



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 8, 2022

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

Re: Collection of Petroleum Business Tax
and Motor Fuel Excise Tax
Report 2021-F-30

Dear Ms. Hiller:

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 have followed up on the actions taken by officials of the Department of Taxation and Finance (Department) to implement the recommendations contained in our audit report, *Collection of Petroleum Business Tax and Motor Fuel Excise Tax* (Report [2018-S-28](#)).

Background, Scope, and Objective

Petroleum Business Tax (PBT) is paid by registered distributors of applicable types of fuel 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 fuel, among others. Effective January 1, 2022, the PBT rate, which is adjusted annually based on the change in the Producer Price Index for refined petroleum products, is 17.3 cents per gallon, up from 16.6 cents in 2021. Transactions exempt from PBT include sales to federal, state, and local governments and sales of certain types of residential heating fuel.

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, 2022, 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 2 State Fiscal Years ended March 31, 2021 and 2020, PBT collections totaled \$942 million and \$1.2 billion, respectively; MFT collections for the same 2 years totaled \$425 million and \$512 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 January 2022, there were more than 1,300 PBT licensees that hold a Distributor of Motor Fuel and/or Distributor of Diesel Fuel and/or Residual Petroleum Product license with the Department.

The objective of our initial audit, which was issued May 20, 2020, was to determine whether the Department had systems and practices in place that allow it to appropriately collect PBT and MFT, as required by relevant law and regulation. The audit covered the period January 1, 2016 through January 31, 2019. The audit found that, in general, the Department had systems and practices in place that allow it to appropriately collect PBT and MFT, as required by relevant law and regulation. However, we also found that the Department did not review distributors' existing collateral security amounts to determine if they continued to be appropriate based on Department criteria. We also identified distributors that, despite Department notification, were not enrolled in PrompTax and were not prepaying their PBT and/or MFT tax liability as required.

The objective of our follow-up was to assess the extent of implementation, as of March 18, 2022, of the two recommendations from our initial audit report.

Summary Conclusions and Status of Audit Recommendations

The Department has made significant progress in addressing the problems we identified in the initial audit report and has implemented both recommendations from the report.

Follow-Up Observations

Recommendation 1

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

Status – Implemented

Agency Action – Since our initial audit, the Department has employed several strategies to determine if collateral security amounts are appropriate. First, the Department has developed a risk-based Collateral Security Grading System (System) to identify distributors whose collateral security amount may need to be increased. The System results in a grade that's based on the distributor's compliance history in four areas: PBT Taxes Owed in Review Period, Current Security Amount, PBT and Sales Tax Assessment History, and PBT Filing Histories. The Department plans to review distributors whose grade is below 65% and to review every distributor, regardless of grade, once every 3 years.

Department officials also indicated that the Audit Division now reviews collateral security amounts of the distributors selected for audit to determine if they're appropriate. Between July 2020 and January 2022, the Audit Division reviewed 13 distributors and determined that 11 had an appropriate collateral security amount. The remaining two were recommended for an increase. Subsequently, one of the two distributors was determined to have an appropriate collateral security amount and the other was recommended for further review.

In addition, the Department uses a PBT Collateral Security Review Tracker Report (Tracker Report), which identifies distributors that are delinquent in paying PBT and/or MFT. According to the Tracker Report for the period July to December 2021, there were 29 delinquent distributors. Of the 29, the existing collateral security amount for 17 distributors was determined to be sufficient, while 12 distributors were classified as undergoing further review.

The Department developed written procedures for its reviews of collateral security and a quarterly Collateral Security Rating Report that will include a security grade for each distributor. According to Department officials, specifications for the report are complete; however, development has been delayed due to competing priorities.

Recommendation 2

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

Status – Implemented

Agency Action – Department officials stated that, in March 2019, after the scope of our initial audit, they implemented an ongoing monitoring process of all PBT and MFT distributors to ensure they are properly enrolled in PrompTax and are making their required payments. To ensure proper enrollment, the Department now runs a selection report annually, on or after June 1, to determine whether distributors meet PrompTax participation criteria. If a distributor is identified as meeting PrompTax criteria but is not enrolled, Department officials stated they will then track subsequent notification, follow-up correspondence, and outreach. We reviewed the report results for the one selection period (July 2021) since our initial audit, which indicated that no distributor met the criteria to be a new mandatory PrompTax participant. Department officials said that since beginning the monitoring process, all relevant taxpayers have complied with enrollment, and they have not needed to issue penalties for failure to enroll.

In addition, the Department uses a monthly Electronic Funds Transfer Report to assess and monitor compliance with PrompTax filing and payment activity. The reports include information about prepayments made by enrolled distributors and allow Department personnel to identify distributors whose prepayments fall below a relevant threshold. We reviewed a letter that the Department sent to a distributor that had not satisfied its required tax prepayment amount for 2020, resulting in penalties and fees owed to the Department.

Major contributors to this report were Karen Bogucki, CGFM, Amy Tedesco, and Karen Corbin.

We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Sharon L. Salembier, CPA, CFE
Audit Manager

cc: Judith Farnan-Farago