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September 15, 2020

Ms. Roberta Reardon
Commissioner
Department of Labor
Building 12, W.A. Harriman Campus
Albany, NY 12240

Mr. Michael R. Schmidt
Commissioner
Department of Taxation and Finance
Building 9, W.A. Harriman Campus
Albany, NY 12227

Re: New York Youth Jobs Program
Report 2020-F-7

Dear Ms. Reardon and Mr. Schmidt:

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 Labor and the Department of Taxation and Finance to implement the recommendations contained in our audit report *New York Youth Jobs Program* (Report [2017-S-69](#)).

Background, Scope, and Objectives

The New York Youth Jobs Program (Program) was established in 2011 under Section 25-a of the New York State Labor Law (Law) and was formerly known as both the New York Youth Works Program and the Urban Youth Jobs Program. The Program is intended to create jobs and spur economic growth in the State by establishing incentives for employers to hire new employees and retain existing ones. Under the Program, eligible employers may receive tax credits when they hire unemployed or underemployed youth aged 16 to 24 who live in New York State and to whom one or more additional criteria apply, such as being currently or formerly in foster care or under the custody of the Office of Children and Family Services, or being homeless. The Department of Labor (Labor) certifies both employer and youth eligibility and also calculates the dollar amount of tax credits that an employer is entitled to claim. The Department of Taxation and Finance (Tax and Finance) establishes procedural requirements for claiming Program tax credits and processes employers' tax forms. The 2018-19 Enacted Budget allocated \$40 million to the Program annually for the years 2018-2022.

Employers are entitled to claim credits equal to \$750 per month, for up to six months, for each full-time employee or equal to \$375 per month, for up to six months, for each part-time employee who worked at least 20 hours per week (or 10 hours per week for employees enrolled full time in high school). Retaining employees beyond the initial six months results in an additional credit to the employers.

Our initial audit report, issued January 9, 2019, sought to determine if Labor was ensuring that employers met Program eligibility requirements and were certified, and that the youth they hired were eligible for the Program. The audit also determined if Tax and Finance was ensuring that tax credits were appropriately granted under the Program. We found that

Labor could improve its method for verifying youth eligibility, and Tax and Finance could do better to ensure that the tax credits granted were accurate and only for Program-eligible youth. We found that 209 of 359 individuals in our sample who were certified by Labor were either not Program-eligible or potentially not eligible. Accordingly, on behalf of the 209 individuals, employers claimed and received \$191,336 in tax credits to which they may not have been entitled.

The objective of our follow-up review was to assess the extent of implementation, as of July 14, 2020, of the five recommendations from our initial audit report.

Summary Conclusions and Status of Audit Recommendations

We found that Labor and Tax and Finance implemented the five recommendations – three addressed to Labor and two addressed to Tax and Finance – from our initial audit report.

Follow-Up Observations

Recommendation 1

To Labor:

Re-evaluate the employer Program application to determine whether, and how, to capture information such as employee advancement and benefit opportunities.

Status – Implemented

Agency Action – Labor officials informed us that they decided not to require that employers include information about employee advancement and benefit opportunities on the employer Program application. However, they have added a statement to employer approval letters strongly encouraging employers to discuss employment advancement and benefit opportunities with their Program participants.

Recommendation 2

Provide and publicize Program-specific definitions for underemployment and unemployment and align them with Program requirements.

Status – Implemented

Agency Action – Since our initial audit, Labor has modified information on its website to describe underemployment and to differentiate it from unemployment. Underemployment is described as the state of being employed less than full time and seeking full-time employment, and/or being employed in a position that is inadequate with respect to an individual's skills and training. In addition, Labor's Youth Certification application now asks applicants to indicate whether they are currently unemployed, were unemployed prior to completing the application, or do not have enough paid work or work that is adequate with respect to their skills and training.

Recommendation 3

Develop risk-based procedures to ensure that only eligible youth are certified for the Program. Steps may include using records from Tax and Finance or other sources to verify applicant information on a sample basis.

Status – Implemented

Agency Action – Among the youth eligibility criteria, age is most conducive to verification (employers are not permitted to ask youth applicants which of the non-age or non-residency criteria they meet). To ensure that only eligible youth are certified for the Program, Labor officials stated that they have added an age calculation function to their online Youth Application. If a youth enters a date of birth that is calculated to be outside of the Program's eligible age parameters, the youth gets an error message stating they have entered an invalid date of birth. In addition, Labor's Confirmation of Hire form and Annual Report now ask employers to indicate each hired youth's date of birth. According to Labor's internal procedures, staff match the three dates from the Youth Application, Confirmation of Hire form, and Annual Report to obtain better assurance that youth meet the Program's age requirement.

To Tax and Finance:

Recommendation 4

Improve procedures to ensure that Program tax credits that are granted are accurate and for eligible employees. Steps might include, but not be limited to:

- *Modifying form instructions to clarify how to claim tax credits in the first six months;*
- *Changing how employee work hours, factors, and personal information are captured to allow automated checks against other relevant information.*

Status – Implemented

Agency Action – Procedures to ensure that the Program tax credits that are granted are accurate and for eligible employees have been improved as a result of Tax and Finance actions and by certain Program changes arising from recent budget provisions. Tax and Finance first addressed this recommendation by adding clarifying instructions to its 2018 corporate and individual Youth Jobs Program Tax Credit forms. The clarifications explained the correct method for calculating and claiming tax credits for the first six months of a youth's employment and for determining full-time or part-time status for youth who began employment on a day other than the first day of the month. Tax and Finance removed these instructions from subsequent years' forms because provisions in the State's 2018-19 Enacted Budget shifted the responsibility for calculating Program tax credits from qualified employers to Labor.

Under the new provisions, qualified employers are now required to submit an annual report to Labor by January 31 that includes a list of all eligible hires from the prior Program year and for the two previous Program years, and their dates of birth, start dates, and number of hours worked per month. Employers must also assert in the report that employees met all eligibility requirements. Labor then uses this information to calculate the allowable tax credit and notify the employer. With Labor calculating the allowable Program tax credits, there is less risk that employers will claim incorrect tax credit amounts.

Recommendation 5

Take appropriate action to investigate and recover, where applicable, the \$191,336 (\$121,818 + \$69,518) in excess tax credits allowed.

Status – Implemented

Agency Action – Our initial audit identified \$191,336 in Program tax credits claimed by 11 employers (on 12 tax returns) that were granted for employees whose eligibility was in question or that were inaccurately claimed or supported. This amount included \$69,518 claimed by a shareholder for the entire business, rather than just the shareholder's portion.

Tax and Finance initiated audits of 7 of the 12 tax returns (\$144,743 of the tax credits we questioned in our initial audit) and has completed 5, resulting in the collection of \$84,847, plus interest and penalties. Of the \$144,743, officials stated that they elected not to pursue \$13,250 in tax credits granted for youths who were not recertified in the year the tax credit was claimed, but who had been certified for the prior year. Of the remaining five tax returns (\$46,593 in questioned tax credits), officials said that the statute of limitations for audit had expired for credits on two returns, totaling \$9,625, and that credits on three returns, totaling \$36,968, were not cost-effective to audit. We accepted these explanations as reasonable.

Major contributors to this report were Karen Bogucki, CGFM; Theresa Nellis-Matson, CPA; Jeffrey Dormond; and Rupert Wilmot-Dunbar.

We thank the management and staff of the Departments of Labor and Taxation and Finance for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Sharon L. Salembier, CPA, CFE
Audit Manager

cc: Erin Murphy, Department of Labor
Judy Farnan-Farago, Department of Taxation and Finance