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OFFICE OF THE STATE COMPTROLLER

March 1, 2023

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

Re: Efforts to Collect Delinquent Taxes
Report 2022-F-33

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, *Efforts to Collect Delinquent Taxes* (Report [2019-S-61](#)).

Background, Scope, and Objective

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 (CED). 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 the 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 December 2022 lists for individuals and businesses totaled almost \$407 million and \$255 million, respectively, for the amount due and owed at the time the warrant was filed. These amounts are about 29% and 40% higher than their respective totals as of March 2021, which we cited in our initial audit report.

The objective of our initial audit, issued August 24, 2021, was to determine whether the Department was making adequate efforts, in accordance with Department policy, to collect unpaid amounts – including taxes, interest, penalties, and fees – from delinquent individual and business taxpayers. It covered the period January 1, 2016 through December 31, 2019 and also considered information received from the Department through April 15, 2021. We found that, 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 also found that the Department generally followed relevant policies – with certain exceptions – in cases where it abated amounts due.

The objective of our follow-up was to assess the extent of implementation, as of February 14, 2023, of the two recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

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

Follow-Up Observations

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.

Status – Implemented

Agency Action – Since our initial audit, the Department has taken steps to improve its documentation of staff actions in the collection process. In December 2021, the Department consolidated and revised its guidance on completing cases to better describe the circumstances in which certain searches are applicable and required and to detail the steps that staff must take. The changes made to guidance documents were first discussed during staff meetings with all CED staff and then reinforced by email. According to Department officials, revisions were also published and made available to all staff via the Department's intranet.

Furthermore, in December 2022, CED finalized a quality assurance review of cases completed during the period January 1 through March 31, 2022 to determine whether staff were completing searches as required by the revised guidance. However, according to Department officials, due to current resource constraints, such as loss of staff and training new staff, additional reviews have been placed on hold although it is their intent to resume them on a periodic basis in the future.

Additionally, CED conducted ad hoc reviews throughout 2022. Supervisors selected and reviewed a statistical sample of cases each month to determine whether staff followed all procedures, including performing applicable taxpayer searches, in completing a collection case. CED reviewed approximately 4,000 of the more than 19,400 collection cases completed between January 1, 2022 and November 30, 2022 – about 20% – and found that 3,546 cases – about 90% – were completed correctly with appropriate documentation of staff actions. For the 10% of cases where supervisors identified

errors or missing items in a case completion, they documented the issues and sent the case back to staff for correction. According to Department officials, this process has aided CED in ensuring case documentation is appropriate and in accordance with CED guidance.

During our follow-up, we reviewed a random sample of 10 quality assurance and 15 ad hoc cases and determined that case notes adequately detailed the steps taken by staff, including steps to locate collectible taxpayer assets through applicable searches (e.g., financial sources, motor vehicles, real property). We found that CED staff are clearly documenting the reasons for closing a case and ceasing collection activities, and there was evidence of supervisor review and input to staff when more work was necessary. Department officials indicated that completed cases are not closed cases and that there are automated processes to re-initiate collection activities if information pertinent to the case becomes available.

Recommendation 2

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

Status – Implemented

Agency Action – Since our initial audit, the Department has taken steps to ensure compliance with its abatement policies and procedures and to improve documentation of the rationale for abatement decisions. In December 2021, the Department revised and consolidated its guidance relating to the abatement process, further revising it in August 2022. The new guidance emphasizes documenting all facts and information regarding the case and better describes the roles of personnel and the steps involved in abatement decisions. It also requires CED staff to record all information supporting the abatement determination in the case event log, including the taxpayer’s demonstration of reasonable cause for abatement. Supervisory review and approval are needed to move the abatement process forward. The revised guidance was communicated to staff through the same staff meetings and email as the case completion guidance cited above. According to Department officials, revisions were also published and made available to all staff via the Department’s intranet.

The revised guidance also includes procedures for ad hoc supervisory reviews of a random sample of abatement requests to determine if appropriate procedures were followed for each abatement type (e.g., penalty deletion, assessment abatement), the request was justified, and there was documented support for the abatement decision. In September 2022, the Department reviewed 122 of 361 submitted requests, or 34%, and found that 118 (97%) included appropriate documentation to justify the decision to abate the liability. According to Department officials, reviews are expected to be completed monthly.

Major contributors to this report were Jessica Kirk, Robert Horn, and Karen Corbin.

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

Very truly yours,

Sharon L. Salembier, CPA, CFE
Audit Manager

cc: Rachel Ingalsbe, Department of Taxation and Finance