



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

January 17, 2007

Mr. Jonathan Mintz  
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

Re: Report 2006-F-32

Dear Commissioners Mintz and Stark:

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, and Article 3 of the General Municipal Law, we have followed up on the actions taken by officials of the New York City Department of Consumer Affairs (DCA) and the New York City Department of Finance (Finance) to implement the recommendations contained in our audit report, *Selected Controls Over Licensing of Cigarette Retailers and Wholesalers* (Report 2003-N-7).

**Background, Scope and Objectives**

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. A dealer must apply for one license for each place of business from which cigarettes are sold.

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 NYC with expired C of R's or those that have obtained a State C of R, but not a NYC license. Further, a wholesale distributor that intends to sell cigarettes or tobacco products in NYC must first obtain a State license from the Department and then obtain a NYC wholesale license from Finance.

According to Finance officials, cigarette tax stamp revenues for the year ended June 30, 2006 were \$123.3 million. 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 July 2006 there were 134 licensed cigarette wholesalers for which Finance collected a total of \$80,400 in license fees for the year.

Our initial audit report, which was issued on August 18, 2004, examined selected controls over the licensing of cigarette retailers and wholesalers for the period January 1, 2001 through October 31, 2003. Our report identified areas where DCA and Finance could improve the accuracy of licensing data for cigarette retailers and wholesalers. In particular, they can improve their efforts by targeting those retailers and wholesalers whose State Certificate of Registration (C of R) or State license has been suspended, revoked or expired to ensure that these businesses are no longer selling cigarettes. We concluded that, because of these and other weaknesses, cigarette retailers were selling cigarettes with a revoked or suspended NYC license and cigarette wholesalers were selling cigarettes with a current NYC license that did not have a State license. The objective of our follow-up, which was conducted in accordance with generally accepted government auditing standards, was to assess the extent of implementation, as of October 31, 2006, of the nine recommendations included in our initial audit report.

### **Summary Conclusions and Status of Audit Recommendations**

Although, DCA officials agreed to implement our initial audit recommendations, little progress was made. Of six audit recommendations presented to DCA in our initial audit report, one has been implemented and five have not been implemented. Most of our recommendations required DCA officials to work closely with the Department. However, a new administration in place at DCA since the time of our initial audit now states that working with the Department is not necessary. DCA officials cite a rigorous inspection program, combined with access to a related State Department of Health (DOH) database as the best means to enforce tobacco licensing requirements. While we support the relationship with DOH and the rigorous inspection program, these actions do not suffice. A working relationship with the Department, the State's primary tobacco licensing agency, is fundamental to enhancing enforcement efforts in the NYC tobacco licensing program. This relationship would enable both agencies to electronically share current licensing related data to more efficiently enforce tobacco licensing requirements.

In marked contrast, we found that Finance officials have made substantial progress in implementing the three recommendations we made in our initial audit report. Of the three audit recommendations made to Finance, two have been implemented, and one recommendation has been partially implemented.

## **Follow-up Observations**

**To DCA:**

### **Recommendation 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.*

Status - Not Implemented

Agency Action - DCA added new fields of information to its database, but has not received input from the Department to assess what fields are necessary to meet the recommendation. Therefore, DCA has not met the spirit of the recommendation and has no intention to match the files to highlight retailers whose information is not accurate. DCA officials cited as an alternative, their access to the Environmental Health Information and Permit System (eHIPS) maintained by DOH. This database includes the names, addresses and C of R numbers of tobacco retailers in New York City (NYC). However, DCA has not utilized the eHIPS data for electronic comparisons.

### **Recommendation 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.*

Status - Not Implemented

Agency Action - As we stated concerning Recommendation 1, DCA does not compare its database with the Department's database. Instead, DCA requires that retailers bring their current State C of R to DCA when first applying for, or renewing a NYC tobacco license. However, this procedure is not an adequate substitute for a periodic comparison of databases because of potential time lapses between the State and NYC licensing processes.

### **Recommendation 3**

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

Status - Implemented

Agency Action - DCA officials made location inspections subsequent to our initial audit and revoked or suspended the licenses for seven of the 37 potentially problematic retailers identified.

#### **Recommendation 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.*

Status - Not Implemented

Agency Action - Although in response to our initial audit report, DCA officials agreed to initiate a direct dialogue with the Department, they have not done so.

#### **Recommendation 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.*

Status - Not Implemented

Agency Action - DCA officials have not revised their enforcement procedures. Additionally, citing a lack of authority, the officials still do not notify wholesalers of retailers with revoked or suspended licenses. We believe that specific authority is not required to notify wholesalers.

#### **Recommendation 6**

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

Status - Not Implemented

Agency Action - See Agency Action in response to Recommendation Number 1.

**To Finance:**

#### **Recommendation 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.*

Status - Implemented

Agency Action - Finance officials are receiving license revocation and suspension information from the Department. Additionally Finance notifies the Department when wholesalers no longer have a valid NYC cigarette license.

### **Recommendation 8**

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

Status - Implemented

Agency Action - Finance established updated licensing procedures. They have also placed the Cigarette Tax Enforcement guidelines on their Internet web site.

### **Recommendation 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.*

Status - Partially Implemented

Agency Action - Finance officials provided us with a list of several accomplishments in meeting a long-term goal of curbing the selling of untaxed cigarettes in NYC since our initial audit. However, the officials have not yet developed a formal long-term strategy as we had recommended. A strategic plan is necessary to align the organization toward an overall mission with measurable goals and time-related bench marks.

Major contributors to this report were Ron Pisani, Joan Williams, and Daphne Sanon.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the agencies for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Kenneth I. Shulman  
Audit Manager

cc: Mr. George Davis, NYC Mayor's Office  
Mr. Jed Herrmann, NYC Department of Consumer Affairs  
Lisa Ng, Division of Budget