



State of New Hampshire Department of Revenue Administration

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John T. Beardmore
Commissioner

June 25, 2014

Honorable Mary Jane Wallner, Chair
New Hampshire General Court
Joint Legislative Fiscal Committee
Legislative Office Building, RM 210-211
33 North State Street
Concord NH 03301

Re: Report by Department of Revenue Administration - *July 2013 Performance Audit Report, "Department of Revenue Administration: Collection of Delinquent Taxes"*

Dear Rep. Wallner and Honorable Members of the Committee:

In July of 2013, the Office of the Legislative Budget Assistant (LBA) issued a Performance Audit Report, "Department of Revenue Administration: Collection of Delinquent Taxes," relative to its audit of the Department of Revenue Administration's (DRA) Collection Division. In that report the LBA made thirteen (13) observations and recommendations regarding internal controls, taxpayer compliance enforcement, and administrative rules and internal policies for collecting delinquent taxes. At that time, the DRA concurred in whole, or in part, to the LBA observations and recommendations and committed to addressing the same within the next year. Accordingly, I provide the Joint Legislative Fiscal Committee with the following report outlining the DRA's actions to-date.

LBA Observation No. 1 - Improve Abatement Management

LBA Recommendation to DRA management:

- refine the abatement authority delegation to include authority to abate fees;
- define the "best interest of the State" when applied to abatements;
- clarify "waive" in the abatement delegation;
- monitor the Director's abatement decisions to ensure compliance with his delegated authority;
- delete monthly reporting requirements from the abatement delegation if technological advancement has made separate reporting redundant; and
- require the Division fully document reasons for abatement transactions.

TDD Access: Relay NH 1-800-735-2964

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the Department.

DRA Audit Response: *Concur – DRA delegations will be updated and refined immediately. The DRA will put in place a reporting process to monitor Division abatement decisions.*

DRA Actions to-date:

- ✓ Promulgation of NH Code of Admin. Rules, PART Rev 2909, entitled “Settlement Agreements with the Collections Division,” is currently scheduled for the Joint Legislative Committee on Administrative Rules’ (JLCAR) calendar in July 2014. Per the new rule, a “[s]ettlement agreement” means a written agreement between a taxpayer and the department’s collection’s division where the department agrees to accept some amount less than the full amount of taxes, interest, and penalties owed by the taxpayer to the department in full settlement of the taxpayer’s tax obligation to the department.” Abatements often result from settlement agreements. This proposed rule implements the LBA recommendation by codifying when settlement agreements should be offered.
- ✓ On January 29, 2014, the Commissioner issued delegation DEL #052, which refines the delegation authority to abate fees.
- ✓ All abatements approved by the Division Director are reported on a monthly basis, in writing, to the Commissioner in accordance with DEL #052.
- ✓ Reasons for Division abatements are now consistently entered with the abatement transaction in DRA’s Tax Information Management System (TIMS).

LBA Observation No. 2 - Promulgate Administrative Rules for Payment Agreements

LBA Recommendation: the DRA promulgate administrative rules for payment agreements in order to provide clear requirements for both the DRA and taxpayers. The rules should specifically address how taxpayers must document their inability to pay and to ensure the Division obtains and maintains written payment agreements.

DRA Audit Response: *Concur – DRA will first determine whether it will seek statutory changes and then address promulgating the appropriate administrative rules.*

DRA Action to-date:

- ✓ Passage of Senate Bill (SB) 386 (Chapter 78, Laws of 2014), which in relevant part, removes the “lien” and “taxpayer demonstration of inability to pay in full” requirements to enter into a written installment agreement under RSA 21-J:43. This allows greater flexibility for the DRA and the taxpayer to enter into such agreements.
- ✓ Promulgation of NH Code of Admin. Rules, PART Rev 2908, entitled “Written Installment Payment Agreements with the Collections Division.” This proposed rule implements the LBA recommendation and is currently scheduled for the JLCAR calendar in July 2014.

LBA Observation No. 3 - *Adopt Administrative Rules for Liens*

LBA Recommendation: The DRA adopt administrative rules for its use of liens as a collection tool and ensure they are consistently applied.

DRA Audit Response: *Concur – DRA will begin drafting appropriate administrative rules to address DRA's use of liens.*

DRA Action to-date:

- ✓ Promulgation of NH Code of Admin. Rules, PART Rev 2907, entitled “Lien Procedures.” This proposed rule implements the LBA recommendation and is currently scheduled for the JLCAR calendar in July 2014.

LBA Observation No. 4 - *Technical Assistance Manual Should Be Authoritative*

LBA Recommendation: The DRA develop, issue, and adhere to an authoritative policy and procedure manual to codify Division policies and procedures to help ensure compliance with statute and consistent collection practices.

DRA Audit Response: *Concur – DRA concurs with the Recommendation, however, post-audit period, the DRA completed an update of its Collection Division Technical Assistance Manual (TAM), and such TAM currently addresses the concerns outlined in Observation No. 4.*

DRA Actions to-date:

- ✓ The TAM has been revised where necessary.
- ✓ The Division staff are trained to use the TAM as an authoritative source with accountability for adhering to its contents or consulting with their supervisor if they encounter any questions or concerns.
- ✓ The following language has been incorporated into the TAM – “This manual is authoritative for the policies and procedures within the Division. This manual is subject to change. These policies and procedures were prepared with the expectation of being updated on an ongoing basis as staff and financial resources are made available.”

LBA Observation No. 5 - *Improve Records Management*

LBA Recommendation: The DRA promulgate, implement, and oversee a statutorily compliant records management program for the Division.

DRA Audit Response: *Concur – Although data sought during the audit period was available, it was segregated in different files and locations based upon differing DRA needs, such as documentation needed for LBA financial auditors, as well as differing retention schedules. Going forward, the DRA will strive to improve records management*

by placing all relevant taxpayer data into a single record, and has already taken steps to document this approach in its updated TAM.

DRA Actions to-date:

- ✓ Updated the TAM to include a provision for taxpayer data to be placed into a single record.
- ✓ On March 5, 2014, the Commissioner issued the “Collection Division Record Retention and File Destruction” policy and procedure #14-011, which established a policy and procedure regarding the record retention and destruction of files in the Division.

LBA Observation No. 6 - Strengthen Information Technology (IT) Control Environment

LBA Recommendations: DRA management strengthen the IT control environment by:

- establishing system development controls to ensure new and modified systems are implemented according to DoIT’s System Development Methodology;
- creating and testing operational disaster recovery and business continuity plans to facilitate IT system recovery and continuous operation in the event of a disaster;
- improving physical access controls to DRA’s building, including formalizing procedures for identifying after-hours access, locking server rooms and limiting employee access, enforcing its existing policies for access to the building, and document its monitoring of building access privileges;
- increasing controls over user access privileges to IT applications by establishing a formal user access privilege policy and procedure, not providing employees with access to both test and production environments, eliminating the practice of shared user accounts and passwords, and reviewing current employee access privileges to ensure they are appropriate based on business needs; and
- creating and implementing a user account management policy and procedures, to ensure terminated employees do not have access to DRA’s IT systems and user activity is routinely monitored.

DRA Audit Response: *Concur In Part - Bullet No. 1 relates to system development controls under the purview of the Department of Information Technology (“DOIT”). According to DOIT, DOIT embedded staff always follow the System Development Lifecycle methodology for each internal project supporting the DRA. DOIT also follows a very strict process for identifying and addressing all internally managed program changes. DOIT states that the challenge is holding vendors to the same standards and accountability since these contracts are held with the agency and not DOIT. Going forward, DOIT will strive to ensure that vendors procured by the DRA are working in conjunction with the System Development Lifecycle methodology per DOIT guidelines.*

Bullet No. 2 relates to disaster recovery. The DRA agrees that issues surrounding disaster recovery and Continuity of Operations Plans must be updated, enhanced, and tested.

Bullet No. 3 discusses physical access. DOIT and the DRA agree that there needed to be more stringent controls around access to the server room and steps have already been taken to further secure access to the computer room.

Bullet no. 4 addresses the user access security matrix. The DRA does review, on a twice yearly basis, all employees' IT access privileges to ensure they are appropriate based on business needs. Nevertheless, the DRA agrees it will implement a formal written policy to that effect. Additionally, DOIT monitors and disables DRA user network accounts after 45 days of inactivity.

Bullet no. 5 relates to user access privileges to IT applications. DOIT will continue to work with the DRA to refine the current procedures and implement stronger controls. DOIT represents that in certain circumstances it is necessary for IT and business users to have access to both test and production environments. Nevertheless, DOIT concurs with this observation and is creating unique user IDs for each operator.

DRA Actions to-date:

- ✓ There is an overall State initiative to address the Continuity of Operations Plan for all state agencies. The DRA is participating in this effort and intends to follow the State established standards. Additionally, a formal DRA Disaster Recovery plan is underway and is scheduled to be finished in FY 2015 and is part of the overall Agency IT Plan.
- ✓ The key to the DRA server room has been secured in a lock box with access limited to certain authorized personnel. Access is managed by the computer operators and all those who enter must be logged.
- ✓ A review and update of user privileges was completed in August 2013:
 - *Test Credentials* - DoIT maintains a list of credentials for the test environments. These test credentials have limited access and permissions based on what the users need to test. All test credentials are only enabled for the duration of the test period. After the testing is completed all test credentials are disabled.
 - *Production Credentials* – All production users now have only one set of credentials to ensure the appropriate privileges are granted. Administration verified all updates which were then implemented.
- ✓ In conjunction with DoIT, the DRA enforces the DoIT User Account Maintenance Policy and Procedure for on-going account maintenance including the creation, modification and deletion of accounts as well as the routine review of inactive accounts by DoIT.

LBA Observation No. 7 - Improve Risk Management

LBA Recommendations: DRA management improve its risk management controls by:

- establishing written policies and procedures for significant business processes;
- conducting and documenting biannual risk assessments;
- increasing oversight over third-party service providers, such as requiring them to submit SSAE No. 16 reports;
- regularly completing internal audits to ensure controls are functioning as intended;

- creating and implementing a quality control system to ensure data are accurate; and
- designating an employee responsible to identify, evaluate, and manage external and internal business operations and IT systems risks.

DRA Audit Response: *Concur in part – The DRA agrees that the internal audit function needs to return and the DRA’s Internal Auditor will re-implement a formalized audit program for the DRA.*

Bullet No. 2 addresses risk assessments. The DRA further agrees with this Observation and will work with DOIT to implement a formalized process based on the DOIT policy. DOIT, per its Risk Management Assessment policy, must assist the DRA with all risk assessment activities and work with the DRA in completing this process as they require.

Bullet No. 5 relates to creating a quality control system. The DRA will work with the vendor and DOIT to assess the data currently in the TIMS application for accuracy. During the audit period, the DRA did have in place an Information Security Officer who recently left State employment. The DRA will designate a new Information Security Officer pursuant to the recommendation in Bullet No. 6. DOIT will offer assistance to this person as required.

DRA Actions to-date:

- ✓ The Commissioner established a policy and procedure committee, which is reviewing existing policies and procedures and creating new policies and procedures for significant business processes.
- ✓ The DRA’s internal audit function is active as other responsibilities that were temporarily assigned to the Internal Auditor have been transferred to other employees within the DRA, allowing the Internal Auditor time to conduct planned internal audits.
- ✓ An Information Security Officer has been appointed.

LBA Observation No. 8 - *Ensure Timely Handling of Collection Cases*

LBA Recommendations to DRA management:

- expedite assignment of non-M&R collections cases to the Division;
- assess the efficiency of the 60-day proposed tax notice practice, consider whether the practice remains valuable and whether it effectively duplicates the statutory appeal period, and promulgate administrative rules to formalize the practice if it is to remain in effect;
- consider reducing the 80-day pre-programmed assignment of non-M&R tax notices to the Division;
- determine the cause for other delays in assigning tax notices to the Division and remedy any systemic issues contributing to delays; and
- ensure the Division timely processes cases.

DRA Audit Response: *Concur – for Tax Year 2013, the DRA will assess the tax notice [notice of assessment] system, including the areas highlighted in the bulleted recommendations.*

DRA Actions to-date:

- ✓ The proposed tax notice (notice of assessment) practice emerged from the growing caseload experienced by the DRA Hearings Bureau working with formal appeals that could have been informally resolved using a proposed assessment process. The proposed notice of assessment process for informal resolution is used in many other tax departments, including the US Department of Treasury, Internal Revenue Service. The policy and procedure committee reviewed the proposed notice of assessment practice and learned that the practice expedites resolution, saves taxpayers the expense of formal representation in the hearings process and allows adjudication of true disputes through the Hearings Bureau in a timely manner. The policy and procedure committee recommended the proposed notice of assessment practice be promulgated in administrative rules rather than an internal DRA policy and procedure.
- ✓ The proposed notice of assessment 60-day practice has been returned to a 45-day practice.
- ✓ The policy and procedure committee is evaluating if the proposed notice of assessment adds a risk to a positive outcome in any discernable set of tax obligations other than Meals and Rentals Tax notices of assessment, which are immediately issued without use of the proposed notice of assessment practice.
- ✓ The 80-day pre-programmed assignment has been determined to allow time for an appeal that may be mailed on the 60th day of the 60-day appeal period to be received by the DRA and processed by the Hearings Bureau. As such, the 80-day period allows the Collections Division to send a delinquency notice or contact the taxpayer for collection of tax due with confidence that it will not impact any asserted appeal rights.
- ✓ The Division is monitoring assignment times and determining if observed delays are justified or a result of a TIMS issue that should be reported.
- ✓ The Division reports the outstanding notice of assessment inventory to the Commissioner frequently.

LBA Recommendations to Division management:

- expedite assignment of M&R collections cases;
- determine the cause for delays in assigning M&R tax notices to the Division and remedy any systemic issues contributing to delays;
- expand upon efforts to measure Division and Compliance Officer performance by establishing benchmarks for case processing, including timeliness; and
- gather case data to measure the timeliness of collection actions and case outcomes.

DRA Audit Response: *Concur – for Tax Year 2013, the DRA will assess the tax notice (notice of assessment) system, including the areas highlighted in the bulleted recommendations.*

DRA Actions to-date:

- ✓ A report on the unassigned, open Meals and Rentals Tax Notices of Assessment is reviewed by the Division Director as part of a monthly trend report to identify any unexpected delays due to system issues. The trend report is shared quarterly with the Commissioner.
- ✓ The system change that resulted in delays during part of the audited periods was corrected prior to the end of the audited periods. The monitoring noted above will quickly identify any similar event.
- ✓ A Collections Supervisor was recruited in September 2013. The supervisor trained compliance officers on the follow-up schedule in the Division's TAM and measures adherence during the review of lien requests.
- ✓ The Supervisor and the Director compile data from the "remarks" section (see Observation 12) with payment data. Aged notices of assessment reports are also now available for trending.

LBA Observation No. 9 - *Adopt Administrative Rules for Settlement Agreements and Offers-In-Compromise*

LBA Recommendations: the DRA promulgate administrative rules and policy regulating the use of settlement agreements and offers-in-compromise before continuing their use. We further recommend the Division formalize procedures to operationalize DRA administrative rules and policy.

DRA Audit Response: *Concur in part – the DRA will review its policies and procedures in this area and will determine whether administrative rules should be promulgated or more formalized procedures need to be put in place.*

DRA Action to-date:

- ✓ Promulgation of NH Code of Admin. Rules, PART Rev 2909, "Settlement Agreement with the Collections Division." This proposed rule implement the LBA recommendation and is currently scheduled for the JLCAR calendar in July 2014

LBA Observation No. 10 - *Need To Publicize Payment Options*

LBA Recommendation: the DRA provide sufficient guidance on its website explaining the circumstances by which taxpayers can seek payment agreements and abatements.

DRA Audit Response: *Concur - the DRA engaged DOIT in May of 2013 to work with the DRA to update its website to include information on payment agreements, abatements, and other matters relevant to the collections process. The improved website will be a vital resource for users such as taxpayers, tax practitioners, Legislators, other State agencies, and the general public to obtain forms, form instructions, laws, rules and publications of the DRA. The site will also educate the public about various tax relief programs as well as provide an efficient means for the public to get quick answers to frequently asked questions. Significant enhancements will include: improved navigation of the website for users; improved updating capabilities for DRA staff; a clean,*

minimalist design that is visually appealing, easy to navigate and very interactive; and a one-stop design for all tax-related matters.

DRA Actions to-date:

- ✓ The DRA has updated its website to assist taxpayers in finding information about payment agreements and requests for abatements.
- ✓ Upon adoption of proposed rules, PART Rev 2908 and PART Rev 2909, the DRA will provide forms and enhanced information on its website directing taxpayers to payment options.

LBA Observation No. 11 - *Identify Training Needs And Develop An Appropriate Employee Training Program*

LBA Recommendations: the DRA identify employee training needs and develop an appropriate training program for Division of Collections employees. We also recommend the DRA include appropriate funding for this training in its biennial budget requests.

DRA Audit Response: *Concur – the DRA can provide internal training relative to the various needs assessed, to the extent internal resources are available. The DRA will further plan for and seek budget approval in the next biennium for relevant external training opportunities.*

DRA Actions to-date:

- ✓ In FY 2014, the DRA provided 77 hours of internal tax training to the Division compliance officers. In addition, Division compliance officers attended 124 hours of BET classes on various relevant topics. Further, two compliance officers attended a 3-day training program on tobacco tax compliance presented by the Federation of Tax Administrators.
- ✓ The Division has investigated needs and will request in the next budget cycle \$1,000 for computer-based collection training and \$1,500 for specialized training opportunities through web-based programs and an equal amount for BET courses.
- ✓ Division management has updated the accountabilities required for compliance officers and has identified 48 training activities associated with these accountabilities. Current staff needs will be identified based upon current skill sets and new hires will receive training in all 48 areas.

LBA Observation No. 12 - *Improve Interdivisional Communication*

LBA Recommendations: the DRA consider expanding use of the *Remarks* section of TIMS to improve interdivisional communication and ensure employees from the Collections and Audit Divisions have greater access to each other's case notes.

DRA Audit Response: *Concur – the DRA will work to ensure all pertinent divisions and units expand the use of Remarks within TIMS to enhance communication. Post-audit*

period, the number of Remarks posted by other divisions and units have increased dramatically, thus greatly enhancing interdivisional communication.

DRA Actions to-date:

- ✓ The Director of the DRA Audit Division encouraged auditors to use the Remarks section more in TIMS.
- ✓ Collections staff began to observe summarized audit results entered into the Remarks section by auditors.
- ✓ During July 2013, 3,903 remarks were entered into TIMS by employees of other DRA Divisions.
- ✓ For the quarter ending 12/31/2013, Divisions other than the Collections Division entered 10,056 remarks.
- ✓ For the quarter ending 3/31/2014, Divisions other than the Collections Division entered 13,133 remarks.
- ✓ These statistics document the greatly expanded use of the remarks.

LBA Observation No. 13 - *Discontinue Practice Of Requiring Delinquent Meals And Rentals Operators To Provide Bank Account Security Information*

LBA Recommendation: the Division discontinues the practice of requiring delinquent meals and rentals operators to provide bank account security information until such time as the DRA has authority to do so in statute.

DRA Audit Response: *Concur – the DRA discontinued this practice during the audit period. The DRA will review whether to seek a statutory change to provide a tool that will adequately secure the State’s revenue stream.*

DRA Actions to-date:

- ✓ The Division discontinued the practice early in the audit period.
- ✓ At the current time, the Division is using internal data sources to confirm operators with a history of noncompliance are meeting their commitments.

I hope this letter has been helpful in demonstrating the DRA’s efforts in the past year. If you have any questions, feel free to contact me directly.

Sincerely,



John T. Beardmore
Commissioner

Cc: Jeffrey A. Pattison, Legislative Budget Assistant; LBAO
Richard J. Mahoney, CPA, Director of Audits; LBAO
Representative Lucy Weber; Chair, LPAOC