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October 15, 2001

Mr. Arthur J. Roth
Commissioner
Department of Taxation and Finance
Building #9
W.A. Harriman State Office Campus
Albany, NY 12227

Re: Report 2001-F-30

Dear Mr. Roth:

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 reviewed the actions taken by the Department of Taxation and Finance (Department) as of September 10, 2001 to implement the recommendations contained in our audit report, *Administration of the Offers in Compromise Program* (Report 97-S- 63). Our report, which was issued on April 14, 1999, determined whether the Department administered the Offers in Compromise Program in compliance with policies and procedures and the Law and in a manner that promoted efficient and effective operating practices and appropriate internal controls.

Background

The Department administers the State's Tax Law (Law) and serves as the State's general tax collection agency. If there is doubt about the collectability of the full amount of a taxpayer's liability (i.e., taxes, interest and penalties), Section 171 (15) of the Law allows the taxpayer to make an offer in compromise (OIC or Offer). The OIC is a contract between the Department and the taxpayer which allows the taxpayer to settle existing tax liabilities for less than the full amount of the debt. According to Department officials, the OIC gives taxpayers with financial difficulties a fresh start and gives business taxpayers the opportunity to continue in business when normal Department efforts to collect the full tax debt could force them to close. The Special Procedures Section (SPS) of the Tax Compliance Division administers the Department's OIC Program (Program).

Summary Conclusions

In our prior audit, we found that the Department developed appropriate policies and procedures for staff to follow when investigating, reviewing and approving Offers. However, we found the Department did not always comply with policies and procedures regarding Offers for trust taxes, and did not ensure taxpayer compliance with Offer payment and filing requirements. We also found that the Department needed to develop a strategic plan and benchmarks to gauge Program success, establish procedures to alleviate processing delays, streamline the Program database and establish adequate controls over remittances.

Summary of Status of Prior Audit Recommendations

Of the 13 prior audit recommendations, the Department implemented ten recommendations and has partially implemented three recommendations.

Follow-Up Observations

Recommendation 1

Develop and implement a strategic plan stating the mission, goals, objectives and activities, appropriate benchmarks and performance indicators for the Program.

Status - Implemented

Agency Action - The Department has developed a purpose statement indicating its key services along with Program performance measures containing 20 benchmarks. The benchmarks measure various processes in the Program.

Recommendation 2

Evaluate the audited results indicating that the benchmark of 180 days for resolving Program cases is frequently not being met. Take appropriate corrective actions to improve operational efficiency and effectiveness or, if warranted, adjust the benchmark.

Status - Implemented

Agency Action - The Offers Measurement Workshop Team developed several performance measures that focus on timeline. Management attributes the increase in the percent of cases being resolved within the 180-day benchmark to monitoring these performance measures. In the 1998-99 fiscal year 47 percent of cases were resolved in 180 days. In fiscal year 1999-00 this percent increased to 77 percent of the cases. For the first nine months of 2000-01, the percent increased to 80 percent.

Recommendation 3

Finalize formal policies and procedures for Program participation.

Status - Implemented

Agency Action - The Department has developed a procedure manual to document the policies and procedures for Program participants.

Recommendation 4

Comply with requirements that trust tax offers equal to at least the amount of tax due unless and until requirements are changed to allow for settlement of less than taxes owed.

Status - Implemented

Agency Action - New Department regulations were created on June 15, 1999. These regulations provide that an Offer with an amount less than the tax can be accepted upon considerations of all factors if it is apparent that accepting an Offer would be in the best interest of all parties.

Recommendation 5

Ensure that normal collection activities continue for all taxpayer Offers until such time as any missing documentation related to the Offer is supplied to the Department.

Status - Implemented

Agency Action - As part of the Department's new regulations, Section 171 subsection 5001 (5) states "The filling of an offer in compromise shall not automatically operate to stay the collection of any tax liability. However, enforcement of collection may be deferred if the interest of the Department shall not be jeopardized thereby." Officials explained that the normal course of business collection activity would continue. However, under certain circumstances, such as a business being in bankruptcy, there would be no point in attempting to collect when assets were unavailable.

Recommendation 6

Develop Program guidelines that include a checklist of items of documentation that the participant must provide with the Offer.

Status - Implemented

Agency Action - The procedure manual provides a summary of the required documentation that participants must provide.

Recommendation 7

Establish the system and procedures necessary to ensure that Program participants are making payments in accordance with their schedule, and are filing and paying taxes for the five-year period following acceptance of the Offer.

Status - Implemented

Agency Action - The Department has established a written procedure that formalizes the monitoring process and identifies those cases not in compliance.

Recommendation 8

Follow-up on the potential database inaccuracies identified in this report and establish ongoing quality assurance steps to detect and to correct database inaccuracies.

Status - Partially Implemented

Agency Action - The Department has developed a seven-step process to detect and correct database inaccuracies and establish ongoing quality assurance. However, officials could only provide evidence that one of the steps is being followed. Further, a Department manager informed us that they had reviewed the database to ensure the accuracy of its information. However, the Department could not provide any evidence of this review or of any changes they had made to the database.

Recommendation 9

Modify the database to eliminate unneeded fields and any duplicate records and to identify applications, reapplications and rejected applications that are related.

Status - Partially Implemented

Agency Action - The Department has decided to develop a new database instead of modifying the existing database. The Department issued an RFP on February 5, 2001. We were told that the vendor selection was almost complete. Management said the new system would meet the requirements of this recommendation.

Recommendation 10

Enhance the database to provide for meaningful management reports, including reports that age cases, and to interface with CARTS so that information can be shared and duplicate information can be reduced.

Status - Partially Implemented

Agency Action - See Agency Action in response to Recommendation 9.

Recommendation 11

Conduct a vulnerability assessment of the OIC remittance operations to determine the risks within the process that need to be addressed. Make adjustments and corrections as necessary to strengthen controls.

Status - Implemented

Agency Action - The Department has completed an Internal Control review for the remittance process as of March 31, 2000. Officials concluded no changes were required in the control structure.

Recommendation 12

Develop a comprehensive system of internal control over remittances which includes procedures whereby management can adequately monitor operations to ensure that remittances are properly safeguarded, and that deposits and disbursements are properly accounted for.

Status - Implemented

Agency Action - We found that the OIC Unit has modified their payment processing procedures to comply with our recommendation. The Department has developed comprehensive written procedures that OIC personnel adhere to.

Recommendation 13

Require formal control procedures for the reconciliation of PD Remit to the Sole Custody Fund and for reviews to ensure transactions are done timely and properly. Make staff aware of these procedures and train them about their role in maintaining controls over remittances.

Status - Implemented

Agency Action - The Division of Treasury reconciles the Sole Custody bank account on a daily basis. In addition, someone outside the OIC Unit reconciles the FMS Accounting System to the PD remit system on a monthly basis. Another person outside the Unit periodically checks the PD remit system for accuracy, completeness, and length of time from receipt of a check until the check is forwarded for deposit. This is done at least once a month but normally is done more frequently.

Major contributors to this report were Arthur F. Smith, Melissa Little and David Pleeter.

We would appreciate your response to this report within 30 days, indicating any actions planned or taken to address any unresolved matters discussed in this report. We also thank the Management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Jerry Barber
Audit Director

cc: Deidre A. Taylor, DOB
George Konta, Department of Taxation and Finance