, the Department has flexibility in establishing discretionary security requirements for some types of fuel businesses, such as distributors of diesel motor fuel. In determining whether to require discretionary security – and if so, the amount – Department personnel consider factors such as the petroleum business activity operated, fuel type distributed, six-month tax liability expected (based on estimated gallons to be sold per month), payment and filing history, and the ratio of current assets to current liabilities, as derived from information on the distributor’s unqualified audited financial statements. Depending on these factors, the Department may require discretionary security to cover the estimated six-month combined PBT and MFT liability.

Collateral security must be at least the amount, if any, specified in regulation. If the discretionary bond amount is higher than the statutory amount, the Department may choose the higher amount or may require an amount that equals the sum of both statutory and discretionary security amounts. The Department may also require that the collateral security be increased at any time to protect revenues.

Of the 25 distributors whose registrations we reviewed, 14 were required to provide either statutory or discretionary collateral security, and 11 were not required to provide statutory collateral security. Six of those 11 distributors were not subject to discretionary security because of the type of fuel they sold (e.g., aviation gasoline), and 5 distributors were subject to discretionary security. We reviewed the Department’s support for these 5 cases and found the security amount to be appropriate, based on Department procedures. To evaluate the appropriateness of the existing collateral security for the remaining 14 distributors, we compared the security amount for each distributor to its actual tax liability for the period January 1, 2016 to July 31, 2018 and calculated the average six-month liability.

We found the collateral security amounts to be appropriate for 13 of the 14 distributors. The remaining distributor’s existing security of \$102,000 was far less than its actual average six-month tax liability of \$352,000 (for both PBT and MFT) for the period we reviewed (the \$102,000 included a statutory bond amount of \$2,000 plus a discretionary bond of \$100,000 in the absence of the distributor’s audited financial statements). Because the discretionary security amount is often at least the amount of the estimated six-month tax liability, the actual tax liability provides more accurate information to use in this decision making and could warrant increasing the discretionary security amount. In response to our observations, Department officials said that the distributor has been in business for a long time and has had no assessments or late filings. However, they acknowledged that an ongoing audit could result in their considering a change in the security amount. They also said that, due to current staffing levels, they have not been able to regularly reexamine collateral security amounts, but indicated they are developing a process to do so based upon distributors’ actual six-month tax liability.

Filing and Collection

Filing

Distributors of motor fuel, highway and non-highway diesel, residual petroleum products, and aviation fuel are required to submit a monthly tax return by the 20th of the subsequent month and pay applicable tax on reported transactions. Retailers of only non-highway diesel motor fuel and distributors of only kero-jet fuel are required to file quarterly by the 20th of the month following the quarter's end. Separate tax returns are required for consumption-based users, such as those that use fuel for commercial vessels and aircraft fuel. Filing is required even when there is no tax due or when a distributor has no sales or purchases during the filing period. The Department generates a monthly report of delinquent filers, and its procedures require that the Registration Unit notify non-filers or delinquent filers when they don't file a required tax return, and attempt to contact them if needed. After repeated notifications, the procedures culminate in a notice canceling the distributor's registration.

Using tax return data from January 1, 2016 through July 31, 2018 and a sample of 26 active petroleum businesses, we determined whether each business had filed the required monthly or quarterly tax returns during the period. Of the 26 distributors, 3 were quarterly filers (including one that switched from monthly filing), and 23 were monthly filers, for a total of 722 tax returns due to the Department. Of the 722 tax returns, 720 had been filed at the time of our testing. We verified that the remaining two, which represented one tax return each for two distributors, were filed after our testing.

Collection

Audit Efforts and Collection and Deposit of Tax Received

As part of its collection efforts, the Department conducts audits of PBT and MFT distributors according to their internal audit plans. Generally, these audits are done to evaluate whether taxpayers paid the correct amount of tax, and may result in additional tax collected. We reviewed the Department's audit procedures and results of their audit efforts and also accompanied Department personnel to the location of a fuel distributor under audit to observe their audit procedures. We shared our observations separately with Department officials.

We also verified that the Department collected a sample of both taxes reported for a given period. Of the 33,061 tax returns the Department received during the period January 1 through December 31, 2017, which totaled \$3.3 billion in reported PBT and MFT combined, we verified that the Department collected and deposited \$139.9 million, as shown in the following table.

	Promptax/EFT	Paper Check	Total
2017	\$64.0 million	N/A	\$64.0 million
2016	\$64.0 million	\$11.9 million	\$75.9 million
Total	\$128.0 million	\$11.9 million	\$139.9 million

Compliance With Promptax Requirements

We identified distributors that – despite Department notification – were not enrolled in Promptax and were not prepaying their PBT and/or MFT tax liability as required. Distributors whose combined PBT and MFT liability exceeds \$5 million for the Department’s reference period (June 1 through May 31) are required to enroll in the Department’s Promptax electronic filing and payment program and to prepay a portion of each month’s tax liability. The Department notifies distributors when they become subject to the requirement. Distributors then have 40 days to enroll online or – in certain circumstances, such as a significant decrease in tax liability – request a hardship exemption. Under Promptax requirements, distributors must prepay the liability for the first 22 days of the month no later than three business days after the 22nd day of the month. After month-end, they must also file a tax return and pay the tax liability for the remaining days of the month. The Department may assess a \$5,000 penalty for those who are required to enroll but do not, plus \$500 for each additional month the distributor remains unenrolled.

Using the relevant Department Promptax reference period – which in this case was June 1, 2016 through May 31, 2017 – we identified 33 distributors that were required to enroll in Promptax beginning September 1, 2018. Of the 33 distributors, 30 were appropriately enrolled in and paying via Promptax and 3 were not. Of the three, one – whose tax liability for the period we reviewed was greater than \$11 million – was notified by the Department in July 2015 that it was required to begin using Promptax in September 2015. The Department notified the other two distributors in July 2017 and July 2018 of their required participation beginning September 2017 and September 2018, respectively.

Delay in the Department’s collection of these prepayments is a cash flow issue for the State and results in loss of the time value of the related funds for the duration of the delay, which we estimated as approximately \$13,000 (calculated using only the first month of the delay). In addition, lack of Department follow-up and enforcement reflect a need for improved monitoring. At the time of our testing, the Department had not assessed penalties against any of the three distributors, which we estimated as \$45,000. After we brought this matter to the Department’s attention, it contacted the three distributors, who subsequently enrolled in and began submitting payments through Promptax, which we verified.

Recommendations

1. Using a risk-based approach, revisit existing collateral security amounts to determine if they are appropriate, and adjust them as warranted.

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2. Assess whether distributors that are required to enroll in PrompTax are complying with applicable requirements, and take appropriate follow-up action as needed.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the Department of Taxation and Finance has systems and practices in place that allow it to appropriately collect Petroleum Business Tax and Motor Fuel Excise Tax, as required by relevant law and regulation. Our audit covered the period January 1, 2016 through January 31, 2019.

To achieve our audit objective and assess related internal controls, we reviewed relevant laws, rules, and regulations. We also reviewed the Department's policies and procedures that relate to distributor registration and the administration, collection, and audit of PBT and MFT revenues. We held meetings with Department personnel to gain an understanding of their practices related to administering, collecting, and auditing PBT and MFT. To better understand the Department's audit efforts, we accompanied their audit personnel to the location of a fuel distributor whose records they were examining and observed their practices there for several days.

From the Department's list of 42,786 tax returns (including PT-100s, PT-200s, PT-350s, and PT-351s) that it received during the period January 1, 2016 through August 22, 2018 from 1,856 distributors, we judgmentally selected 25 distributors, based on the year of registration, to determine if they were appropriately registered and, where applicable, had provided the appropriate collateral security. To do this, we obtained information from Department officials, who explained and demonstrated the collateral security calculation process and provided their rationale for decisions regarding discretionary collateral security amounts. They also provided information about the role of distributors' assessment and payment histories, as well as audit results, in decisions about collateral security. For each distributor, we reviewed the initial registration application or the most recently submitted application (e.g., such as one submitted for a business name change) for completeness and to assess whether the Department calculated and collected collateral security, where applicable, in accordance with its stated practices. We also reviewed case notes and examined applicants' registrations to determine if they were active, canceled, refused, or withdrawn.

We also selected a judgmental sample of 52 airports, which we identified using Internet research, to determine if distributors selling fuel at these locations were appropriately registered and filing applicable tax returns. Based on Department officials' statements that there were no fuel sales at 4 of the 52 airports, we used the remaining 48 to perform the related test. We also obtained tax return information from the Department data warehouse for the period January 1, 2016 through July 31, 2018 and randomly selected 26 of the 1,658 active registered distributors from the Department's June 2018 Publication 532 (New York State Petroleum Business Tax Registrations and Licenses) to determine if they had filed the required monthly or quarterly tax returns.

We judgmentally selected deposits from five months to determine whether the tax collections deposited reflected the amounts reported on the related tax returns. From the 33,061 relevant fuel tax returns the Department received during the period January 1, 2016 through December 31, 2017, which totaled \$3.3 billion in reported PBT and MFT combined, we selected the highest and lowest reported tax amounts

for each of the two tax types (PBT and MFT) for each of the two years. Because certain months represented both a high amount and a low amount (for example, September 2017 represented the highest reported tax amount for both PBT and MFT), this resulted in a sample of five different months. From each of the five months, we selected one day's deposit that represented the various deposit types (electronic funds transfer, paper check, or PromptTax). The five deposits totaled \$139.9 million and represented payments for 67 taxpayers. We then reviewed the tax return data and, in some cases, the tax returns themselves, to determine whether the information matched.

To determine whether taxpayers required to be enrolled in PromptTax were enrolled, we analyzed tax return data, using the Department's reference period June 1, 2016 through May 31, 2017, to identify taxpayers whose reported total PBT and/or MFT exceeded the enrollment requirement of \$5 million. From the population of 1,658 relevant taxpayers, 33 met the enrollment requirement and we used those as our sample. We then followed up with the Department to determine whether these taxpayers were appropriately enrolled or, if not, the reason why.

We did not design our samples to be projected to the populations from which they arose, nor did we project them to the related populations.

Statutory Requirements

Authority

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.

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 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.

Reporting Requirements

We provided a draft copy of this report to Department officials for their review and formal written response. We considered their response in preparing this report and have included it in its entirety at the end of this report. In their response, Department officials indicated the actions they have taken or that are in progress to address the two recommendations from our draft report.

Within 180 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Taxation and Finance 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.

Agency Comments



Department of Taxation and Finance

DIANE M. RYNSKI
Director of Processing Services
Office of Processing Services

April 21, 2020

Mr. Mark Ren
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236-0001

Re: Report 2018-S-28 – Collection of Petroleum Business Tax and Motor Fuel Excise Tax

Dear Mr. Ren:

The Office of the State Comptroller (OSC) examined the Administration and Collection of Petroleum Business Tax and Motor Fuel Excise Tax by the Department of Taxation and Finance (Department) for the audit period covering January 1, 2016 through January 31, 2019. We are gratified that this audit validated the Department's registration, filing and collection processes for these taxes. This letter responds to the two recommendations made in the draft report for this audit.

Recommendation 1:

Using a risk-based approach, revisit existing collateral security amounts to determine if they are appropriate and adjust them as warranted.

Department Response:

In May 2019, the Department centralized all operations related to business registrations and account updates into the Registration and Account Services Bureau (RASB), within the Office of Processing Services Division (OPS), in order to leverage OPS automated processing expertise to improve the efficiency of all Department registration and licensing/permitting processes. As part of this reorganization, the Petroleum Business Tax (PBT) and Motor Fuel Excise Tax (MFT) registration operations and some key staff were transferred from the Audit Division to RASB.

RASB has been reviewing the entire application process to identify where improvements can be implemented. One aspect of the review is the initial bonding process for all taxes that require bonding, including PBT and MFT. We have been working with our Office of Counsel to review and revise all the instructions and correspondence for the bonding process. This project will include the establishment of routine processes for re-evaluating and adjusting collateral security amounts, as deemed appropriate based on the specific criteria set for each tax program, and the creation of correspondence informing businesses when their bonding requirements change and processes to receive, evaluate and store related documents.

Recommendation 2:

Assess whether distributors that are required to enroll in PromptTax are complying with the applicable requirements and take appropriate follow-up action as needed.

Department Response:

In March 2019, the Department implemented a monthly monitoring process for all the Petroleum Business Tax (PBT) and Motor Fuel Excise Tax (MFT) taxpayers in the PromptTax program to ensure they are properly enrolled and making their required payments. Phone outreach is conducted to taxpayers that are not in compliance; all outreach is documented and continues until each taxpayer becomes compliant. We have also revised procedures to ensure that penalties are assessed against any taxpayers that fail to enroll in the program when required to do so. Four distributors were notified in July 2019 that they are mandated to participate in the PromptTax program; each taxpayer timely enrolled and is complying with payment requirements.

Thank you for the opportunity to comment on the draft report. The Department would like to thank the OSC auditors for their professionalism during the conduct of this audit.

Sincerely,



Diane M. Rynski
Director of Processing Services

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