

A REPORT BY THE NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

**Alan G. Hevesi
COMPTROLLER**



***NEW YORK CITY DEPARTMENT OF
CONSUMER AFFAIRS***

NEW YORK CITY DEPARTMENT OF FINANCE

***SELECTED CONTROLS OVER LICENSING OF
CIGARETTE RETAILERS AND
WHOLESALERS***

Report 2003-N-7

DIVISION OF STATE SERVICES

OSC Management Audit reports can be accessed via the OSC Web Page:

<http://www.osc.state.ny.us>

If you wish your name to be deleted from our mailing list or if your address has

changed,

contact the State Audit Bureau at (518) 474-3271

or at the

Office of the State Comptroller

110 State Street

11th Floor

Albany, NY 12236



Alan G. Hevesi
COMPTROLLER

Report 2003-N-7

Ms. Gretchen Dykstra
Commissioner
Department of Consumer Affairs
42 Broadway
New York, NY 10004

Ms. Martha E. Stark
Commissioner
New York City Department of Finance
One Centre Street
New York, NY 10007

Dear Ms. Dykstra and Ms. Stark:

The following is our audit report addressing selected controls over the licensing of cigarette retailers and wholesalers for the period January 1, 2001 through October 31, 2003.

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Article 3 of the General Municipal Law. Major contributors to this report are listed in Appendix A.

Office of the State Comptroller
Division of State Services

August 18, 2004

EXECUTIVE SUMMARY

NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

NEW YORK CITY DEPARTMENT OF FINANCE SELECTED CONTROLS OVER LICENSING OF CIGARETTE RETAILERS AND WHOLESALERS

SCOPE OF AUDIT

The New York State Tax Law requires that every retail dealer of tobacco products obtain a Certificate of Registration (C of R) and that every wholesale dealer obtain a license from the New York State Department of Taxation and Finance (Department). In addition, Chapter 13 of the New York City (NYC) Administrative Code states that it is unlawful for a person to engage in business as a retail or wholesale dealer in NYC without a NYC cigarette license. In 2000, the NYC Department of Consumer Affairs (DCA) became responsible for the licensing of NYC cigarette retailers. The NYC Department of Finance (Finance), Enforcement Division, is responsible for licensing the NYC cigarette wholesalers. As of June 2003, there were about 12,300 licensed retailers in New York City and 160 wholesalers licensed to sell cigarettes to retailers in New York City.

Our audit addressed the following questions relating to selected DCA and Finance controls over NYC cigarette licensing for the period January 1, 2001 through October 31, 2003:

- Does DCA and Finance maintain accurate licensing data for NYC cigarette retailers and wholesalers?
- Does DCA and Finance ensure that NYC retailers and wholesalers with expired, suspended, or revoked licenses are not selling cigarettes?

AUDIT OBSERVATIONS AND CONCLUSIONS

We found that DCA and Finance can improve the accuracy of its licensing data for cigarette retailers and wholesalers. DCA and Finance do perform follow up reviews on retailers and wholesalers that have expired, suspended or revoked New York City licenses to ensure that these retailers and wholesalers are no longer selling cigarettes. However, we believe they can improve their

efforts by targeting those retailers and wholesalers whose State C of R or State license has also been suspended, revoked or expired.

All cigarette retailers must have a C of R issued by the Department and a NYC license to sell tobacco products in NYC. Therefore, controls should be in place to identify retailers within New York City with expired C of R's or those that have obtained a State C of R but not a NYC license and to follow up with these retailers to ensure that they are not continuing to sell tobacco products. When we compared Department and DCA records of retailers, we found that 3,583 retailers appeared to have a current C of R but did not match up to DCA records as having a current NYC license. We selected a random sample of 85 of the 3,583 retailers and visited the 85 retailers' reported places of business to determine whether these retailers were in fact selling cigarettes without a NYC license. Based upon the results from our statistical random sample, we can project, with a 90 percent confidence level, that between 285 and 725 of our sample population of 3,583 NYC retailers were selling cigarettes without a current NYC license. This difference occurs in part because the Department and DCA do not compare their records to ensure that retailers applying for a NYC license have the required C of R and that the information for all retailers is correctly entered in each database. We did a similar test of the listing maintained by DCA of retailers whose licenses were revoked or suspended by DCA during the last two years in order to determine if any of these retailers were inappropriately selling cigarettes. We estimate, with a 90 percent confidence level, that between 55 and 148 of the 764 retailers on DCA's list were selling cigarettes with a revoked or suspended NYC license. (See pp. 13-17)

A wholesale distributor that intends to sell cigarettes or tobacco products in New York City must first obtain a State license from the Department and then subsequently obtain a NYC wholesale license from Finance. We identified seven cigarette wholesalers with a current NYC license that did not have a State license. We provided this information to Department officials for their follow-up. Finance subsequently cancelled the NYC licenses for five of these wholesalers. In addition, our comparison of the Department and Finance's records determined that there were 43 wholesale distributors located in New York City that failed to renew their NYC wholesale license for 2003. We provided this list to Finance officials and asked if they checked on these 43 wholesale distributors to determine whether or not they continued to sell to retailers in NYC. Finance provided a summary listing of explanations of their follow-up activity which identified that eight of the 43 wholesalers were under criminal investigation for violations and another two wholesalers were found to be distributing cigarettes and are also under investigation by the Enforcement Division. (The remainder were either out of business, had changed locations, stopped selling cigarettes or had their license renewed.) Finance officials state that in the past they have followed up on wholesalers who failed to renew their NYC licenses. However, the Finance Enforcement Division has no formal written procedures for the wholesale license review and approval process nor do they have a formal written

long term strategic plan for the enforcement of the cigarette licensing laws. (See pp. 19-21)

Our report contains nine recommendations to address these and other findings relating to the licensing of cigarette retailers and wholesalers.

Comments of DCA and Finance Officials

DCA officials agreed with our six recommendations and stated that they have implemented or are exploring ways to implement the recommendations. Finance generally agreed with our three recommendations and stated that they have implemented or are developing ways to implement the recommendations.

CONTENTS

Introduction

Background	9
Audit Scope, Objectives and Methodology	10
Comments of DCA and Finance Officials to Audit	11

Licensing of Cigarette Retailers

Recommendations	17
-----------------	----

Licensing of Cigarette Wholesalers

Recommendations	21
-----------------	----

Appendix A

Major Contributors to This Report	23
-----------------------------------	----

Appendix B

Comments of Department of Consumer Affairs Officials	25
--	----

Appendix C

Comments of Department of Finance Officials	29
---	----

INTRODUCTION

Background

The New York State Tax Law requires that every retail dealer of tobacco products obtain a Certificate of Registration (C of R) and that every wholesale dealer of tobacco products obtain a license from the New York State Department of Taxation and Finance (Department). The law authorizes the Commissioner of the Department to levy and collect a cigarette excise tax on all cigarettes for use or sale in New York State (State). The Department collects this tax through the sale of tax stamps (to be affixed to each pack of cigarettes) to its licensed cigarette-stamping agents. Agents subsequently sell the cigarettes, with the appropriate tax stamp, to licensed cigarette wholesalers, who then sell them to retailers for sale to the general public. The law further requires that every retail and wholesale dealer publicly display a certificate of registration/license in each place of business in the State where cigarettes or other tobacco products are sold.

In addition, the State Laws of 1952 authorized the New York City (NYC) Cigarette Tax, which is also collected through the sale of tax stamps. According to New York City Department of Finance (Finance) officials, cigarette tax stamp revenue for the ten months ended April 30, 2003 was \$223 million. Chapter 13 of the NYC Administrative Code (Code) states that it is unlawful for a person to engage in business as a retail or wholesale dealer in NYC without a cigarette license. A dealer must apply for one license for each place of business from which cigarettes are sold.

In 2000, the Code was changed to authorize the New York City Department of Consumer Affairs (DCA) to take responsibility for the licensing of cigarette retailers. The NYC Retail Cigarette License costs \$110 biennially, and as of June 2003, there were 12,300 licensed retailers. DCA's Enforcement Division oversees compliance with the retail cigarette licensing laws. According to DCA records, DCA conducted more than 16,330 tobacco inspections for the period April 1, 2002 through March 31, 2003. Officials stated that their major focus is to ensure that cigarette retailers are licensed and that they prohibit the sale of cigarettes

to minors. For the period from April 1, 2002 through March 31, 2003, DCA levied \$1.66 million in fines for licensing violations.

Finance's Enforcement Division, is responsible for licensing the cigarette wholesalers and enforcing the wholesale cigarette licensing laws. The NYC Wholesale Cigarette License costs \$600 annually, and as of April 2003, there were 160 licensed cigarette wholesalers for which Finance collected a total of \$98,400 in license fees for the year.

Audit Scope, Objectives and Methodology

We audited selected DCA and Finance controls over cigarette licensing for the period January 1, 2001 through October 31, 2003. One objective of our performance audit was to determine whether DCA and Finance maintain accurate licensing data for cigarette retailers and wholesalers. Another objective was to determine whether DCA and Finance ensure that retailers and wholesalers with expired, suspended or revoked licenses are not selling cigarettes.

To accomplish our objectives, we reviewed State and NYC laws, and DCA and Finance policies and procedures. We conducted interviews with DCA and Finance officials regarding their monitoring and oversight responsibilities associated with cigarette licensing. We compared information maintained by the Department regarding licensed retailers and wholesalers as of June 2003 with information maintained by DCA and Finance. We also visited random samples of NYC cigarette retailers to verify that they had the required NYC license and the State Certificate of Residence.

Generally accepted government auditing standards suggest that auditors may find it useful to obtain written representations from management, both to affirm the completeness and accuracy of information provided to the auditors, and to ensure there are no undisclosed situations of which management is aware, including instances of fraud, abuse or illegal acts, that would significantly affect the auditors' assessment of risk. It is our policy to routinely request a management representation letter covering these issues and have done so in conjunction with this audit. However, as a matter of policy, the City of New York does not provide these written representations to us, although management has provided us with oral assurances on these matters.

Generally accepted government auditing standards require that we plan and perform our audit to adequately assess those operations of DCA and Finance which are included within our audit scope. Further, these standards require that we understand DCA's and Finance's internal control structure and its compliance with those laws, rules and regulations that are relevant to the operations which are included in our audit scope. An audit includes examining, on a test basis, evidence-supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

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, several of which are performed by the Division of State Services. 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 who 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 management functions do not affect our ability to conduct independent audits of program performance.

Comments of DCA and Finance Officials to Audit

We provided draft copies of this report to DCA and Finance officials for their review and comment. We have considered the comments of DCA and Finance officials in preparing this audit report and have included them as Appendix B and Appendix C, respectively.

Within 90 days of the final release of this report, we request the Commissioner of DCA and the Commissioner of Finance to report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

LICENSING OF CIGARETTE RETAILERS

All cigarette retailers must have a valid C of R and a NYC license to sell tobacco products in New York City. Either issuing entity may revoke or suspend a retailer's C of R or license for a number of reasons, including the sale of unstamped cigarettes or the sale of cigarettes to minors. Therefore, controls should be in place to identify retailers whose C of R or NYC license has been revoked/suspended, or not renewed to prevent such retailers from continuing to sell tobacco products.

All applicants for a NYC license must submit proof they possess a current C of R issued by the Department. They are also required to list their State sales tax identification number on their NYC license application. Upon suspension or revocation of their NYC license, the retailers must immediately surrender their license to DCA.

One of the principal means used by DCA to enforce the cigarette licensing laws is through the State funded Youth Tobacco Program. Under this program, DCA enlists the aid of underage children to help DCA inspectors detect retailers who are illegally selling cigarettes to minors. As part of this program, DCA inspectors also check the retailer's compliance with NYC and State licensing laws, such as having the required cigarette licenses, and perform follow-up inspections of identified violators. This system of inspections helps DCA monitor compliance with the entire range of tobacco laws.

Based upon the results of this audit and our recently completed audit of the Department's tobacco licensing process, (report 2002-S-58 issued in October 2003), we believe that there are some additional cost effective means by which DCA can identify unlicensed retailers, to strengthen their licensing efforts and to perform additional targeted inspections. According to Department records, as of June 2003, there were 13,317 retailers doing business in NYC that had a current C of R. According to DCA records for the same period, 12,300 retailers had a current NYC license.

This difference occurs because the Department and DCA do not compare their databases to ensure that retailers applying for a NYC license have the required C of R and that the information for all retailers is correctly entered in each database. When we compared these two records by sales tax identification number and address, we found that 3,583 retailers appeared to have a current C of R but did not have a current NYC license. We could not match certain records because of the lack of corresponding identification numbers and the different spelling of the addresses on the two databases.

For example, although DCA requires all NYC license applicants to record their State sales tax identification number on their license applications, DCA does not record the number on its database. Similarly, the Department does not have the NYC license number on its database. Further, the DCA database had the State sales tax identification numbers for only 664 of the 12,300 (6 percent) licensed retailers. As a result, the Department and DCA cigarette license databases are incompatible for comparison purposes. DCA needs to work with Department officials to establish a list of common data elements to be included in the respective licensing databases to facilitate matching. At a minimum, DCA should update the current database to include the sales tax registration number and State C of R number when retailers renew their licenses. DCA should also confirm the accuracy of this information with the Department for retailers who renew their license.

We selected a random sample of 85 of the 3,583 retailers and visited the 85 retailers' reported places of business from July 22 through August 20, 2003. Our review of these retailers identified 47 who had a current NYC license. The inability to use the Department and DCA databases to adequately match records was a major reason why we could not initially determine that these 47 retailers had a current NYC license. In addition, 15 retailers were in business but did not sell cigarettes and therefore did not need a license, and five were no longer in business.

However, 18 retailers were selling cigarettes without a current NYC license on the premises. According to DCA officials, they inspected nine of the 18 retailers in 2003 and another 6 in 2001 or 2002. Eight of these retailers were issued violations for unlicensed activity or for selling cigarettes to minors. Our site visits also determined that 22 retailers either did not display a

NYC license as required or displayed expired or photocopied licenses.

We provided DCA officials with the results of our site visits for their follow-up. DCA officials stated that for the 18 retailers, which we identified as selling cigarettes without a NYC license on the premises, they determined that six of these retailers were recorded on DCA records as having a current license. Accordingly, 12 retailers were selling cigarettes without a current NYC license. Based upon the results from our statistical random sample (12 out of 85), we can project, with a 90 percent confidence level, that between 285 and 725 of our sample population of 3,583 NYC retailers, were selling cigarettes without a current NYC license.

We did a similar test of the listing maintained by DCA of retailers whose licenses were revoked or suspended, in order to determine if any of these retailers were inappropriately selling cigarettes. We determined that the licenses of 764 retailers had been revoked or suspended at some point over the period from January 1, 2001 through June 3, 2003. We selected a random sample of 75 of the 764 retailers and visited the retailers' reported place of business from July 22 through August 20, 2003. Our review of these 75 retailers found that 17 retailers appeared to be selling cigarettes without a current NYC license.

We provided DCA officials with the results of our site visits for follow-up. DCA officials stated that when they reviewed their records for the 17 retailers who we found selling cigarettes without a current NYC license on the premises, they determined that seven of the 17 retailers had appealed their license revocation/suspension and thus were legally able to continue selling cigarettes pending their appeal. Therefore, 10 retailers from our sample were selling cigarettes without having a current NYC license. Based upon the results for our statistical random sample (10 of 75) from a total population of 764, we can project with a 90 percent confidence level, that between 55 and 148 establishments of our sample population of 764 establishments, were selling cigarettes with a revoked or suspended NYC license.

In addition, our sample identified two retailers who apparently had obtained a new NYC license without having a State C of R. As noted previously, the Department and DCA do not regularly compare their databases to ensure that those retailers applying

for a new NYC license, or those renewing an existing license have a current C of R in effect. Therefore, it is important that DCA work with Department officials to develop a process to verify that license applicants have a current State C of R before a New York City license is issued.

It also appears that DCA does not promptly notify the Department when it suspends or revokes a NYC license. The Department should be notified in a timely manner so that it can take prompt action against the retailers. We identified 12 retailers from our sample of 75 retailers that had their NYC licenses revoked or suspended prior to May 2003 and were still listed on the Department database as having current C of R's as of June 2003.

Similarly, DCA does not notify licensed wholesalers of those NYC retailers whose licenses have been revoked or suspended, so that they can halt sales to such retailers. Although DCA notifies Finance of revoked or suspended licenses, it appears that no one alerts the wholesalers to stop sales to unlicensed retailers. As part of the plan for DCA enforcement efforts, we believe that DCA should periodically notify the wholesalers of all revoked or suspended licenses.

Our findings indicate that there are additional opportunities for DCA to identify unlicensed retailers through the use of these methods. We believe DCA needs to compare the DCA cigarette retailer license database to the Department database on a regular basis to identify retailers who do not have both the current State C of R and a NYC license. DCA can then use the results of these comparisons to target retailers for appropriate enforcement activities. DCA should also develop a formal written, long-term strategic plan for enforcing the cigarette retail licensing laws that incorporates methods such as the ones we used in this audit. Although DCA is using the Memorandum of Understanding for the Youth Tobacco Program as its current enforcement work plan, DCA's Enforcement Division lacks a formal strategic plan.

In responding to our draft report, DCA officials stated that they are in agreement with our findings and recommendations. Officials indicated that they are already taking steps to increase communication with the Department and are exploring the best way to reconcile the Department and DCA's databases. In addition, they indicated that they researched the retailers that

we identified in our samples, and have taken corrective action. We commend DCA for taking immediate action to improve its processes.

Recommendations

To DCA:

1. Work with Department officials to establish a list of common data elements to be included in the respective licensing databases to facilitate matching. At a minimum, update the current database to include the sales tax registration number and State C of R number when retailers renew their licenses. Confirm the accuracy of this information with the Department for retailers who renew their license.
2. Compare the DCA cigarette retailer license database to the Department database on a regular basis to identify retailers who do not have both the current State C of R and a NYC license. Use the results of these comparisons to target retailers for appropriate enforcement actions.
3. Follow up on all retailers identified in our samples as not in compliance with the cigarette licensing laws and take appropriate actions.
4. Work with Department officials to develop a process to verify that license applicants have a current State C of R after the issuance of the New York City license.
5. Develop a plan for DCA enforcement efforts that includes the use of the techniques such as those demonstrated in this audit to identify retailers for enforcement efforts. Among other things, this should include periodically notifying licensed wholesalers of those NYC retailers whose licenses were suspended or revoked.
6. Work with Department officials to identify formal ways to share specific enforcement actions (suspensions, revocations) between agencies.

(DCA officials agreed to implement all six recommendations.)

LICENSING OF CIGARETTE WHOLESALERS

A wholesale distributor that intends to sell cigarettes or tobacco products to retailers in New York City must obtain a State license from the Department and a NYC wholesale license from Finance. Wholesalers cannot obtain a NYC wholesale license from Finance unless they already have obtained a State license from the Department. If a wholesaler's State license is revoked, their NYC license is also to be revoked.

Finance maintains a list of licensed wholesalers which they post on their agency Internet website. The April 10, 2003 list provided to us by Finance included 160 licensed wholesalers. We matched the Finance list to the Department list of licensed wholesalers as of June 2003. We identified seven cigarette wholesalers with a current NYC license that did not appear to have a State license.

In response to our findings, on July 25, 2003 Finance officials notified five of the seven wholesalers that their NYC licenses were cancelled due to their failure to maintain a current State license. For a sixth wholesaler, Finance officials said that they did not issue a 2003 license to that firm, even though the firm was included on the list provided to us. For the seventh wholesaler, we found that Finance had approved their 2003 license on January 22, 2003, even though the firm's State license was not approved until June 23, 2003.

Finance officials stated that they do not have a formal written procedure for the review and approval of wholesale cigarette license applications. Officials told us that Department staff sends a monthly printout to Finance of those firms that have a current State license. Officials further stated that the Department does not notify them when a specific wholesaler has had its State license revoked or which firms failed to renew their wholesale license. We believe that Finance needs to develop a formal written notification process with the Department to improve their methods of verifying the existence of a current State license.

Comparing Finance records for 2002 and 2003, we identified 43 cigarette wholesalers located in the five boroughs of NYC that had a NYC license in 2002 but did not have a license in 2003. We subsequently asked Finance officials if they had followed up to see if these 43 wholesalers had discontinued sales to retailers in NYC. According to Finance officials they checked all 43 wholesalers to see if they were selling to retailers in NYC. Finance provided us a summary listing of explanations of their follow-up activity which identified that eight of the 43 wholesalers (seven of these are now out of business while the eighth is currently being prosecuted) were under investigation for violations; two other wholesalers were found to be distributing cigarettes in NYC and are also under investigation by Enforcement. The remaining wholesalers were either out of business, stopped selling cigarettes, merged with another firm or had changed locations.

Although Finance officials state they have followed up on the wholesalers we identified who failed to renew their NYC licenses in past years, there are no formal written procedures that required Finance enforcement operations to do so. Such procedures should include matching of records to identify wholesalers that did not renew their license from one year to the next, and following up to ensure that they do not continue to distribute cigarettes. Such procedures should also provide for matching Department and Finance records to ensure that wholesalers that apply for a City license already have a current, valid State license.

We also believe that Finance should take this opportunity to update their strategic plan for guiding their enforcement efforts. In May 2003, Enforcement Division officials stated that the enforcement staff investigated complaints made by the public and that previously they performed some surprise random inspections. Officials further noted that investigators perform undercover operations of licensed wholesalers, perform "street sweeps" and examined unlicensed transporters of untaxed cigarettes. In response to our draft report, Finance officials stated that they have a strategic plan with respect to criminal enforcement investigations. Their current enforcement activities do not employ the wholesale matching of files that we employed on this audit. Such an effort should provide valuable information for enforcement activities.

Without strong controls over the licensing of cigarette wholesalers and retailers, there is increased probability that cigarettes could be illegally sold. With the recent increase in cigarette taxes in NYC, there is a greater incentive for retailers to sell unstamped cigarettes. According to Finance officials, cigarette tax stamp revenue for the ten months ended April 30, 2003 was \$223 million. With this type of volume, loss of revenues due to the sale of untaxed cigarettes could be significant.

Recommendations

To Finance:

7. Request the Department to notify Finance when a cigarette wholesaler's State license is revoked or suspended. In turn, Finance should notify the Department when a wholesaler's NYC cigarette license is revoked or suspended.
8. Establish formal written procedures for the wholesale cigarette license review and approval process.
9. Prepare a long term strategic plan for the Finance enforcement operations that would employ a variety of approaches, including a comparison of Department and Finance records to identify potential unlicensed wholesalers.

(Finance officials agreed to develop ways to implement all three recommendations.)

MAJOR CONTRIBUTORS TO THIS REPORT

Arthur F. Smith

Tom Trypuc

Keith Murphy

Bebe Belkin

Irina Kovaneva

Hugh Zhang

Paul Bachman



The New York City
Department of
Consumer Affairs
42 Broadway
New York, NY
10004-1716

Gretchen Dykstra
Commissioner

March 10, 2004

Hon. Alan G. Hevesi
Office of the New York State Comptroller
110 State Street
Albany, New York 12236

RE: Draft Audit Report # 2003-N-7
Licensing and Enforcement of Cigarette Retail Licenses

Dear Comptroller Hevesi:

Thank you for the opportunity to comment on the findings contained in the draft audit report entitled, "Selected Controls Over Licensing of Cigarette Retailers and Wholesalers, (2003-N-7)."

Your audit report highlights how our licensing operations could be more efficient and our enforcement efforts could be better targeted if we coordinated with the New York State Department of Taxation and Finance (Department). We agree and we value coordination and cooperation with other city and state agencies. In fact, DCA already routinely and formally notifies both the New York City and New York State Departments of Health of suspensions and revocations of a NYC cigarette retailer license.

DCA used to receive notification from the Department about New York City retailers that had current, suspended or cancelled Certificate of Registration (C of R). We no longer receive such information. We would welcome such information sharing again, and we understand—through another audit report (2002-S-58)—that the Department provides their Transaction and Transfer Tax Audit Bureau (TTTB) with a monthly report of all cancellations and licenses issued and will make operational a website that contains information about whether a retailer has an active or suspended/cancelled registration. We hope we will be privy to the same information, either directly or through the New York State Department of Health as a conduit.

Our responses to the specific recommendation follow.

Recommendation One

Work with Department officials to establish a list of common data elements to be included in the respective licensing data licensing databases to facilitate matching. At a minimum, update the current database to include the sales tax registration number and State C of R number when retailers renew their licenses. Confirm the accuracy of this information with the Department for retailers who renew their license.

Response

DCA agrees with your recommendation and will work with the Department to explore the best way to implement this recommendation in the near future.

Recommendation Two

Compare the DCA cigarette retailer license database to the Department database on a regular basis to identify retailers who do not have both the current State C of R and a NYC license. Use the results of these comparisons to target retailers for appropriate enforcement actions.

Response

DCA agrees with your recommendation. Cross-checking databases would not only allow DCA to target enforcement actions, but it would improve the efficiency of the licensing process for the renewal of cigarette retailers licenses.

Recommendation Three

Follow up on all retailers identified in our samples as not in compliance with the cigarette licensing laws and take appropriate actions.

Response

DCA agrees with your recommendation and has completed all corrective action necessary.

Recommendation Four

Work with Department officials to develop a process to verify that license applicants have a current State C of R after the issuance of the New York City license.

Response

DCA agrees with your recommendation and will contact the Department to initiate a direct dialogue.

Recommendation Five

Develop a plan for DCA enforcement efforts that includes the use of the techniques such as those demonstrated in this audit to identify retailers for enforcement efforts. Among other things, this should include periodically notifying licensed wholesalers of those NYC retailers whose licenses were suspended or revoked.

Response

DCA agrees with the spirit of this recommendation, though not all of its specifics. As you state in the audit report, DCA already notifies the New York City Department of Finance (Finance) of those NYC retailers whose licenses were suspended or revoked. It is neither prudential nor practical for DCA to notify wholesalers directly because we do not license them. In addition, DCA already conducts routine and repeated follow-up inspections of retail establishments that have had their licenses suspended or revoked. Should the Department provide DCA with additional retailers who fall into this category, DCA would gladly incorporate that list into its existing and successful inspection protocols.

Recommendation Six

Work with the Department officials to identify formal ways to share specific enforcement actions (suspension, revocations) between agencies.

Response

DCA agrees with your recommendation and will discuss this issue with the Department.

I welcome opportunities to learn about ways to improve DCA's systems and processes, and I appreciate the recommendations contained in this audit report.

Sincerely,



Gretchen Dykstra
Commissioner

- C: Martha Stark, DOF
Rochelle Patricoff, DOF
Carla Vanderwalle, DOF
Jonathan Mintz, DCA
Alba Pico, DCA
Kristen Lasky, DCA
Pansy Mullings, DCA
Lori Tarver, DCA
Anna Bacchia, DCA



FINANCE
NEW • YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

March 10, 2004

Mr. Steven E. Sossei
Audit Director
Office of the New York State Comptroller
110 State Street
Albany, New York 12236

**RE: Draft Audit Report # 2003-N-7
Selected Controls Over Licensing and Enforcement
Of Licensing of Cigarette Retailers and Wholesalers**

Dear Mr. Sossei,

We have reviewed the audit that your staff conducted of the New York City Department of Finance ("Finance") in connection with Finance's practices and procedures over the licensing of cigarette wholesalers. Thank you for your audit recommendations. The audit was helpful to our operations since it highlights areas where we can improve.

Since this audit also involved the New York City Department of Consumer Affairs ("DCA"), we met with representatives of DCA to discuss the audit report. Finance agrees with DCA's written response to the audit.

The draft report suggests that Finance implement three recommendations. Below are the recommendations made in the draft report, and Finance's comments:

The Department of Finance should:

1. Request the Department to notify Finance when a cigarette wholesaler's State license is revoked or suspended. In turn, Finance should notify the Department when a wholesaler's NYC cigarette license is revoked or suspended.

We agree with this recommendation and while regular communication regarding the revocation and suspension of licenses has been in place, we are working with the Department (New York State Department of Taxation and

Finance) toward reducing the lag time in the information flow between the two agencies. We are also working toward formalizing the existing process in written standard operating procedures.

2. Establish formal written procedures for the wholesale cigarette license review and approval process.

We agree with this recommendation. We will develop a Standard Operating Procedure to formally document the steps we take with each case file:

- A) Finance telephones the Department to confirm that the copy of the State license supplied by the applicant to Finance is valid.
- B) Verify that the taxpayer is current with his or her NYC business tax filings.
- C) Create the license and forward the information to Automated Tax Processing for the processing of the check and updating of Fairtax.
- D) Key punch the license with the cash book and folio number and forward it to the licensee.

Finance is working with the Department to implement electronic communications to replace the need for the telephone confirmation process that is currently in place. In addition, we will explore the possibility of a joint database.

3. Develop formal written procedures for the Finance Enforcement operations and prepare a long term strategic plan that would employ a variety of approaches, including a comparison of Department and Finance records to identify potential unlicensed wholesalers.

Finance does have formal written procedures contained in the Investigators Manual relating to all enforcement operations including the issuance of summons for unlicensed wholesalers and all related cigarette enforcement activity.

The only written procedures that were requested during the audit related to the review and approval process for the licensing function of wholesalers. This recommendation implies that we have no written enforcement procedures for operations, which is incorrect.

With respect to criminal enforcement investigations, Finance does have a strategic plan in place. For comparing Finance's list of 160 licensed wholesalers with the Department's list, Finance is exploring the development of a long term strategic plan.

State Comptroller's Note:

*We revised our report to reflect comments of Department of Finance Officials.

* Note

If you have any questions concerning this response, please feel free to call me at (212) 669-4878.

Sincerely,

A handwritten signature in black ink that reads "Carla Van de Walle". The signature is written in a cursive, flowing style.

Carla Van de Walle
Senior Director
Internal Audit & Special Projects

C: Martha E. Stark, NYC Department of Finance
Rochelle Patricoff, NYC Department of Finance
Carleton Butler, NYC Department of Finance
Gretchen Dykstra, NYC Department of Consumer Affairs
Kristen Lasky, NYC Department of Consumer Affairs
George Davis, III, The Mayor's Office of Operations