



City of New York

OFFICE OF THE COMPTROLLER

John C. Liu
COMPTROLLER



IT AUDIT and RESEARCH

Tina Kim

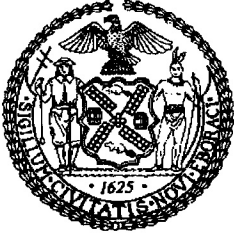
Deputy Comptroller for Audit

Audit Report on the Reliability and
Accuracy of Commercial Rent Tax Data
Administered by the Department of
Finance

7A12-130A

February 7, 2013

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
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John C. Liu
COMPTROLLER

February 7, 2013

To the Residents of the City of New York:

My office has audited the Department of Finance (DOF) to determine whether the agency's commercial rent tax (CRT) data exist in a secure environment and is sufficiently reliable and accurate for collection purposes. We audit entities such as DOF as a means of ensuring systems and technological resources of City agencies are cost-effective, efficient, secure, and operate in the best interest of the public.

The CRT data exists in a secure environment, and it is readily accessible to all essential users identified by DOF. The CRT data is generally reliable for collection purposes, and it generally contains the required information for enforcement and penalty collection purposes.

During the course of audit fieldwork, we noted several issues for DOF follow-up. CRT billing periods are kept independent of each other. As a result, previous period outstanding balances are not carried over to the next billing period, which may hamper collection efforts. We also identified an outstanding balance of \$8.4 million owed to the City. In addition, we found overpaid tax balances on the system totaling \$57.6 million, which DOF states are due to taxpayer filing errors or prepayments rather than actual tax overpayments.

The results of the audit have been discussed with DOF officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "JCL".

John C. Liu

TABLE OF CONTENTS

| | |
|--|-----------|
| AUDIT REPORT IN BRIEF | 1 |
| Audit Findings and Conclusion | 1 |
| Audit Recommendations..... | 2 |
| Agency Response..... | 2 |
| INTRODUCTION | 3 |
| Background | 3 |
| Objectives..... | 3 |
| Scope and Methodology Statement..... | 4 |
| Discussion of Audit Results | 4 |
| FINDINGS AND RECOMMENDATIONS | 5 |
| Account Balances are Not Carried Forward | 5 |
| Outstanding Balances of \$8.4 Million Owed to the City | 5 |
| Possible Overpayment in the System..... | 6 |
| Recommendations..... | 7 |
| DETAILED SCOPE AND METHODOLOGY | 10 |
| ADDENDUM Department of Finance Response | |

THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER IT AUDIT AND RESEARCH

Audit Report on the Reliability and Accuracy of Commercial Rent Tax Data Administered by the Department of Finance

7A12-130A

AUDIT REPORT IN BRIEF

The Department of Finance (DOF) collects City revenues, encourages compliance with City tax and other revenue laws, values all real property in the City, provides a forum for the public to dispute tax and parking violation liability, and maintains property records. In Fiscal Year 2012, DOF collected approximately \$673 million in Commercial Rent Tax (CRT).

CRT is charged to commercial tenants who occupy or use a location for commercial activity in Manhattan south of 96th Street and locations that have an annual or annualized gross rent paid that is at least \$250,000. Tenants are exempted for reasons such as short rental periods, residential subtenants, use for theatrical productions, and not-for-profit status. The statutory tax rate is 6 percent of the base rent paid by tenants of the premises that are used to conduct any business, profession, or commercial activity. In addition, a tax credit is allowed for taxpayers whose annualized base rent is between \$250,000 and \$300,000.

An annual return (CR-A)¹ is required to be filed by every tenant, on or before June 20, covering the preceding year from June 1 to May 31, unless the annual gross rent paid for any taxable location is \$200,000 or less and the rent received from any subtenant of the premises is \$200,000 or less. Every tenant subject to tax for a period must file a quarterly return (CR-Q1, CR-Q2, and CR-Q3). Quarterly returns are due for the three-month periods ending on the last days of August, November, and February of each tax year and must be filed within 20 days after the end of the period they cover. DOF utilizes an in-house system called Fairtax to process and maintain information relating to all those who pay these taxes and fines.

Audit Findings and Conclusion

The CRT data exists in a secure environment, and it is readily accessible to all essential users identified by DOF. The CRT data is generally reliable for collection purposes, and it generally contains the required information for enforcement and penalty collection purposes.

¹ CRT quarterly returns include CR-Q1, CR-Q2, and CR-Q3. The CRT annual return is CR-A.

During the course of audit fieldwork, we noted several issues for DOF follow-up. CRT billing periods are kept independent of each other. As a result, previous period outstanding balances are not carried over to the next billing period, which may hamper collection efforts. We also identified an outstanding balance of \$8.4 million owed to the City. In addition, we found overpaid tax balances on the system totaling \$57.6 million, which DOF states are due to taxpayer filing errors or prepayments rather than actual tax overpayments.

Audit Recommendations

DOF should:

- Ensure that the billing process is corrected and previous years' account balances are carried forward.
- Collect the outstanding taxes due as applicable.
- Review, analyze, and correct all the inaccurate overpaid information on the system.
- Review and, if necessary, modify its filing process to ensure taxpayers are following the filing instructions.

Agency Response

In their response, DOF officials generally agreed with one recommendation, but disagreed with our recommendations dealing with: previous years' account balances being carried forward, the outstanding CRT balance of \$8.4 million, and the need to take any actions to correct the inaccurate overpaid information on the system.

INTRODUCTION

Background

The Department of Finance (DOF) collects City revenues, encourages compliance with City tax and other revenue laws, values all real property in the City, provides a forum for the public to dispute tax and parking violation liability, and maintains property records. In Fiscal Year 2012, DOF collected approximately \$673 million in Commercial Rent Tax (CRT).

CRT is charged to commercial tenants who occupy or use a location for commercial activity in Manhattan south of 96th Street and locations that have an annual or annualized gross rent paid that is at least \$250,000. Tenants are exempted for reasons such as short rental periods, residential subtenants, use for theatrical productions, and not-for-profit status. The statutory tax rate is 6 percent of the base rent paid by tenants of the premises that are used to conduct any business, profession, or commercial activity. In addition, a tax credit is allowed for taxpayers whose annualized base rent is between \$250,000 and \$300,000.

An annual return (CR-A) is required to be filed by every tenant, on or before June 20, covering the preceding year from June 1 to May 31, unless the annual gross rent paid for any taxable location is \$200,000 or less and the rent received from any subtenant of the premises is \$200,000 or less. Every tenant subject to tax for a period must file a quarterly return (CR-Q1, CR-Q2, and CR-Q3). Quarterly returns are due for the three-month periods ending on the last days of August, November, and February of each tax year and must be filed within 20 days after the end of the period they cover. DOF utilizes an in-house system called Fairtax to process and maintain information relating to all those who pay these taxes and fines.

First-time filers must fill out a paper tax form and mail it. DOF creates a new account and the system will automatic assign a sequentially numbered account ID. Current filers have the option of paper forms or online filing through DOF's NYC E-file. All forms and checks are mailed to a lockbox at Bank of America. The bank scans all forms and payment. A data file is sent by the bank twice a week to the DOF Financial Information Technology Unit (FIT). This file is uploaded into Fairtax. DOF employees can view the images on Filenet².

Objectives

The objectives of this audit were to determine whether the CRT data:

1. Exists in a secure environment and is readily accessible to all essential users;
2. Is sufficiently reliable for collection purposes; and
3. Contains required information for the enforcement and penalty collection process.

² Filenet is software used by DOF employees to view a copy of taxpayers' forms and payments.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was from June 2009 through September 2012. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with DOF officials during and at the conclusion of this audit. A preliminary draft report was sent to DOF officials and was discussed at an exit conference held on December 4, 2012. On December 11, 2012, we submitted a draft report to DOF officials with a request for comments. We received a written response on December 26, 2012. In their response, DOF officials generally agreed with one recommendation, but disagreed with our recommendations dealing with: previous years' account balances being carried forward, the outstanding CRT balance of \$8.4 million, and the need to take any actions to correct the inaccurate overpaid information on the system.

The full text of the DOF response is included as an addendum to this final report.

FINDINGS AND RECOMMENDATIONS

The CRT data exists in a secure environment, and it is readily accessible to all essential users identified by DOF. The CRT data is generally reliable for collection purposes, and it generally contains the required information for enforcement and penalty collection purposes.

During the course of audit fieldwork, we noted several issues for DOF follow-up. CRT billing periods are kept independent of each other. As a result, previous period outstanding balances are not carried over to the next billing period, which may hamper collection efforts. We also identified an outstanding balance of \$8.4 million owed to the City. In addition, we found overpaid tax balances on the system totaling \$57.6 million, which DOF states are due to taxpayer filing errors or prepayments rather than actual tax overpayments.

Account Balances are Not Carried Forward

While reviewing CRT data, we noted that delinquent balances from previous billing periods are not carried over to the next billing period. For example, account holders whose accounts are delinquent for the period ending May 31, 2010, may send a payment for the period of May 13, 2011, but leave the outstanding May 31, 2010, balance unpaid possibly because it was not carried forward as part of the total amount owed. The Fairtax CRT program was designed to keep each account's billing periods separate from each other. DOF's practice of not carrying over an account's delinquent balance from a previous period encourages taxpayers to forgo paying earlier delinquent account balances and also may hamper collection efforts.

Outstanding Balances of \$8.4 Million Owed to the City

During our testing period, we found an outstanding tax balance totaling \$10 million for the period covering June 2009 through September 2012 for 953 outstanding CRT accounts. The highest dollar value for any one account was \$465,729.02, with an average outstanding balance of \$8,831.98. We forwarded these outstanding balance accounts to DOF officials for further clarification. The DOF officials reviewed the eight largest outstanding accounts. According to DOF officials, four out of eight accounts have been recently paid and three accounts are in the DOF Audit Division (which is responsible for auditing accounts referred to it). After we analyzed the additional data provided by DOF officials, we found that there is still an outstanding tax balance totaling \$8.4 million for the period covering June 2009 through September 2012 (see Table I).

Table I

CRT Outstanding Balances

| CRT Tax Year | # of Outstanding Accounts | Outstanding Balances |
|--------------|---------------------------|----------------------|
| 2010 | 251 | \$2,848,799.10 |
| 2011 | 186 | \$2,184,677.02 |
| 2012 | 510 | \$3,330,408.12 |
| Total | 947 | \$8,363,884.24 |

Taxpayers who have not paid their CRT within two to three weeks after it is due receive a Notice of Tax Due with interest and penalties. If, after six weeks of receiving the Notice of Tax Due and the taxpayer not paying the tax liability, the taxpayer will receive a Notice and Demand for Payment Due. If the notice goes unanswered, the case will be referred to DOF's Collections Division.

The Audit Division is responsible for auditing accounts sent by DOF's Quality Analysis Group Modeling Division. The CRT cases selected for audit are assigned a complexity level. The levels are 1 thru 5, 1 being the most simple and 5 being the most complex. The turnaround time for a case depends on the complexity level. Simple cases take up to one year and complex cases take several years to complete. We received a list of all open CRT cases (250) within the Audit Division. We matched these 250 open cases with the 947 outstanding transactions to determine how many outstanding accounts were being audited. We found that 42 out of 947 outstanding transactions totaling \$3.3 million are in DOF's Audit Division.

DOF officials informed us that while CRT accounts are in the Audit Division, these accounts are not liable for collection. Disputed field audits can be protested within 90 days of the issuance of the assessment and are reviewable by Finance's Conciliation Bureau or the New York City Tax Appeals Tribunal. These agencies can uphold, reduce, or abate the assessment balance.

DOF Collections Division is responsible for reviewing warrants for completeness and accuracy and then docketing warrants with the courts. Warrants are generated in Fairtax automatically. When a warrant is issued, the Collections Division can then take enforcement action. New York State law permits DOF to issue a warrant for collection of delinquent accounts for up to six years.

We received a list of all 321 outstanding CRT transactions within the Collections Division with an outstanding balance of \$2.9 million. We compared these 321 transactions with the 947 outstanding transactions to determine whether any actions were taken to ensure the outstanding balances were paid. We found that only 83 transactions totaling \$455,976.64 are in the Collections Division.

Possible Overpayment in the System

A business may request a refund due to overpayment of tax. The overpayment may be the result of an amended return, audit, or more money paid than was owed. There is no specific form to ask for a Commercial Rent Tax refund. Taxpayers must file an amended CRT return and mail it to the address on the amended return. A claim for a refund must be filed within 18 months from the date of filing the return on which the refund claim is based or six months from the date of payment of the tax, whichever is later.

Taxpayers must file three CRT quarterly returns (CR-Q1, CR-Q2, and CR-Q3)³ with payments to report their base rent for each quarter. However, there are no CRT forms for the fourth quarter. Instead, DOF requires taxpayers to file a CR-A annual return to report the entire year's base rent and payment information. DOF uses the CR-A to calculate the annual tax liability (6 percent of the base rent paid by tenants annually).

During our test, we identified 5,867 accounts that have overpaid balances totaling \$57,960,716.18, as shown in Table II.

3 CR-Q1 for first quarter from June 1 to August 31, CR-Q2 for second quarter from September 1 to November 31, and CR-Q3 for third quarter from December 1 to February 28.

Table II

CRT Overpaid Balances

| CRT Tax Year | # of Overpaid Account Balances | Overpaid Balances |
|--------------|--------------------------------|-------------------|
| 2010 | 2,070 | \$17,524,857.76 |
| 2011 | 1,960 | \$17,828,569.49 |
| 2012 | 1,837 | \$22,607,288.93 |
| Total | 5,867 | \$57,960,716.18 |

DOF officials are not required to inform account holders if they are entitled to a refund. Therefore, we forwarded these possible overpaid balance accounts to DOF officials for further clarification.

The DOF officials reviewed the top five overpaid accounts totaling \$4,294,059.23 for 2011 CRT tax year. According to DOF officials, due to taxpayers' filing errors, these accounts appear to be overpaid on the system, but these accounts are not overpaid. DOF officials stated that the taxpayers for these overpaid accounts did not follow the filing instructions and submitted the wrong information on the CR-A. It appears, according to DOF officials, that four of the five overpaid accounts used the CR-A to report their fourth quarter base rent (the last three months) instead of the rent for the entire year. Therefore, DOF used the incorrect information provided by the taxpayers to calculate the tax liability. As a result, the annual tax liability is understated and these accounts appear to be overpaid in the system and should have had a zero balance. DOF officials stated that they need to manually adjust these accounts on the system. According to DOF officials, for the remaining one overpaid account, the taxpayer made five payments in 2011 and three payments in 2012. Therefore, this account appears to be overpaid on the system for 2011. DOF officials also stated that filing errors occur very often and some of the "overpaid" accounts were due to the taxpayer submitting the wrong information on the CR-A.

However, without DOF providing a detailed analysis of each account, we could not confirm whether these account overpaid balances represent filing errors, prepayments, or actual overpayments.

Recommendations

DOF should:

1. Ensure that the billing process is corrected and previous years' account balances are carried forward.

DOF Response: DOF disagreed, stating, "As we have stated in response to your audit of Utility Taxes (7A10-078), prior period account balances are not carried forward into current periods in our system of record, 'Fairtax'. The Fairtax billing system was specifically designed to keep account periods independent of each other, and applying current tax payments to prior periods would serve only to create discrepancies with taxpayer records."

Auditor Comment: In our audit of utility taxes (issued January, 26, 2011), DOF partially agreed with a related recommendation, stating, “Fairtax offers no capacity for us to carry over previous UTX balances into current periods. Our IT Department has advised that Fairtax could not be recoded to add this functionality without rewriting the entire payment application system.” Therefore, Fairtax does not contain up-to-date individual account balances. The impact of this condition results in DOF’s inability to: calculate historical values, properly credit taxpayers’ accounts, and make proper adjustments, which exposes the City to inaccurate financial records. Further, DOF should investigate all methodologies to ensure the previous years’ account balances are carried forward and determine if there are any other deficiencies that exist in Fairtax, a 20-year-old application.

DOF Response: DOF also stated, “We completely disagree with the audit staff’s conclusion that taxpayers are ‘encouraged’ to forego paying their full balances or that collection efforts have been impeded. Finance has an automated billing process that initiates a tax bill immediately upon the filing of a late filed or unpaid tax return. All delinquencies are billed and moved to audit or collections if left unpaid.”

Auditor Comment: Although DOF issues a *Notice of Tax Due* and *Notice of Demand for Payment Due* to taxpayers who have not paid the tax liability, not all delinquency accounts are forwarded to the Audit or Collections Unit. We found that only 76 outstanding accounts of the 947 accounts (8 percent) were in the Collections unit. Also, 39 outstanding accounts of the 947 accounts (4 percent) were in the Audit Unit. Therefore, the remaining 832 accounts (88 percent) are unpaid and outstanding, underscoring our position that DOF failed to take action to ensure the outstanding balances were paid. During the current audit and at the exit conference in December 2012, DOF did not provide any supporting documentation to prove that the \$8.4 million outstanding balance has been reduced. Furthermore, we analyzed the list of all outstanding CRT accounts within the Collection Unit; we found that 116 open accounts have been open for over 23 years with outstanding balances totaling \$1.4 million.

2. Collect the outstanding taxes due as applicable.

DOF Response: DOF agreed with the sentiment, but does not agree there is an outstanding CRT balance of \$8.4 million owed the City, stating, “Finance has an aggressive program to collect delinquent taxes. After the issuance of two tax bills, Finance docketed tax warrants, which become public records and enable us to attach assets to satisfy the debt. . . the \$8.4 million balance due on September 10, 2012 was worked on after it was sent to the auditors and the amount due and unpaid continues to decline as collection activity continues. As we explained to the auditors who reviewed the Fleet Program, while it might make sense to look at outstanding payables that are aged over a certain amount of time, it makes no sense to draw conclusions from a static list....”

Auditor Comment: DOF, in its response to the prior comptroller’s audit report, *Audit Report on the Department of Finance’s Efforts to Collect Outstanding Parking Fines from Participants in its Stipulated Fine and Commercial Abatement Programs* (Audit Number FM11-110A, issued October 18, 2012), stated: “We told the auditors at the exit conference that they should trace how much of the . . . remained unpaid six months later, but they did not pursue this elementary question. Based on our

experience, only the debt listed as over 180 days old was potentially at risk, and the remaining debt would have long since been paid.” During the current audit and at the exit conference in December 2012, DOF did not provide any supporting documentation to prove that the \$8.4 million outstanding balance has been reduced. Therefore, referring back to Table I, the outstanding balances were all over 180 days. Approximately \$2.8 million dollars dates back to 2010, while \$2.1 million dates back to 2011. Clearly, the debt has not been paid. In addition, while DOF believes that it has an aggressive program to collect delinquent taxes, it is apparent that changes are necessary.

3. Review, analyze, and correct all the inaccurate overpaid information on the system.

DOF Response: DOF disagrees that any action needs to be taken, stating, “The Comptroller accurately points out that 5,867 accounts are ‘overpaid’ by \$58 million. Two thirds of those accounts (3,935) are overpaid by \$10 or less. Additionally, Finance has explained that the bulk of the overpayment amount is due to taxpayer filing errors, which if corrected, would result in no overpayment amount. When a taxpayer filing error is called to our attention, we correct the account. Taxpayers with valid overpayments can always obtain refunds by filing refund claims. Therefore since the taxpayer can collect a refund if there is an overpayment, Finance does not see that making technical adjustments which will in the most part result in no refund is a high priority issue.”

Auditor Comment: We found that 1,934 (33 percent) out of 5,867 accounts were overpaid by more than \$10, totaling \$57,959,133. Furthermore, DOF did not provide a detailed analysis of each account. Therefore, we could not confirm whether these account overpaid balances represent filing errors, prepayments, or actual overpayments. In addition, DOF is correct that two-thirds of the 5,867 accounts (3,993) show balances of less than \$10; however, these items total only \$1,583. The \$58 million overpaid information will remain incorrect on Fairtax until DOF manually corrects these records. Consequently, Fairtax will not contain up-to-date account balances until this manual update occurs. Therefore, we reiterate our recommendation that DOF should review, analyze, and make the necessary technical adjustments to reflect the correct account balances.

4. Review and, if necessary, modify its filing process to ensure taxpayers are following the filing instructions.

DOF Response: DOF disagreed, stating, “Modification of the filing process would require legislation. The errors identified in recommendation #3 do not have a material revenue impact to the agency.”

Auditor Comment: DOF believes the inaccurate overpaid information on the system has no impact on revenue. The impact of this condition is DOF’s inability to: calculate historical values, properly credit taxpayers’ accounts, and make proper adjustments, which expose the City to inaccurate financial records. Further, Fairtax, a 20-year-old application with noted deficiencies, cannot ensure accurate financial records. DOF should review and revise its current procedures to reduce filing errors and to ensure taxpayers are following the filing instructions.

DETAILED SCOPE AND METHODOLOGY

We conducted this 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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was June 2009 through September 2012. Our fieldwork was conducted from June 2012 to November 2012. To achieve our audit objectives, we:

- Interviewed various DOF officials from the Audit unit, Payment Operations unit, Data Intelligence Group unit, Quality Analysis Group unit, Collections unit, and the Finance Information Technology unit;
- Conducted a process walk-through on June 6, 2012, to gain an understanding of the administration of the CRT;
- Reviewed CRT business rules, tax forms, and filing information;
- Reviewed and analyzed policies and procedures for calculating CRT payment, interest, and penalties;
- Reviewed and analyzed the DOF CRT list received from City agencies to determine whether DOF coordinates with City agencies to identify City business tenants that are required to file CRT returns and pay CRT; and
- Reviewed and analyzed DOF Security Guidelines and Policy and Standard Operating Procedures Mainframe Security Policy to determine whether DOF policy and its procedures provide adequate security controls.

On September 10, 2012, we received CRT data that contained three year payment transactions (tax periods from June 1, 2009, to May 31, 2012). The file contained 23,334 transactions for some 9,415 taxpayer accounts. We separated the original file into three files (tax period 2010, 2011, and 2012). To determine the accuracy of the data and satisfy our audit objectives,⁴ we:

- Performed several frequency distributions to determine any duplicate data;
- Performed queries to ascertain whether critical data elements needed for billing and collection purposes was missing, including, EIN, account ID, owner's name and business address, and total tax due;
- Tested for invalid or inappropriate dates or data;
- Ran queries for all outstanding balances for CRT accounts and an additional query for all account overpayment balances to determine whether any outstanding account had a compensating overpayment in another tax year;

⁴ All of our tests were based on the data that we received on September 10, 2012, for tax periods from June 1, 2009, to May 31, 2012.

- Ran queries for all outstanding balances for CRT accounts to determine whether DOF had taken any action to ensure that outstanding balances were paid;
- Ran queries for all CRT accounts with a total liability of zero to determine the number of taxpayers filing zero liability and to determine the reasons for filing zero liability;
- Identified and examined all accounts with missing filing periods to identify any discrepancies in the system and the possibility of account failure to file a return;
- Matched all the CRT open cases in the Audit Unit with all the CRT outstanding accounts from the annual CRT data file to determine how many outstanding accounts were being audited;
- Matched all the CRT accounts in the Collections Unit with all the CRT outstanding accounts from the annual CRT data file to determine how many outstanding accounts were in the Collections Unit;
- Identified and examined all accounts that noted an overpayment of CRT to determine how many taxpayers had made an overpayment; and
- Identified and examined all accounts outstanding of less than \$5 to determine why such balances were not written off (DOF policy is to write off such balances).



Finance

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December 26, 2012

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**Re: Draft Audit Report on the Reliability and Accuracy of Commercial
Rent Tax Data Administered by the Department of Finance (7A12-130A)**

Dear Deputy Comptroller Kim:

Thank you for the opportunity to provide the Department of Finance's official response to this draft audit report dated December 11, 2012.

We are pleased that the overall audit findings confirm that "*The CRT data exists in a secure environment, and is readily accessible to all essential users identified by DOF. The CRT data is generally reliable for collection purposes, and it generally contains the required information for enforcement and penalty collection purposes.*"

In addition, we are appreciative of the professionalism of the audit staff who worked on this audit. That said, the following are our specific responses to the report's recommendations:

Recommendation #1: Ensure that the billing process is corrected and previous years' account balances are carried forward.

Finance disagrees.

As we have stated in response to your audit of Utility Taxes (7A10-078), prior period account balances are not carried forward into current periods in our system of record, "Fairtax". The Fairtax billing system was specifically designed to keep account periods independent of each other, and applying current tax payments to prior periods would serve only to create discrepancies with taxpayer records.

We completely disagree with the audit staff's conclusion that taxpayers are "encouraged" to forego paying their full balances or that collection efforts have been impeded. Finance has an automated billing process that initiates a tax bill

immediately upon the filing of a late filed or unpaid tax return. All delinquencies are billed and moved to audit or collections if left unpaid.

Recommendation #2: Collect the outstanding taxes due as applicable.

Finance agrees with the sentiment but does not agree there is an outstanding CRT balance of \$8.4 million owed the City.

Finance has an aggressive program to collect delinquent taxes. After the issuance of two tax bills, Finance docketed tax warrants, which become public records and enable us to attach assets to satisfy the debt.

In response to a data request, we sent the auditors a list of all CRT receivables as of one date: September 10, 2012. After the auditors agreed to delete four cases in audit, the static list of 947 CRT receivables had a value of \$8,363,884, representing 4/10 of 1% of the \$2 billion in CRT collections over the three year audit period. The auditors did not ask how much CRT that came due in the audit period had been billed, which was 4,725 bills for \$23,632,708. Comparing the original billings with the 9/10/12 balances due would have reflected an 80% reduction in bills and a 65% reduction in receivables.

Additionally, while the auditors deleted four cases that were in audit, there were 168 cases in audit out of the 947 receivables examined by the auditors representing an additional \$1 million of the receivable balance. Audit assessments within the statutory 90 day protest period are subject to appeal. Audits in review or conciliation are not collectible, further reducing the overall CRT delinquency rate for the audit period.

Just as the amount due had been reduced from approximately \$23 million to approximately \$8.4 million by the point the auditors' list was created, the \$8.4 million balance due on September 10, 2012 was worked on after it was sent to the auditors and the amount due and unpaid continues to decline as collection activity continues. As we explained to the auditors who reviewed the Fleet Program, while it might make sense to look at outstanding payables that are aged over a certain amount of time, it makes no sense to draw conclusions from a static list unless the auditors followed the receivables over time to determine whether the amounts on the list were ultimately collected. They failed to ask this question, which makes their conclusion useless.

The \$8.4 million amount due is also misleading for another reasons. A list generated on September 10 would include all the payables from the FY 11 tax year, which only came due in June 2012. By September 10 Finance would have just finished sending out the first follow up letter to filers who did not include a check. No other collection steps could have been taken yet. If the auditors were determined to look at the payables owed as of one date, they could at least have chosen a date near the close of a year's collection activity instead of at the start.

Recommendation #3: Review, analyze and correct all the inaccurate overpaid information on the system.

Finance disagrees that any action needs to be taken

The Comptroller accurately points out that 5,867 accounts are “overpaid” by \$58 million. Two thirds of those accounts (3,935) are overpaid by \$10 or less. Additionally, Finance has explained that the bulk of the overpayment amount is due to taxpayer filing errors, which if corrected, would result in no overpayment amount. When a taxpayer filing error is called to our attention, we correct the account. Taxpayers with valid overpayments can always obtain refunds by filing refund claims. Therefore since the taxpayer can collect a refund if there is an overpayment, Finance does not see that making technical adjustments which will in the most part result in no refund is a high priority issue.

Recommendation #4: Review, and if necessary, modify its filing process to ensure that taxpayers are following the filing instructions.

Finance disagrees.

Modification of the filing process would require legislation. The errors identified in recommendation #3 do not have a material revenue impact to the agency.

Sincerely,



Elizabeth Botwin

cc: Andrew Salkin, Deputy Commissioner, Operations
Michael Hyman, Deputy Commissioner, Tax Policy and Planning
Thomas Harty, Deputy Commissioner, Information Technology
George Davis III, Mayor’s Office of Operations
Celia Carino, Internal Audit Director