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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 29, 2003

Ms. Martha Stark
Commissioner
The City of New York
Department of Finance
1 Centre Street
New York, New York 10007

Re: Delinquency Disclosure Program
Report 2002-N-9

Dear Ms. Stark:

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, we audited the actions taken by the New York City Department of Finance in implementing the Delinquency Disclosure Program. Our audit covered the period August 1, 1999 through November 30, 2002.

A. Background

The New York City Department of Finance (Finance) collects New York City's business, property and excise taxes, and administers and enforces the laws relating to these taxes. Finance also administers the collection of parking ticket fines and penalties. In 1999, Finance initiated the Delinquency Disclosure Program for the following business taxes: the General Corporation Tax, Utility Tax, Hotel Tax, Commercial Rent Tax, and Unincorporated Business Tax. The amount received by New York City in such taxes for the fiscal year ended June 30, 2002 was about $3.3 billion, and according to records maintained by Finance, as of September 20, 2002, as much as $1.5 billion in such taxes, both actual and estimated, were reported as delinquent.

The Delinquency Disclosure Program (Program) is intended to help in the resolution of such delinquencies. The Program is used only for delinquencies above a certain dollar amount and only when Finance's other efforts to resolve the delinquencies have not been successful. In the Program, delinquent taxpayers are contacted by Finance and informed that their delinquency will be publicly disclosed if action is not taken to resolve the delinquency within a certain timeframe. If such action is not taken or the taxpayer cannot be located, the name of the delinquent taxpayer and the amount of

the delinquency is published on Finance's Internet Web site. The disclosure of this information is intended to induce the taxpayer to contact Finance and either initiate payment or correct any errors in Finance's information. As of November 30, 2002, Finance had selected 809 business tax delinquencies totaling about $237 million for participation in the Program.

B. Audit Scope, Objectives and Methodology

We audited the actions taken by Finance in implementing the Delinquency Disclosure Program between August 1, 1999 and November 30, 2002. The objectives of our performance audit were to determine whether Finance developed formal standards for measuring the success of the Program and if so, whether these standards were consistently applied. To accomplish our objectives, we discussed Program policies and procedures with Finance officials, and analyzed data and reports relating to the Program. To facilitate our analysis, we used computer assisted audit techniques to select and analyze information maintained by Finance on automated information systems.

It is our practice to request a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. In the representation letter, agency officials assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. Agency officials further affirm that either the agency has complied with all laws, rules and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors.

However, officials at Finance informed us that, as a matter of policy, Mayoral agency officials would not provide representation letters in connection with our audits. As a result, we lack assurances from Finance officials that all relevant information was provided to us during the audit. We consider this refusal to provide a representation letter to be a scope limitation on our audit. Therefore, readers of this report should consider the potential effect of this scope limitation on the findings and conclusions presented in this report.

Except as noted above, we conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of Finance that are included within our audit scope. These standards also require that we understand Finance's internal control structure and compliance with those laws, rules and regulations that are relevant to the operations 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.

We use a risk-based approach to select activities for audit. We therefore focus our audit efforts on those activities we have identified through a survey as having the greatest possibility of needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, little audit effort is devoted to reviewing operations that may be relatively efficient and effective. As a result, our audit reports are prepared on an "exception basis." This audit report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

C. Results of Audit

We found that a formal performance measurement system has not been established for the Delinquency Disclosure Program. As a result, while there are indications that some delinquent taxes may have been collected through the Program, Finance officials cannot determine whether the Program is performing as effectively as it could or whether certain types of changes in the Program might result in increased collections. We also found that Finance was not always timely or consistent in its implementation of the Program, and did not fully document the actions taken in implementing the Program. We recommend that Finance establish a formal performance measurement system for the Program, and develop formal written procedures to guide Program activities.

Finance officials agree with our recommendations. They stated that they are in the early stages of implementing the Program, and are still in the process of identifying the best approaches to take to achieve the objectives of the Program. However, they agree that the Program would benefit from written procedures and the establishment of a formal performance measurement system.

1. Performance Measures

Government agencies are accountable for the effective, efficient and economical use of the publicly funded resources provided to accomplish their missions. To provide this accountability, agency management should determine and report measurable results of performance to the public, executive management and elected officials. Through such reporting, management and the public not only become aware of performance, but also of where improvements can be made.

One of the cornerstones of a performance measurement system is the establishment of goals and objectives that are pertinent to an agency's mission and are measurable. Another cornerstone is the establishment of performance indicators. A performance indicator is a particular value or characteristic that measures outputs or outcomes, which are indicative of progress towards goals and objectives. A performance measurement system should be built upon a comprehensive set of measurable goals, objectives and performance indicators.

We found Finance has identified measurable results that relate, to some extent, to the Program. In particular, records maintained by Finance indicate that, between January 1, 2000 and August 13, 2002, a total of $7.8 million in delinquent business taxes was collected from 31 of the 809 businesses that were included in the Program. Moreover, during the same period, the tax liabilities of 53 of the 809 businesses were lowered by $14.1 million as a result of additional information that was supplied by the taxpayers. In addition, 26 businesses declared bankruptcy reducing outstanding liabilities for these businesses by $3.9 million.

However, it cannot be determined whether the $7.8 million in collections or $14.1 million in adjustments were the direct result of the Program, or whether some or all of these collections and adjustments were the result of other factors and would have been made even if the Program had never been implemented. The extent to which the Program contributed to these delinquency resolutions cannot be determined, because Finance has not established a system for making such determinations. In particular, Finance has not developed measurable goals or measurable performance indicators for the Program (such as an expected rate of collection for each type of tax). If such goals or performance indicators had been in place when the Program was implemented, any improvements in collection rates might be able to be attributed to the implementation of the Program. Similarly, if collection rates did not increase after the Program was implemented, it could be concluded that the Program was not effective in its current form and changes ought to be made.

Records maintained by Finance also indicate that ten delinquent taxpayers made payments totaling $1.8 million after they were notified in May 2001 that their delinquencies would be disclosed on Finance's Web site. We were able to verify nine of these ten payments (the amount reported for the tenth payment -- $51,720 -- did not agree with the amount -- $293,699 -- recorded in Finance's payment records). While these payments may indicate that the Program can be effective, in the absence of a formal performance measurement system, there is no basis for determining whether this rate of collection is appropriate, or whether collections could reasonably be expected to increase if certain types of changes were made in the Program (such as disclosing the delinquencies in other Web sites or other publications). To enable the effectiveness of the collection efforts to be fully evaluated, we recommend that a formal performance measurement system be established for the Program.

Finance officials indicated that, when our audit began, they were still in the early stages of their implementation of the Program, and as a result, were still assessing the overall feasibility of the Program as a collection tool. At that time, they had yet to consider the Program a formally defined step in the overall collection process. However, they are committed to formalizing the Program and evaluating more precisely its revenue impact. They stated that they agree with our recommendation for a formal performance measurement system, and are engaged in the process of developing such a system.

2. Program Implementation

At the time of our audit, Finance officials had not developed formal written procedures for the Program. However, they had developed informal procedures for various aspects of the Program, and they expected these procedures to be followed. According to these procedures, delinquencies were to be selected for inclusion in the Program by staff in the Delinquency Disclosure Program (DDP) Unit. The selections were to be made from Finance's automated records of tax liabilities. Guidelines had not been developed stating how frequently these selections should be made. At the time of our audit, a total of 809 selections had been made on three separate occasions: August 1999, December 1999 and November 2000. A total of 494 delinquencies were selected in 1999 and 315 delinquencies were selected in 2000. In August 1999, delinquencies of $100,000 or more were to be selected; subsequently, the threshold for selection was lowered to $75,000.

Once a delinquency is selected for inclusion in the Program, staff in the DDP Unit are to review certain other records to confirm that the delinquency has not been paid (or otherwise adjusted) and the business has not declared bankruptcy. If the tax has not been paid or otherwise adjusted and the business has not declared bankruptcy, a letter is to be sent to the business stating that the delinquency will be disclosed on Finance's Web site in 30 days unless the taxpayer takes certain actions. If payment arrangements are not made or the taxpayer does not take other appropriate actions, the delinquency is to be published on the Web site. If the taxpayer takes appropriate actions after the delinquency is published, the published information should be removed from the Web site. Guidelines have not been developed stating how frequently the delinquency information on the Web site should be reviewed to ensure that it is up to date. At the time of our audit fieldwork on September 10, 2002, a total of 235 delinquencies were listed on the Web site.

To determine whether delinquencies were selected, processed and published in accordance with the procedures developed by Finance, we reviewed records relating to all 809 delinquencies that were selected for inclusion in the Program as of November 30, 2002. We also reviewed records relating to other delinquent business taxes to determine whether all of the delinquencies that were eligible for selection had in fact been selected.

We found that delinquencies were not always selected, processed and published in accordance with the established procedures. We also identified a number of delinquencies that may have been eligible for selection, but were not selected. The results of our review can be summarized as follows:

- According to the records maintained by Finance, 630 of the 809 delinquencies selected for the Program were published on the Web site. The records also indicate that 100 of the 809 delinquencies were not published, because after the delinquencies were selected, it was determined by DDP Unit staff that either the delinquencies had been paid (or otherwise adjusted), payment arrangements had been made or bankruptcy proceedings had been initiated. The records do not indicate whether the remaining 79 delinquencies were published on the Web site. Moreover, if the 79 delinquencies were not published, the records do not indicate why they were not published. We therefore conclude that as many as 79 of the 809 delinquencies may not have been processed or published in accordance with established procedures.

- A total of 315 delinquencies were selected for the Program in November 2000. However, none of these delinquencies were published on the Web site until September 10, 2002, nearly two years after they had been selected (at this time, 207 of the 315 delinquencies were published). Finance officials stated that this long delay was caused by staff shortages in the DDP Unit.

- Even though delinquencies are to be selected from certain of the tax liability records maintained by Finance, 47 of the 494 delinquencies that were selected in 1999 were not included in these records. We could not verify whether the 315 delinquencies selected in November 2000 were included in the tax liability records, because the original tax liability records for that period had not been retained by Finance. We

therefore conclude that delinquencies were not always selected for the Program in accordance with established procedures.

- As many as 770 additional tax delinquencies may have been eligible for the Program, but were not selected for the Program. We identified these delinquencies by using computer assisted audit techniques to review Finance's records of legal proceedings that had been initiated by Finance in response to reported business tax delinquencies. According to these records, the 770 delinquencies totaled $152.7 million. Finance officials stated they would review the 770 delinquencies and determine whether they were in fact eligible for the Program. They stated that, according to their preliminary review, many of the delinquencies may relate to incidences of non-filing, which were never intended to be targeted by the Program. Rather, the Program was intended to target the non-payment of taxes that had been assessed.

- One of the delinquencies listed on the Web site on September 10, 2002 was not accurate, because the name of the power of attorney was published instead of the taxpayer. Publishing the wrong name undermines the potential benefit of having the information on the Web site and creates a potential liability.

In addition, when we reviewed the Web site on September 10, 2002, we found that 198 of the delinquencies on the Web site at that time had been selected in November 2000, and only three of the delinquencies that were selected in 1999 were still listed. When we asked Finance officials why most of the selections from 1999 had been deleted but a few of the selections had been retained, they stated that specific criteria had not been established for updating the delinquency information on the Web site. They further stated that most of the delinquencies selected in 1999 had been deleted because they had been on the Web site for at least a year and had yet to induce any of those taxpayers to contact Finance to make payments or provide new information. Therefore, continued disclosure of those delinquencies did not seem productive.

While it may be appropriate for old delinquencies to be deleted from the Web site at some point, the process of updating the Web site should be guided by specific criteria that are consistently applied, and all additions and deletions should be fully documented. Finance has not established such criteria and does not always document the actions taken in updating the Web site. As a result, Finance officials cannot be reasonably assured that delinquencies are added to, and deleted from, the Web site in accordance with requirements.

We also note that, for most of the delinquencies published on the Web site, the current address of the taxpayer was not known. For example, according to the records maintained by Finance, 207 of the 315 delinquencies selected in November 2000 were published on the Web site. However, the taxpayer's current address was known for only 9 of these 207 delinquencies. We found no indication in the records maintained by Finance that a systematic effort is made to identify these unknown addresses. If a delinquent taxpayer's current address is known, collection efforts are much more likely to be successful.

As was noted earlier in this report, ten of the taxpayers who were contacted by letter in May 2001 made payments after they were informed that their delinquencies would be disclosed. We

recommend that a systematic effort be made to identify the addresses of delinquent taxpayers whose current addresses are not known.

Recommendations

1. *Develop a formal performance measurement system for the Delinquency Disclosure Program.*

2. *Develop formal written procedures addressing all aspects of the Delinquency Disclosure Program, including the selection and processing of delinquent taxes, the publishing and updating of delinquency information on the Web site, and the documentation of the actions taken in implementing the Program.*

3. *Monitor the actions taken in implementing the Delinquency Disclosure Program to ensure that tax delinquencies are selected, processed, published, and updated in accordance with the established procedures.*

4. *Establish a systematic process for attempting to identify the address of delinquent taxpayers whose current address is not known.*

5. *Determine whether the 770 delinquencies identified by our audit are eligible for the Delinquency Disclosure Program.*

A draft of this report was provided to Finance officials for their review and comment. Their comments have been considered in preparing this final report and are included as Appendix A. Finance officials state the report contains useful recommendations for developing Program standards and procedures and they agree with our recommendations. Finance officials state that they did not formalize the procedures for the Program because they were testing the effectiveness of the Program as a collection tool. They concluded that the Program can be effective, and believe that it would benefit from the improvements we recommend. They state they are in the process of implementing our recommendations, and in particular, are developing formal operating procedures for the Program and establishing workflow definitions in their automated information system to track the delinquencies that are selected for the Program. They state that this tracking ability would make it easier to identify the revenue that is collected as a result of the Program.

Within 90 days after final release of this report, we request that the Commissioner of the New York City Department of Finance 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.

Major contributors to this report were Arthur F. Smith, Tom Trypuc, Christine Chu, Ken Hague, Hugh Zhang, Nerissa Theobald and Dana Newhouse.

We wish to thank the management and staff of the New York City Department of Finance for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

Steven E. Sossei
Audit Director

cc: Mr. Michael Phillips
Ms. Carla Van De Walle

FINANCE
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THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

March 20, 2003

Jerry Barber
Audit director
State of New York
Office of the State Comptroller
110 State Street, 11th Floor
Albany, N.Y. 12236

RE: Audit Report 2002-N-9
Department of Finance's Delinquent Disclosure Program

Dear Mr. Barber:

Enclosed please find the Department of Finance's response to the "Working Draft" that was issued by your office on February 24th, 2002.

If you have any questions, please do not hesitate to contact me at (212) 669-4878.

Sincerely,

Carla Van de Walle
Senior Director
Internal Audit &
Management Analysis

Enc.

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Appendix A

Implementation Plan

The Draft Report issued to the Department of Finance ("Finance") by the Office of the State Comptroller ("Comptroller") provides useful recommendations for developing standards and procedures concerning how Finance administers the Delinquency Disclosure Program ("Program"). As Finance stated in the Exit Conference, the Program began as a Web publication of larger outstanding tax debtors and procedures that seemed appropriate prior to Web publication evolved as the Program expanded.

In this review of the Program it is clear that a review of these liabilities prior to the disclosure step is very productive in validating a full collection effort. Accordingly, Finance will write standards and procedures that meet the objective of validating demographic information on a defined set of tax delinquencies, documenting final collection attempts, including, notification and asset location and the publishing of delinquent information on the web (for a specific period of time).

With respect to the recommendations contained in the report, Finance has created the following implementation plan:

1. Develop a formal performance measurement system for the Delinquency Disclosure Program, including the selection and processing of delinquent taxes. Finance will develop a measurement system that identifies collections that are a result of the Program. The essential tool in this measurement will be to move the cases into an "organization" in our case flow where all actions will be within the constraint of the Program efforts. Finance will develop a baseline collection rate on the target population by looking at historical collection rates from the collection state that we are drawing these cases from. **Projected Implementation: April 30, 2003**.

2. Develop formal written procedures addressing all aspects of the Delinquency Disclosure Program, including the selection and processing of delinquent taxes, the publishing and updating of delinquency information on the Web site, and the documentation the actions taken in implementing the Program. Finance has outlined a process for selection and processing of cases for the Program and is currently compiling a Standard Operating Procedure ("SOP"). **Projected implementation: April 30, 2003**.

3. Monitor the actions taken in implementing the Delinquency Disclosure Program to ensure that tax delinquencies are selected, processed, published and updated in accordance with the established procedures. Besides establishing formal procedures for the Program, Finance will review compliance with those procedures periodically. As part of this compliance plan, Finance will reconcile selected case population and disposition when the new posting occurs. **Projected implementation: June 2003**.

4. Establish a systematic processes for attempting to identify the address of delinquent taxpayers whose current address is not known. The Department of Finance plans to validate addresses against several sources. These include, NYS Deptartment of Taxation return files, Federal return files, and Equifax reports. We may also use return mail information from the Postal Service and phone directory/disk information. **Projected implementation: June 2003**

5. Determine whether the 770 delinquencies identified by our audit are eligible for the delinquency Disclosure Program. Finance will review the 770 delinquencies after the SOP is finalized and make a disposition on each regarding eligibility for the program. We will issue the finding of this review to the Comptroller. **Projected implementation: June 2003.**