



# New York State Division of State Police

## Interest Earned on Seized Assets

Report 2009-S-57



Thomas P. DiNapoli



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# State of New York Office of the State Comptroller

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## Division of State Government Accountability

March 24, 2010

John Melville  
Acting Superintendent  
New York State Division of State Police  
Building 22  
1220 Washington Avenue  
Albany, NY 12226-2252

Dear Mr. Melville:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of Interest Earned on Seized Assets of the New York State Division of State Police. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*





## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

#### Audit Objectives

The objectives of our audit were to determine whether the New York State Division of State Police (State Police) maximizes interest earned on seized funds and sends such interest earned to the Special Revenue Fund.

#### Audit Results - Summary

We found that State Police neither maximized interest earned on seized funds nor sent the interest that was earned to the Special Revenue Fund. State Police's Seized Assets Program (Seizure Program) was started in 1990 to ensure proper processing and tracking of seizure cases. State Police has a sole custody checking account (Seized Assets Account) into which it deposits all cash seized in State investigations. State Police maintains custodial control over these funds until the seizure cases are adjudicated. State Police may request a federal agency to administer seizures under certain conditions. The Seized Assets Account is an interest-bearing account.

Once a seizure case has been adjudicated, any related forfeited funds and accumulated interest earnings in the Seized Asset Account must be deposited into a Special Revenue Fund. According to State and Federal guidelines, these forfeited funds must then be used for enhanced law enforcement purposes.

From April 1, 2005 to December 31, 2008, the Seized Assets Account had an average daily balance of more than \$5 million. During this time, \$186,800 was earned in interest (about 1 percent annually). However, we determined that State Police could have invested the funds in other types of accounts and earned more interest. For example, we obtained the interest rates that the State of New York earned on its Short Term Investment Pool (STIP). If State Police had invested the money in the STIP or in similar yield investments, it could have earned \$780,000 in interest for the same period that it was invested at 1 percent annually and earned \$186,800. Therefore, the State Police lost an opportunity to earn \$593,200 for the State.

We also found that State Police did not transfer any of the \$186,800 in interest earned from the Seized Assets Account to the Special Revenue Fund. Therefore, these funds were not available to enhance law enforcement activities. In response to our audit finding, State Police officials reviewed their records and ascertained that the total accumulated interest in their Seized Assets Account since 1990 totaled \$984,399 and sent this amount to the Special Revenue Fund.

Our audit report contains two recommendations. State Police officials replied they have taken action to implement the recommendations in a manner which also suits operating needs.

This report, dated March 24, 2010, is available on our website at: <http://www.osc.state.ny.us>.

Add or update your mailing list address by contacting us at: (518) 474-3271 or

Office of the State Comptroller

Division of State Government Accountability

110 State Street, 11<sup>th</sup> Floor

Albany, NY 12336

# Introduction

## Background

The New York State Police is one of the ten largest law enforcement agencies in the nation and the only full-service police department in New York with Statewide jurisdiction. It has a Headquarters in Albany and 11 Troops located throughout the State. State Police Headquarters provides administrative and support services to all Troops. It also oversees a number of technical and support services that are available to county, local and other State agencies.

Law enforcement agencies may seize different types of assets during the course of their investigations. Some of these assets may be forfeited to the government after administrative or judicial proceedings. State Police's Seized Assets Program (Seizure Program) was started in 1990 to ensure proper processing and tracking assets in seizure cases.

The Seizure Program is guided by numerous State and federal laws. Federal laws allow the federal government to institute cash and property forfeiture proceedings related to certain federal drug, gambling, customs, immigration or currency violations. State laws permit the District Attorney or Attorney General to start a civil action for forfeiture against an individual in the case of a drug-related crime. For non-drug related State crimes, a felony conviction must be obtained in order to forfeit the seized assets. State Police can request the federal government "adopt" seizures resulting from a State Police investigation if there is also a violation of federal law.

State Police has a sole custody checking account (Seized Assets Account) for depositing all cash seized from State investigations. State Police maintains custodial control over these funds until the cases are adjudicated. If a decision is made by the court that assets will not be forfeited, State Police staff prepare checks to return the seized funds to their owner. If the forfeiture is ordered by the court, State Police staff distributes funds according to a formula set in State law which requires funds to be distributed to State Police, the Office of Alcoholism and Substance Abuse Services, and the prosecutor. In some cases, the District Attorney will request to hold funds pending determination. In these cases, State Police staff will forward the funds to the District Attorney. The full amount seized should either be returned and/or distributed. State Police keeps all interest earned on these funds, which is considered income to the State.

In addition, when State Police seize money of individuals involved in federal crimes, State Police initially deposits seized funds in the Seized Assets Account and then remits the money to the U.S. Marshals Service, if the

case is adopted. Federal forfeitures, net of expenses, are shared among the federal government, State Police and other contributing law enforcement agencies, where appropriate.

Once a seizure case has been adjudicated, any related forfeited funds and accumulated interest earnings in the Seized Asset Account must be transferred into a Special Revenue Fund. According to State and federal guidelines, forfeited funds that State Police receive must be used for enhanced law enforcement purposes other than salaries, such as new equipment and vehicles. Deposits to the Special Revenue Fund totaled \$8.3 million in 2005-06, \$5.2 million in 2006-07, \$8.2 million, in 2007-08, and \$10.2 million from April 1, 2008 to December 31, 2008.

### **Audit Scope and Methodology**

The objectives of our audit were to determine whether State Police maximizes interest earned on seized funds and whether it sends such interest in the Special Revenue Fund. Our audit period was April 1, 2005 through December 31, 2008.

To achieve our objectives, we interviewed State Police administrative and finance officials; reviewed State Police seized asset financial and operating records; reviewed the laws, policies and procedures regarding seized assets; reviewed State Police's Seized Assets Account bank statements, deposit slips and cancelled checks; obtained benchmark interest information; and reviewed activity reports from the Special Revenue Fund.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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. 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 whom 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 functions do not affect our ability to conduct independent audits of program performance.

<b>Authority</b>	The audit was performed 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.
<b>Reporting Requirements</b>	A draft copy of this report was provided to State Police officials for their review and comment. Their comments were considered in preparing this final report, and are included at the end of the report.
	Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Superintendent of the Division of State Police shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.
<b>Contributors to the Report</b>	Major contributors to this report include Carmen Maldonado, Robert Mehrhoff, Roger C. Mazula, Alexander Marshall, Gayle Clas, Michele Turmel, and Sue Gold.



## Audit Findings and Recommendations

### Interest Income

We determined that State Police has not maximized interest earnings for funds obtained from seizures. From April 1, 2005 to December 31, 2008, the Seized Assets Account had an average daily balance of more than \$5 million. During this time, \$186,800 was earned in interest (about 1 percent annually).

However, we noted that there were other investment opportunities that State Police could have used that would have earned more interest. For example, when we compared interest rates for bank certificates of deposit and U.S. Treasury notes for the same time period, we found that they routinely outperformed the Seized Assets Account's interest rates. Also, for comparison purposes, we obtained the interest rates that the State of New York earned on its Short Term Investment Pool (STIP). The STIP invests moneys from various State agencies and participating public authorities in short-term investment opportunities so that investments can easily be liquidated to meet cash management demands of the agencies and authorities. We found that the STIP consistently earned more interest than State Police's interest bearing checking account. In fact, if State Police had invested the money in the STIP or in similar yielding investments, it could have earned \$780,000 in interest for the same period it earned \$186,800 (an additional \$593,200 in interest income).

State Police officials stated they hesitate to place money in the STIP because funds may not be available when they have to write a check to the federal government for an adopted case. While we understand their concern, we also note that the balance in the account is far greater than the amount required for checks. Therefore, at a minimum, State Police could keep sufficient funds in the checking account to cover the checks and place the balance in STIP. In addition, State Police has not explored the use of electronic transfer of funds to the federal government which would allow them to place the money with STIP until they prepare the paperwork for the case and have to send the money to the federal government.

State Police officials advised us that the interest-bearing checking account was opened to have an account available for field personnel to deposit monies received. It was not their intention to maximize interest and they did not have staff or expertise to research and make higher-yielding investments. However, State Police officials also did not attempt to negotiate a better rate of return on its interest-bearing checking account, considering the sizeable cash balance in the account.

In these tight fiscal times it is imperative that State Police officials do all they can to increase the amount of interest they earn on all of the funds they hold.

- Recommendation**
1. Improve management of Seized Assets Account funds by identifying secure higher-yielding investment opportunities, such as the STIP and monitoring the interest rates earned on investments to ensure State Police is obtaining the highest interest rate possible.

**Interest Income Not Sent to Special Revenue Fund**

All forfeited money is deposited into the Special Revenue Fund where it is used for enhanced law enforcement purposes. Interest earned on the Seized Assets Account also qualifies for deposit into the Special Revenue Fund. However, we found that State Police did not transfer any of the \$186,800 in interest earned from the Seized Assets Account to the Special Revenue Fund.

State Police officials did not consider the transfer of interest into the Special Revenue Fund to be a priority. Therefore, these funds were not available for use for enhanced law enforcement purposes. In response to our audit finding State Police officials reviewed their records and ascertained that the total accumulated interest in their Seized Assets Account since 1990 was \$984,399 (out of the more than \$5 million in the account). Officials sent this amount to the Special Revenue Fund on March 31, 2009.

- Recommendation**
2. Transfer interest earned on seized funds to the Special Revenue Fund on a regular basis.

# Agency Comments



HARRY J. CORBITT  
SUPERINTENDENT

NEW YORK STATE POLICE  
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ALBANY, N. Y. 12226-2252

February 10, 2010

Ms. Carmen Maldonado  
Audit Director  
State of New York  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12336

Dear Ms. Maldonado

We have reviewed the draft audit report 2009-S-57 regarding the Division of State Police *Interest Earned on Seized Assets*. Generally, we concur with the findings and have taken the following actions to implement the following recommendations.

**Recommendation 1. Improve management of Seized Assets Account funds by identifying secure higher-yielding investment opportunities, such as the STIP and monitoring the interest rates earned on investments to ensure the State Police is obtaining the highest interest rate possible.**

**Recommendation 2. Transfer interest earned on seized funds to the Special Revenue Fund on a regular basis.**

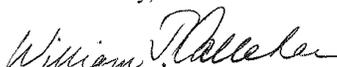
Although attaining a higher interest yield on monies held in the agency's interest bearing sole custody account would make more monies available for law enforcement purposes, the Division of State Police is not in the position to manage a portfolio of investments that would generate the higher interest yield recommended as by the report. It is our opinion that the programmatic need to have an account available to field personnel for the deposit of monies seized in the course of criminal investigations and to have funds immediately available to meet the stringent Federal turnover timelines are best met by this interest bearing checking account.

After discussions with Office of the State Comptroller General Ledger and Cash Management staff we have taken the following steps in response to the recommendations:

1. The Key Bank New York State Police Special Account sole custody account balance as of December 31, 2009 was \$5,644,452. Based upon a review of account activity during the last year, \$4,600,000 will transferred to the Short Term Investment Pool (STIP) into a segregated account that the General Ledger Section of the Office of the State Comptroller is in the process of establishing. \$1,044,452 will remain in the sole custody Special Account so that funds are readily available for withdrawal to meet the Federal turnover timelines. The account balance of the sole custody account will be reviewed periodically and appropriate adjustments will be made between the sole custody account and the STIP to meet this agency's programmatic needs.
2. Interest earnings from the New York State Police Special Account will be transferred annually to the New York State Police Seized Assets Account. On February 3, 2010, \$18,962.67 in interest earned in the Key Bank New York State Police Special Account sole custody as of December 31, 2009 was transferred to the New York State Police Seized Assets Account. We have requested that interest earnings from STIP be transferred by the Office of the State Comptroller monthly to the New York State Police Seized Assets Account. In the future, interest earnings from New York State Police Special Account will be transferred in April for the previous fiscal year's earnings.

If you have any questions or require any additional information feel free to contact me at (518) 457-6621.

Sincerely,



William J. Callahan  
State Police Administrative Director