

Department of Taxation and Finance

Efforts to Collect Delinquent Taxes

Report 2019-S-61 | August 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine if the Department of Taxation and Finance (Department) is making adequate efforts, in accordance with Department policy, to collect unpaid amounts—including taxes, interest, penalties, and fees—from delinquent individual and business taxpayers. The audit covered the period January 1, 2016 through December 31, 2019. We also considered information that was provided by the Department through April 15, 2021.

About the Program

The Department's mission is to efficiently collect tax revenues in support of State services and programs while acting with integrity and fairness in administering State tax laws. When a tax debt has been billed and the taxpayer has exhausted all applicable protest rights, or protest rights have expired, the tax is considered delinquent and the Department may initiate collection actions through its Civil Enforcement Division. Not all debts include a tax amount; some include only penalties and/or interest. There could be just a penalty assessment, and some penalties accrue interest while others do not. Department procedures describe all appropriate collection actions staff must take prior to completing or closing a collection case. Collection actions may include filing a warrant, serving a levy (a legal seizure of property), and performing applicable searches to locate delinquent taxpayers and/or identify potential sources of payment.

In addition to pursuing collection of delinquent taxes, the Department has the authority to waive or abate (reduce or eliminate) some tax liabilities—including interest and penalties—under certain circumstances, such as when a tax liability has been deemed legally uncollectible or not legitimate or when there is reasonable cause to abate.

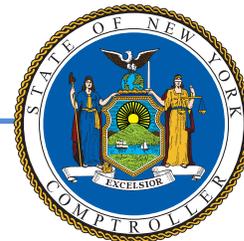
The Department publishes a monthly list of both the top 250 individual and top 250 business tax debtors for whom it filed at least one warrant in the prior 12 months. The March 2021 lists for individuals and businesses totaled almost \$316 million and \$182 million, respectively, for the amount due and owed at the time the warrant was filed.

Key Findings

- For a significant number of the delinquent tax assessments we reviewed, we were unable to determine, based on documentation, that the Department took adequate collection actions prior to completing or closing cases for one of the five collection steps we tested: using applicable search tools to identify taxpayer resources that might be pursued to satisfy the debt.
- The Department generally followed relevant policies—with certain exceptions—in cases where it abated amounts due.

Key Recommendations

- Improve documentation for each relevant assessment so that it affirms which actions are applicable and which actions staff take in their collection activities.
- Take steps to ensure compliance with policies and procedures that address abatement decisions, and, where considered necessary, document the rationale for decisions.



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

August 24, 2021

Amanda Hiller
Acting Commissioner
Department of Taxation and Finance
William A. Harriman State Campus, Bldg. 9
Albany, NY 12227

Dear Ms. Hiller:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides 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 *Efforts to Collect Delinquent Taxes*. 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 |
|-------------|---|-------------------|
| CARTS | Case and Resource Tracking System | <i>Key Term</i> |
| Department | Department of Taxation and Finance | <i>Auditee</i> |
| Division | Department of Taxation and Finance's Civil Enforcement Division | <i>Division</i> |
| DMV | Department of Motor Vehicles | <i>Agency</i> |
| Log | eMPIRE Event Log | <i>Key Term</i> |
| OIC | Offer in Compromise | <i>Key Term</i> |
| Procedures | Procedures for Case Completion Process | <i>Key Term</i> |
| RPA | Responsible Person Assessment | <i>Key Term</i> |
| Statement | Statement of Financial Condition | <i>Key Term</i> |

Background

The Department of Taxation and Finance’s (Department) mission is to efficiently collect tax revenues in support of State services and programs while acting with integrity and fairness in administering State tax laws. When a tax debt has been billed and the taxpayer has exhausted all applicable protest rights, or protest rights have expired, the tax is considered delinquent and the Department may initiate collection actions through its Civil Enforcement Division (Division). Not all debts include a tax amount; some include only penalties and/or interest. There could be just a penalty assessment, and some penalties accrue interest while others do not. Under the law, certain individuals—such as business owners, officers, employees, or partners—are considered “responsible persons” with sufficient current or prior authority over a business’s affairs to potentially be personally responsible for its outstanding sales tax liabilities, including the taxes, accrued interest, and any penalties.

Department procedures describe all appropriate collection actions staff must take prior to completing or closing a case. Collection actions may include filing a warrant, serving a levy, issuing an income execution, and performing applicable searches. Department personnel may also issue a Responsible Person Assessment, or RPA, for individuals identified as having had fiduciary responsibilities, or the authority for making major decisions, for the relevant business.

A warrant is required to enforce collection actions such as a levy (a legal seizure of property), and, once issued, creates a lien against real property the debtor may own in the issued county for 10 years and a lien against the personal property statewide for 20 years. The Department must file the warrant within 6 years from the date of assessment and collect within 20 years from the date of filing a warrant, or the debt becomes legally uncollectible. The Department may issue a levy, which requires a third party that is holding money or other property for the taxpayer to turn over the funds to pay the debt. Certain property is exempt from being levied, including Social Security payments, certain trusts, and pension accounts.

Department staff also use a wage reporting search to identify employment. If the taxpayer is employed, Department staff will issue an income execution, a type of levy in which a portion of the taxpayer’s wages is garnished to satisfy the debt. In some cases, individuals associated with a business, other than the primary taxpayer, may be held accountable for the business’s delinquent taxes.

The Department uses a variety of search tools to locate delinquent taxpayers and/or identify potential sources of payment. For example, a Department of Motor Vehicles (DMV) search may help to locate a taxpayer and determine if they own a motor vehicle or boat registered in New York that could be seized, sold at auction, and applied to the debt. Real property searches are required, in certain circumstances, when a taxpayer cannot be contacted or the taxpayer indicates that they own real property. Department personnel search other databases, when applicable, to identify professional licenses, property sales, property leases, contractual agreements, or lines of credit that may assist them in locating the taxpayer and/or their assets.

In addition to pursuing collection of delinquent taxes, the Department has the authority to waive or abate (reduce or eliminate) some assessments under certain circumstances, such as when a tax liability has been deemed legally uncollectible or not legitimate, there is reasonable cause to abate, or a taxpayer qualifies as financially distressed. The Department has established authority levels required for approval for each of these categories based on dollar thresholds.

Each month, the Department publishes a list of both the top 250 individual and top 250 business tax debtors with outstanding tax warrants for whom it filed at least one warrant in the prior 12 months. The March 2021 lists for individual and business taxpayers totaled almost \$316 million and \$182 million, respectively, for the amount due and owed at the time the warrant was filed. The top individual owed almost \$19 million in sales tax and the top business almost \$14 million in sales and withholding tax.

Audit Findings and Recommendations

For a significant number of the delinquent tax assessments we reviewed, we were unable to determine, based on documentation, that the Department took adequate collection actions prior to completing or closing cases for one of the five collection steps we tested: using applicable search tools to identify taxpayer resources that might be pursued to satisfy the debt. We found the Department generally followed relevant policies—with certain exceptions—in cases where it abated amounts due.

Collection Efforts

The Department uses five classifications for case collection status: assigned to an employee, assigned to a unit, unassigned, completed, or closed. Cases are considered completed either after staff have exhausted all required collection efforts and have found no collectible funding sources to satisfy the debt or when a taxpayer is deceased. Cases are considered closed when a taxpayer initiates a protest or files for bankruptcy or when a warrant is resolved or expired. Completed and closed cases are reactivated only if the Department receives information such as a new funding source or taxpayer address, which triggers a new review.

The Department's Procedures for Case Completion Process (Procedures) describes all appropriate collection actions staff must take prior to completing or closing a case and includes 12 steps. According to the Procedures, all actions taken must be documented in the Department's eMPIRE Event Log (Log). For purposes of our audit tests, we focused on the following five key collection steps:

- Warrant – The case is properly warranted per Department policy;
- Levies – All attachable financial sources have been levied;
- Income Sources – All employer sources have been checked and income executions issued;
- RPAs – All RPAs that can be substantiated have been requested; and
- Searches – All appropriate searches have been completed, including but not limited to real property, Internet, DMV, Department of State, State Liquor Authority, and Uniform Commercial Code.

For the 4 years ended December 31, 2019, the Department initiated more than 2 million assessments that became part of a collection case. As of February 3, 2020, these assessments had a combined balance due of over \$2 billion, which included nearly \$849 million—or about 41% of the total—in sales tax assessments. We focused our audit testing on sales tax assessments. Table 1 presents the number and percent of assessments, as well as balance and percent of total due, by tax type.

Table 1 – Assessments, by Tax Type

| Tax Type | Count | % of Count | Total | % of Total |
|--------------------------------------|------------------|----------------|------------------------|----------------|
| Personal Income | 1,258,133 | 61.71% | \$913,004,425 | 44.26% |
| Sales | 334,647 | 16.42 | 848,972,247 | 41.16 |
| Corporation | 250,527 | 12.29 | 129,111,147 | 6.26 |
| Withholding | 99,969 | 4.90 | 69,995,889 | 3.39 |
| Cigarette/Tobacco | 725 | 0.04 | 55,391,276 | 2.69 |
| Estate | 445 | 0.02 | 19,837,367 | 0.96 |
| Partnership Income | 33,303 | 1.63 | 11,157,260 | 0.54 |
| Fuel Use | 2,933 | 0.14 | 4,529,831 | 0.22 |
| Highway Use | 16,826 | 0.83 | 4,404,176 | 0.21 |
| Real Estate Transfer | 527 | 0.03 | 2,991,339 | 0.15 |
| Limited Liability Entities (LLC/LLP) | 36,169 | 1.77 | 1,443,951 | 0.07 |
| Boxing and Wrestling | 2,915 | 0.14 | 1,317,818 | 0.06 |
| Alcoholic Beverages | 485 | 0.02 | 351,536 | 0.02 |
| Petroleum Products | 291 | 0.01 | 209,613 | 0.01 |
| Hazardous Waste | 586 | 0.03 | 44,552 | 0.00 |
| Motor Fuel | 108 | 0.01 | 16,875 | 0.00 |
| Insurance | 67 | 0.00 | 13,838 | 0.00 |
| Totals | 2,038,656 | 100.00% | \$2,062,793,140 | 100.00% |

Because we could not assess whether all required collection steps had been taken for cases that were still in an active or open collection process (i.e., assigned to an employee, assigned to a unit, or unassigned), we reviewed assessments that had been completed or closed, which made up over half of the sales tax assessments. We also limited our review to amounts equal to or greater than \$1,000, which represented 99% of the amount due. As of February 3, 2020, this resulted in 18,325 assessments with a combined balance of over \$177 million, including nine assessments that each exceeded \$1 million and totaled nearly \$70 million (Table 2).

Table 2 – Closed and Completed Sales Tax Cases, by Amount Due

| Amount Due | Count | % of Count | Total | % of Total |
|-----------------------------|----------------|----------------|----------------------|----------------|
| Less than \$1,000 | 151,545 | 89.00% | \$2,346,958 | 1.00% |
| \$1,000 or Greater | 18,325 | 11.00 | 177,302,801 | 99.00 |
| \$1,000–\$1,000,000 | 18,316 | 11.00 | 107,560,918 | 60.00 |
| \$1,000,000.01–\$37,578,259 | 9 | 0.00 | 69,741,883 | 39.00 |
| Totals | 169,870 | 100.00% | \$179,649,759 | 100.00% |

To determine whether the Department's efforts to collect delinquent taxes were adequate, we reviewed the staff actions recorded in the Log and the corresponding comments in the Department's Case and Resource Tracking System (CARTS). For each of the assessments in our sample, we determined whether Department staff completed each of the five collection steps that were applicable. Specifically, we examined whether staff issued a warrant when applicable, issued levies when financial resources were available, issued income executions when employment

sources were found, requested RPAs when applicable to the case, and completed appropriate searches. In some instances, we considered a collection action not to be applicable, such as when a taxpayer was deceased or no financial sources were found to levy. If the Log indicated that the specific, applicable collection actions were done, we considered efforts for that assessment to be adequate; otherwise, we concluded that we were not able to determine if the efforts were adequate.

We reviewed all nine assessments that were each in excess of \$1 million—ranging from \$1.16 to \$37.6 million—and a sample of closed and completed assessments that were each less than \$1 million. We determined that the Department took adequate steps to collect the tax liabilities for each of the nine assessments that exceeded \$1 million.

We reviewed a random sample of 242 of the 18,316 (18,325 less the nine assessments greater than \$1 million) closed or completed sales tax assessments that ranged in amount due from \$1,000 to \$1 million. We found Department personnel took adequate collection actions, when applicable, for four of the collection steps we tested. For example, they issued warrants when applicable, issued levies when financial resources were available, issued income executions when employment sources were found, and requested RPAs when they were applicable to the case. However, in a significant number of cases, it was not evident that all appropriate searches, or any, were conducted.

In 167 of 242 assessments (69%), Logs indicated that at least one named search had been done (e.g., the search was identified as DMV, Internet, real property) for each assessment. However, although Department procedures require that only appropriate searches be done, we found staff did not document which searches they considered appropriate, and we thus could not determine whether all appropriate searches had been done. For example, in cases where only an Internet search had been recorded in the Log, it was unclear whether other searches, such as a DMV search, may have been appropriate but were not done and/or not recorded. Because there was at least one named search documented in the Logs for the search collection step, we considered Department efforts to be adequate in these cases.

For each of the remaining 75 assessments (31%), in addition to lacking information about which searches were considered appropriate, none identified the searches that were done. Some Log entries included comments such as “all collection methods have been exhausted” or “no other actions available,” which did not identify the actions taken. We concluded that we could not determine if the efforts in these 75 cases were adequate. Projecting these results to the population of 18,316 assessments with a 95% confidence level results in at least 4,785 assessments for which we were unable to determine whether collection efforts were adequate, totaling at least \$4.8 million (4,785 multiplied by the minimum amount of \$1,000 of each assessment).

In response to our observations, Department officials asserted that in cases for which comments, such as those cited above, were recorded in the Log, searches had been conducted and all potential collection avenues had been investigated and/

or pursued before completing the case. Regarding cases for which there were no such comments, officials stated that only appropriate searches were required. They also said that if a supervisor had reviewed the case, it was deemed closed correctly.

However, statements such as “no other actions available” neither affirm which actions were taken nor provide support for the decisions regarding what was deemed appropriate in the case. These Logs are the Department’s record of its collection actions and may assist in preventing duplicate or incomplete collection efforts by staff before completing a case, and may also save time and avoid redundancy if cases are moved among staff. Given the importance of the five collection steps, not performing one—or uncertainty about whether and which searches were done—could mean the difference between collecting and not collecting amounts due.

Abatement Decisions

Abatements may be initiated by the Department or requested by the taxpayer (for penalty deletions and Offers in Compromise, described below). We found that the Department followed relevant policies—with certain exceptions—in cases where it abated tax liabilities and/or penalties. During calendar year 2019, the Department approved roughly 6,200 abatements totaling more than \$127 million.

Abatements can include an entire assessment balance—which may include a tax liability and related penalties and interest, if applicable—or a portion of the assessment. For example, in some cases, only the penalty amount is reduced to zero. An assessment amount may be abated when it has been deemed legally uncollectible or not legitimate, reasonable cause exists for canceling penalties, or a taxpayer qualifies as financially distressed. Reasonable cause must be shown in a written statement by the taxpayer at certain dollar thresholds. Department procedures provide guidance about circumstances that may constitute reasonable cause.

In other cases, the Department and taxpayer may agree to an Offer in Compromise (OIC) in which the Department accepts payment of a reasonable portion of the debt as satisfaction of the debt if the taxpayer proves that they meet OIC criteria. Applications for OICs must include a taxpayer’s Statement of Financial Condition (Statement), which includes information about assets, liabilities, and monthly household income and expenses, among other items. Applicants must also provide federal income tax returns, recent credit reports, and bank statements. The Department’s Procedures require staff to use household expenses reported on the Statement in considering the merit of the OIC request. Staff may consider whether the debt has been discharged in bankruptcy or the debtor has demonstrated insolvency, provided that the amount proposed as a compromise is one the Department can realistically expect to collect in a reasonable period of time. At the time of our audit work, the Department was taking steps to reduce a backlog of OIC requests.

For a sample of 50 assessments abated during calendar year 2019, each amounting to \$3,000 or more and totaling almost \$932,000, we found that the Division generally

obtained appropriate approvals and followed relevant abatement policies. However, for two of the 50 abatements, which included one OIC and one penalty deletion and totaled \$15,502, we found that certain information used by Department personnel to determine taxpayer qualification for abatement was not consistent with Department policy.

Information on the taxpayer's Statement is an important factor in the Department's determination of whether the taxpayer qualifies for an OIC. The Statement must include information about taxpayer household expenses, which Department personnel review for reasonableness using certain estimates. For the OIC we identified, which related to an assessment of \$10,784 (of which \$9,334 was abated, resulting in an amount due of \$1,450), the taxpayer Statement lacked the required household expense information. Instead, Department personnel used an estimate of these expenses. Obtaining the required information from the taxpayer may have resulted in a different determination of whether to grant an OIC. There was also no evidence that an installment payment agreement, which may be appropriate for taxpayers with immediate financial issues who could address their tax liability over time, was offered as an alternative in the OIC case.

The other case, which totaled \$4,718, was an abatement of penalties for failure to pay and file timely for more than 2 years where reasonable cause did not appear to be supported by information provided by the taxpayer. The taxpayer's stated reason for not filing and paying timely was not having received notification from the Department about sales tax returns not filed or paid. In response to our findings, officials said that decisions to approve abatements due to reasonable cause fall within the Department's discretion, subject to applicable laws and regulations.

Recommendations

1. Improve documentation for each relevant assessment so that it affirms which actions are applicable and which actions staff take in their collection activities.
2. Take steps to ensure compliance with policies and procedures that address abatement decisions, and, where considered necessary, document the rationale for decisions.

Audit Scope, Objective, and Methodology

This objective of our audit was to determine if the Department is making adequate efforts, in accordance with Department policy, to collect unpaid amounts—including taxes, interest, penalties, and fees—from delinquent individual and business taxpayers. Our audit covered the period January 1, 2016 through December 31, 2019. We also considered information that was provided by the Department through April 15, 2021.

To accomplish our objective, we interviewed Department officials and reviewed relevant laws and regulations and the Department's policies and procedures related to collection and abatement of delinquent taxes. We also became familiar with and assessed the Department's internal controls as they related to our audit objective. We determined that the assessment data provided by the Department was sufficiently reliable for our use in accomplishing our audit objective. To determine whether Department efforts to collect delinquent taxes were adequate, we selected a random sample of 242 of the 18,316 closed or completed sales tax assessments for the period January 1, 2016 through December 31, 2019 that each totaled from \$1,000 to \$1 million as of February 3, 2020. We intended to project the sample results to the related population and have included our projection in the body of this report. In addition, we judgmentally selected all nine assessments in the above population that each totaled more than \$1 million. We reviewed the Department's actions recorded in the Log and any corresponding comments in CARTS. We did not design the judgmental sample of nine assessments for its results to be projected to the population from which it arose, nor did we project the sample results to that population.

To determine whether Division officials followed existing policies related to abatement decisions, we selected a sample of assessments from the 6,216 that the Department abated during calendar year 2019, which totaled more than \$127 million. We selected only assessments with an abated amount of \$3,000 or more and selected four abatement categories from which to choose our sample: OICs, penalty deletions, small balance abatements, and liability cancellations. This resulted in 1,934 assessment abatements totaling \$105.3 million. We then judgmentally selected the number of abatements from each category. We selected 25 OICs, which represented the category with the largest number of the 1,934 abatements, and selected the remaining 25 based on their relative dollar value of the non-OIC abatements, which resulted in 13 penalty deletions, eight small balance abatements, and four liability cancellations. We then randomly selected the abatements within each category. We reviewed abatement forms, information in CARTS, case worksheets, and correspondence between taxpayers and Division staff. For OICs, we reviewed application and Statement of Financial Condition forms along with supporting financial information, if provided. The results of our testing of the 50 abatements support the findings, conclusions, and the related recommendation in this report. We did not design the sample of 50 abatements for its results to be projected to the population from which it arose, nor did we project the sample results to that population.

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. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of the Department's efforts to collect delinquent taxes.

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 disagreed with some aspects of our conclusions, but indicated actions they plan to take to implement our recommendations. Our State Comptroller's Comments addressing certain Department remarks are embedded within the Department's response.

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 the recommendations were not implemented, the reasons why.

Agency Comments and State Comptroller's Comments



ARGI O'LEARY
Deputy Commissioner
Civil Enforcement Division

August 9, 2021

Mr. Brian Reilly
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236

Re: Report 2019-S-61 Efforts to Collect Delinquent Taxes

Dear Mr. Reilly:

The Office of the State Comptroller (OSC) examined the Efforts to Collect Delinquent Taxes, Report 2019-S-61, by the Department of Taxation and Finance (Department) for the audit period covering January 1, 2016 through April 15, 2021. This letter responds to the recommendations made in the draft report for this audit.

Recommendation 1: Improve documentation for each relevant assessment so that it affirms which actions are applicable and which actions staff take in their collection activities.

As noted in the draft report, OSC sought to examine the extent to which the Department's collections staff completed each of five specific collection actions included in our Case Completion Process procedures, which describe actions that may be required, as appropriate, before a collection case may be completed. We, therefore, assume this recommendation is intended to refer to the documentation of actions taken with regard to collection cases, and not with regard to the underlying assessments.

We continue to be concerned that we were not able to communicate effectively with OSC's audit team regarding our expectations of our collections staff with regard to these internal procedures. In our view, our staff sufficiently documented their actions with regard to each of the collection cases at issues. We recognize, though, that our formal Case Completion Process may not fully reflect our internal procedures. Accordingly, we will revise these procedures to properly reflect our expectation that staff will take specific collection actions as appropriate in a particular collection case.

State Comptroller's Comment – We are pleased that the Department will strengthen its procedures documenting the search steps taken. This provides needed assurance that assessment decisions are aligned with the Department's procedures.

Recommendation 2: Take steps to ensure compliance with policies and procedures that address abatement decisions, and, where considered necessary, document the rationale for decisions.

We are pleased OSC faulted only two Department decisions in its review of 50 abated assessments. As a general matter, the two deficiencies asserted by OSC – one related to the Department's Offer in Compromise (OIC) program and one related to the abatement of penalty for reasonable cause – are matters that fall firmly within the Department's discretion pursuant to applicable law and regulations. Decisions regarding whether a taxpayer qualifies for an Offer in Compromise or for penalty abatement are necessarily fact-specific, and the Department maintains broad discretion in addressing these matters.

With regard to the specific findings, one faulted the Department's reliance on national standards to estimate the household expenses of a taxpayer who made an Offer in Compromise, even though the use of national and local standard expense amounts is specifically contemplated by the regulations governing the Department's administration of this program.

State Comptroller's Comment – While the Department may use the nationally approved standard household expense amounts to determine whether the taxpayer qualifies for an Offer in Compromise, the taxpayer is still required to report these expenses. In this case, the taxpayer did not report these expenses on their Statement of Financial Condition and thus did not meet the criteria to qualify.

With regard to the other finding, the draft report takes exception to the Department's determination that the taxpayer had established good cause for the abatement of certain penalties. In that case, the taxpayer relied upon a third-party to handle the tax matters at issue, was unaware the matters had not been properly handled and, when contacted directly by the Department, promptly filed the missing returns and arranged payment.

State Comptroller's Comment – The Department takes issue with our conclusion regarding this "other finding." However, the finding the Department describes was not one of the two discussed in the draft report.

Abatement of penalties in such circumstances is well within the Department's discretion and, as with the first finding, is specifically contemplated in the Department's regulations. The Department will remind staff of the importance of capturing in its system of record all facts and information supporting the use of discretion in such matters.

Sincerely,



Argi O'Leary
Deputy Commissioner
Civil Enforcement Division

Contributors to Report

Executive Team

Andrea C. Miller - *Executive Deputy Comptroller*

Tina Kim - *Deputy Comptroller*

Ken Shulman - *Assistant Comptroller*

Audit Team

Brian Reilly, CFE, CGFM - *Audit Director*

Sharon Salembier, CPA, CFE - *Audit Manager*

Jessica Kirk, CGAP - *Audit Supervisor*

Kathleen Hotaling - *Examiner-in-Charge*

Innocentia Freeman - *Senior Examiner*

Logan Frese - *Senior Examiner*

Andrea Majot - *Senior Editor*

Contact Information

(518) 474-3271

StateGovernmentAccountability@osc.ny.gov

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



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