

City of New York

OFFICE OF THE COMPTROLLER

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COMPTROLLER



AUDITS AND SPECIAL REPORTS

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Audit Report on the New York City
Department of Finance's Restraint and
Seizure of Payments to City Vendors
with Tax Warrants

SR17-111A

June 28, 2018

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

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To the Residents of the City of New York:

My office has audited the New York City Department of Finance (DOF) to determine whether DOF effectively restrains and seizes payments due to City vendors with outstanding tax warrants. We audit entities such as DOF as a means of increasing accountability and ensuring that City resources are used effectively, efficiently and in the best interest of the public.

The audit found that although DOF effectively restrains payment vouchers due to City vendors with outstanding tax warrants, it does not follow up by seizing and offsetting the vouchered funds against the vendors' City tax debt, as permitted by law. Instead, after restraining a vendor's payment vouchers, DOF waits for the vendor to contact its Collections Unit, so that it can set up a payment plan with, or otherwise induce payment from, the vendor. DOF does not systematically track the overall amounts it collects through that practice and has not provided the requested information we would need to assess its effectiveness in collecting the arrears due to the City from City vendors. Based on the information provided, however, DOF missed opportunities to collect business-tax debt due to the City as a result of its nonuse of the offset process. In some cases, DOF released restrained vouchers in favor of a payment plan with a vendor who thereafter defaulted on that plan, continued to collect payments from the City, and failed to make good on its City tax debt. In at least one such case, no subsequent payment vouchers were available for restraint and offset.

According to DOF's records, as of February 5, 2018, it docketed 254 open warrants totaling \$5.7 million in unpaid business taxes against 192 City vendors, 186 of whom were owed a total of \$2.6 million in vouchered funds that had been placed on hold under DOF's "GenTax FMS Vendor Restraint Process." However, as of early 2018, DOF had not used that process to offset and thereby collect delinquent business-tax debts from vouchers payable to City vendors since October 2014, while at the same time, the City did business with and made payments to these vendors. DOF was unable to tell us how much docketed tax debt it collected from City vendors through other means.

The audit makes six recommendations, including that DOF should develop and implement a system to track and measure its compliance with and the effectiveness of its procedures for the collection of docketed City tax debt from City vendors; revise its operations and procedures to enhance the ability of the DOF Collections Unit to take direct actions to collect docketed tax debt through offset from City vendors; and refrain from releasing a payment voucher until the docketed tax warrant or judgment is substantially satisfied, vacated by a court or withdrawn by DOF.

The results of the audit have been discussed with DOF officials, and their comments have been considered in preparing this report. DOF's 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,

Scott M. Stringer

TABLE OF CONTENTS

EXECUTIVE SUMMARY 1

 Audit Findings and Conclusion 2

 Audit Recommendations..... 3

 Agency Response..... 3

AUDIT REPORT 4

 Background 4

 Objective..... 5

 Scope and Methodology Statement..... 5

 Discussion of Audit Results 5

FINDINGS AND RECOMMENDATIONS 7

 DOF Does Not Seize Pending Payment Vouchers to City Vendors to Satisfy Unpaid Tax Warrants 7

 DOF’s Restraint and Offset Process Allows City Vendors with Tax Judgment to Receive City Payments..... 9

 Recommendations 12

DETAILED SCOPE AND METHODOLOGY 14

ADDENDUM

THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER AUDITS AND SPECIAL REPORTS

Audit Report on the New York City Department of Finance’s Restraint and Seizure of Payments to City Vendors with Tax Warrants

SR17-111A

EXECUTIVE SUMMARY

The New York City Department of Finance (DOF) is responsible for the administration and collection of approximately \$37 billion in City revenue, which includes a variety of business taxes. During Fiscal Year 2017, DOF collected approximately \$1.3 billion in what is identified as business and excise tax revenue.¹ As the City’s tax collector and enforcer of the City’s tax laws, DOF is responsible for collecting taxes due from, among others, private contractors and vendors that do business with the City (vendors), including some vendors that are delinquent in paying those taxes. Under longstanding procedures, DOF can notify the vendors of their City tax debts, docket them as warrants and, after providing an additional notice, offset the docketed taxes the vendors owe to the City against the amounts the City owes to the vendors for the goods and services they provided. This audit was conducted to determine whether DOF effectively restrains and seizes the payments due to City vendors with outstanding tax warrants.

DOF’s Collections Unit is responsible for collecting delinquent debt from taxpayers, including by taking legal action against taxpayers with outstanding business tax debt. Such action may include issuing and docketing a tax warrant in the County Clerk’s office, which is enforceable as a judgment, enabling DOF to seize the taxpayer’s assets or levy on the taxpayer’s bank account to collect the judgment amount. The judgment debt can also be referred to an outside agency for collection.

When the business-tax debtor is a vendor that sells goods or services to the City, DOF’s Collections Unit is also empowered to collect the tax arrears through a DOF procedure known as the “GenTax FMS Vendor Restraint Process.” This vendor collection process includes an automated interface between DOF’s GenTax system and the City’s Financial Management System (FMS)—the City’s centralized accounting and budgeting system, which is used for, among other things, processing and issuing payments to City vendors for the goods and services they have provided. It is those payments due to the vendors from the City that DOF is empowered to

¹ Approximately \$1.3 billion in tax revenue is derived from Cigarette Tax, Commercial Motor Vehicle Tax, General Corporation Tax, Financial Corporation Tax, Unincorporated Business Income Tax, Utility Tax, Hotel Room Occupancy Tax, Commercial Rent Tax, Conveyance of Real Property Tax and Surcharge on Liquor Licenses.

collect by offsetting and then applying the payments to the vendors' docketed City tax debts under the restraint process.

To initiate the GenTax FMS Vendor Restraint Process, GenTax generates a file of open warrants listing each business-tax debtor, which is sent weekly to FMS, and an automated match is performed. Based on that match, restraints, also known as holds, are placed on the FMS payment vouchers payable to City vendors with outstanding tax warrants. When such a hold is placed on a payment, DOF's Collections Unit sends Offset Notification letters to the affected vendor to inform it that the amount under restraint will be seized and offset automatically if full payment of the warrant debt is not received within 15 days of the date specified in the letter.

Thereafter, if the vendor's tax-warrant debt remains due after the 15-day notice period, the DOF Collections Unit is authorized to ask the Office of the New York City Comptroller (Comptroller) to pay the vouchered funds to DOF rather than to the vendor, as an offset against the vendor's City tax debt. By properly using this collection method, DOF can effectively recover outstanding tax debt owed to the City by City vendors.

Audit Findings and Conclusion

Although DOF effectively restrains payment vouchers due to City vendors with outstanding tax warrants, it does not follow up by seizing and offsetting the vouchered funds against the vendors' City tax debt, as permitted by law. Instead, after restraining a vendor's payment vouchers, DOF waits for the vendor to contact its Collections Unit, so that it can set up a payment plan with, or otherwise induce payment from, the vendor. DOF does not systematically track the overall amounts it collects through that practice and as of the date of this report has not provided the information we requested that would enable us to assess its effectiveness in collecting the arrears due to the City from City vendors. Based on the information provided, however, DOF, by forgoing the available offset process, has missed opportunities to collect business-tax debt that is due to the City. In some cases, DOF released the vouchers it was holding in favor of a payment plan with a vendor who thereafter defaulted on that plan, continued to collect payments from the City and failed to make good on its City tax debt. In at least one such case we identified, no subsequent payment vouchers were available for restraint and offset. Accordingly, as a result of DOF's failure to collect the vendor's tax arrears through a legal offset, it lost the opportunity to do so since—having collected more than \$428,518 in vouchered payments from the City—the corporation is dissolved, according to DOF's records, while it owes more than \$80,000 in unpaid taxes.

According to DOF's records, as of February 5, 2018, the agency had docketed 254 open warrants totaling \$5.7 million in unpaid business taxes against 192 City vendors, 186 of whom were owed a total of \$2.6 million in vouchered funds that had been placed on hold under DOF's "GenTax FMS Vendor Restraint Process." However, as of early 2018, DOF had not used that process to offset—i.e., collect—delinquent business-tax debts from vouchers payable to City vendors since October 2014, while at the same time, the City did business with and made payments to these vendors notwithstanding their delinquent taxes. DOF was unable to tell us how much docketed tax debt it collected from City vendors through other means.

Audit Recommendations

DOF should:

1. Develop and implement a system to track and measure its compliance with and the effectiveness of its procedures for the collection of docketed City tax debt from City vendors.
2. Revise its operations and procedures to enhance the ability of the DOF Collections Unit to take direct actions to collect docketed tax debt through offset from City vendors, including training staff on how to complete the offset process and increasing staff access to FMS.
3. Revise its written procedures to require that whenever a payment voucher earmarked for a City vendor with an open, docketed tax warrant has been restrained and a specific time period (to be determined by DOF) has elapsed and other collection methods have not been successful, the Collections Unit *must* generate a “Comptroller assignment memo” requesting that the Comptroller’s Office assign the withheld payments to DOF, unless (a) the warrant has been fully satisfied, or (b) a decision has been made and recorded in GenTax, to suspend collection efforts for a limited time (to be determined by DOF) to allow DOF to review the case.
4. Not release a payment voucher until the docketed tax warrant or judgment is substantially satisfied, vacated by a court or withdrawn by DOF after appropriate documentation has been filed in GenTax indicating the basis for that action.
5. Request and obtain FMS access as needed for the offset process.
6. If other collection methods have not proven to be successful, use the City payment vouchers that are on hold to offset open docketed warrants totaling approximately \$5.7 million owed by City vendors.

Agency Response

The DOF agreed with the report’s findings and recommendations and described the steps it has taken or will take to implement the report’s recommendations.

AUDIT REPORT

Background

DOF's responsibilities include the administration and collection of approximately \$37 billion in City revenue, which includes various business taxes. During Fiscal Year 2017, DOF collected approximately \$1.3 billion in what it refers to as business and excise tax revenue.² As the City's tax collector and enforcer of the City's tax laws, DOF is responsible for collecting such taxes from, among others, private contractors and vendors that do business with the City, including some vendors that are delinquent in paying those taxes. Under longstanding procedures, DOF can notify the vendors of their City tax debts, docket them as warrants and, after providing an additional notice, offset the docketed taxes the vendors owe to the City against the amounts the City owes to the vendors for the goods or services they provided. This audit was conducted to determine whether DOF effectively restrains and seizes the payments due to City vendors with outstanding tax warrants.

According to DOF, when vendors file tax returns, they, like all other taxpayers, self-assess the taxes they owe and the amounts to be paid. If DOF determines that a City vendor (or other similarly situated taxpayer) did not pay the correct amount of taxes owed, a Notice of Tax Due is generated by the agency's GenTax system and mailed to the vendor; the vendor, like any other taxpayer, has 30 days to respond.³ If the vendor fails to respond, DOF sends a Notice and Demand for Payment to the vendor, and the case is transferred to DOF's Collections Unit.

In addition, through its routine tax audits of City taxpayers, DOF may identify some vendors that have not filed returns or paid their required business taxes. In such cases, DOF sends a Notice of Determination, which includes DOF's assessment of the tax amount the vendor owes. The vendor, like any other taxpayer, has 90 days to dispute the assessment, and, if it is not satisfactorily disputed or if the taxes owed have not been paid within that timeframe, DOF sends a Notice and Demand for Payment, notifying the vendor (or other similarly situated taxpayer) that collection procedures will commence. As previously stated, once a Notice and Demand for Payment is issued, the case is transferred to DOF's Collections Unit.

DOF's Collections Unit is responsible for collecting delinquent business tax debt, including by taking legal action against the taxpayers. Such action may include issuing and docketing a tax warrant in the County Clerk's office, which is enforceable as a judgment, enabling DOF to seize the taxpayer's assets or levy on the taxpayer's bank account to collect the judgment amount. The judgment debt can also be referred to an outside collection agency.

When the business-tax debtor is a vendor that has been engaged to provide goods or services to the City, DOF's Collections Unit is also empowered to collect the tax arrears through a DOF procedure known as the "GenTax FMS Vendor Restraint Process." This vendor collection process includes an automated interface between DOF's GenTax system and the City's FMS—the City's centralized accounting and budgeting system, which is used for, among other things, processing and issuing payments to City vendors for the goods and services they have provided. It is those

² Approximately \$1.3 billion tax revenue is derived from Cigarette Tax, Commercial Motor Vehicle Tax, General Corporation Tax, Financial Corporation Tax, Unincorporated Business Income Tax, Utility Tax, Hotel Room Occupancy Tax, Commercial Rent Tax, Conveyance of Real Property Tax, and Surcharge on Liquor Licenses.

³ DOF's GenTax system, known as either GenTax or the Business Tax System (BTS), houses taxpayers' financial information and sends notices to taxpayers on an automated billing timeline.

payments that DOF is empowered to collect by offsetting and then applying the payments to the vendors' docketed City tax debts under the restraint process.

To initiate the GenTax FMS Vendor Restraint Process, GenTax generates a file of open warrants listing each business-tax debtor by Taxpayer Identification Number, which is sent each week to FMS, and an automated match is performed. Based on that match, restraints, also known as holds, are placed on the FMS payment vouchers payable to City vendors with outstanding tax warrants. DOF's Collections Unit sends Offset Notification letters to those vendors, which state, in part, "It is our intention to offset funds from any vendor payments that are due to your business, to satisfy the unpaid tax warrant(s)." The letter further informs the debtor that the amount under restraint will be seized and offset automatically if full payment of the warrant debt is not received within 15 days of the date specified in the letter.

Thereafter, if the vendor's tax-warrant debt remains due after the 15-day notice period, the DOF Collections Unit is authorized to ask the Comptroller, through a "Comptroller assignment memo" uploaded into FMS, to pay the vouchered funds to DOF rather than to the vendor, as an offset against the vendor's City tax debt. However, if the amount of the vouchered funds the City owes the vendor exceeds the amount of the vendor's docketed tax-warrant debt, the DOF Collections Unit must limit the amount requested from the Comptroller to the tax warrant amount. It can do so either by identifying and requesting the assignment of specific vouchers payable to the vendor in amounts that do not exceed the vendor's tax warrant(s) or by asking the City agency that issued the vendor's payment voucher to "split" a voucher that exceeds the vendor's tax debt by canceling it and replacing it with two vouchers—one payable to DOF for the tax warrant amount and the other payable to the vendor for the excess. By properly using this collection method, DOF can effectively recover outstanding tax debt owed to the City by City vendors.

Objective

To determine whether DOF effectively restrains and seizes payments due to City vendors with outstanding tax warrants.

Scope and Methodology Statement

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 covers the period from Fiscal Year 2016 to February 5, 2018.

Discussion of Audit Results

The findings in this report were discussed with DOF officials during and at the conclusion of this audit. A preliminary draft report was sent to DOF and was discussed at an exit conference held on June 12, 2018. On June 13, 2018, we submitted a draft report to DOF officials with a request for comments.

We received a written response from DOF on June 22, 2018. In its response, DOF agreed with the report's findings and recommendations and described steps the office has taken or will take to implement the report's recommendations. Further, DOF stated, "The Comptroller's Office audit generally encourages DOF to make greater use of seizing City vendor payments to satisfy outstanding tax warrants. DOF's practice is to first restrain (i.e. suspend) such payments and notify the affected vendors to achieve payment of the outstanding debt. DOF only seizes vendor payments if payment suspension is unsuccessful. While DOF is in broad agreement with the report's recommendations to improve the clarity and timeliness of our processes, we want to emphasize that any delay in moving from payment suspension to payment seizure does not result in a loss of funds or otherwise harms the City. Once payments are suspended, they remain suspended until DOF releases the suspension. The funds are not released to the vendors until DOF proactively makes an appropriate system entry. During this time the funds remain in the City's bank account. Furthermore, until the City vendor makes payment, the delinquent amount continues to accrue interest to protect the City's interest."

Although interest accrues on unpaid tax debt, the collection methods used by DOF, as alternatives to seizing payments earmarked for City vendors with tax debt, are not always successful, as is demonstrated in the examples described in this report. DOF has not seized vendor payments in those specific cases or, as noted, in *any* other case in nearly four years. In some instances, it appears that DOF's opportunity to readily collect the City vendors' tax debt from restrained funds has been lost, even as interest accrues on that debt. Accordingly, DOF's agreement (1) that "defaulted payment plans, if not quickly addressed by the vendor, should lead to offset of vendor payments," and (2) that DOF will produce a written procedure with a standard time frame for such seizures of restrained funds when other collection methods have proven unsuccessful is a positive development.

The full text of DOF's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

We found that although DOF effectively restrains payment vouchers due to City vendors with outstanding tax warrants, it does not follow up by seizing and offsetting the vouchered funds against the vendors' City tax debt, as permitted by law. Instead, after restraining a vendor's payment vouchers, DOF waits for the vendor to contact its Collections Unit, so that the agency can then set up a payment plan with, or otherwise induce payment from, the vendor. DOF does not systematically track the overall amounts it collects through that practice and as of the date of this report has not provided us with the information we requested that would enable us to assess its effectiveness in collecting the arrears due to the City from City vendors. Based on the information provided, however, DOF, by forgoing the available offset process, has missed opportunities to collect business-tax debt that is due to the City. In some cases, DOF released vouchers it was holding in favor of a payment plan with a vendor who thereafter defaulted on the payment plan, continued to collect payments from the City and failed to make good on its City tax debt. In at least one such case we identified, no subsequent payment vouchers were available for restraint and offset. Accordingly, as a result of DOF's failure to collect the vendor's tax arrears through a legal offset, it lost the opportunity to do so since according to DOF's records, the corporation is dissolved.

According to DOF's records, as of February 5, 2018, the agency had docketed 254 open warrants totaling \$5.7 million in unpaid business taxes against 192 City vendors, 186 of whom were owed a total of \$2.6 million in vouchered funds that had been placed on hold under DOF's "GenTax FMS Vendor Restraint Process." However, as explained in the following section, as of early 2018, DOF had not used that process to offset—i.e., collect—delinquent business-tax debts from vouchers payable to City vendors since October 2014, while at the same time, the City did business with and made payments to these vendors. DOF was unable to tell us how much docketed tax debt it collected from City vendors through other means.

DOF Does Not Seize Pending Payment Vouchers to City Vendors to Satisfy Unpaid Tax Warrants

Under DOF's "GenTax FMS Vendor Restraint Process," each week, a GenTax data file listing all new and cleared City tax warrants is sent to FMS, which results in automatically-imposed holds/restraints on payment vouchers pending in FMS for City vendors with outstanding warrants for City business-tax debt. DOF can then have those pending payment vouchers assigned to it to offset and satisfy the vendors' unpaid tax warrants. However, based on our review of FMS records, although thousands of vouchers were restrained from July 1, 2015 through October 19, 2017, a period covering more than two fiscal years, *none* of those restrained vouchers were subsequently assigned to DOF to offset the funds against the vendors' City tax debt.

We asked DOF to identify the cases in which it offset vouchered funds to satisfy City vendors' unpaid City tax warrants from July 1, 2015 through October 26, 2017. In response, however, DOF officials informed us that they do not maintain records that would be needed to readily identify such cases. Since all offsets would be processed through FMS, we searched FMS records to identify all executed and completed offsets that were assigned to DOF. Through that search, the latest instance we found in which DOF executed and completed an offset against vouchered funds earmarked for a City vendor occurred in October 2014—more than three years ago. We also reviewed FMS for cases in which DOF placed the specific type of hold designated for tax judgment debt, known as a "PPF-V hold," on payment vouchers earmarked for City vendors during a recent

24-week period, August 15, 2017 through January 30, 2018, and found that the number of payment vouchers under restraint on any given day ranged from 923 vouchers valued at \$3.1 million to 2,429 vouchers valued at \$25.1 million.

DOF officials informed us that the restraint of vendor-payment vouchers is a tool they use to encourage City vendors to contact DOF to resolve their outstanding tax debts to the City. DOF's Collections Unit mails an Offset Notification letter to the vendor 14 days after DOF receives notification from FMS that a hold has been placed on a vendor payment voucher. The letter informs the vendor that, to satisfy the vendor's unpaid tax warrants, DOF intends to offset funds from any payment due to the vendor. However, once the letter has been mailed out, DOF does not offset the funds as stated in the letter. Rather, the agency instead waits for the vendor to contact DOF and potentially agree to a payment plan or make other arrangements to satisfy its City tax debt.

Table I

Number of Days Payment Vouchers
on Hold and Its Corresponding
Amounts as of October 19, 2017

Age of Account	1-90 Days	91-120 Days	121-150 Days	151-180 Days	181-365 Days	>1 Year	Total
# of Vouchers	356	141	58	60	249	347	1,211
Total Vouchered Amount Restrained for the Period	\$1,455,668	\$297,780	\$30,725	\$109,295	\$288,502	\$424,153	\$ 2,606,123

We asked DOF officials why they rarely, if ever, took the steps necessary to complete the offset process to recover outstanding business tax debt from City vendors. They explained that it “is a manual, and time consuming process,” which involves, among other things, their contacting the City agency that vouchered funds for the vendor. They further stated that their efforts are affected by their limited access to FMS and that they believe it is easier to collect payment of the tax debt directly from the City vendor than to complete the intra-City offset process. However, because DOF was unable to tell us how much of the vendors’ tax debt it collected—through whatever methods it employed—we cannot compare that amount with the amount potentially available for DOF to collect by completing its own restraint-and-offset process. In the absence of such information, neither the effectiveness of DOF’s current methods, nor its assertion that collecting the vendors’ tax debt through those methods is “easier” than following its own offset procedure can be verified. As previously discussed, under DOF’s offset process, DOF’s Collections Unit may ask the Comptroller’s Office to assign to DOF a voucher earmarked for a City vendor with docketed tax debt as early as 15 days after mailing the Offset Notification letter to the vendor. DOF would have to send the appropriate assignment memo with supporting documentation to the Comptroller through FMS, and upon review and approval by the Comptroller, a check would be issued to DOF. According to DOF officials, further automation of that process by, for example, eliminating the requirement that they upload required documents into FMS, and having the funds transferred to DOF electronically rather than by paper check, would save time and make the offset process more feasible and practical from their perspective.

We met with the Chief of the Comptroller's Office's Bureau of Accountancy, the official who is authorized to review and approve the assignment of vouchered funds to DOF, to find out how long the offset process takes. According to the Accountancy Bureau Chief, once DOF notifies the Bureau via e-mail that an assignment request was submitted through FMS for review, the Bureau would review, approve and pay the request within one day, provided the required supporting documentation was attached to DOF's request in FMS.

DOF's Restraint and Offset Process Allows City Vendors with Tax Judgment to Receive City Payments

We obtained a report through DOF's Business Tax System (BTS), dated October 19, 2017, which listed 344 City vendors with either (a) current restraints on payment vouchers, as of that date, for docketed tax debt, or (b) restraints that had been removed from payment vouchers, which, in effect, would have allowed the vouchered funds to be paid to the vendors.

We judgmentally selected a sample of 21 vouchers earmarked for 18 City vendors to determine why the holds on them had been removed. As of October 19, 2017, 11 of the 18 vendors had no outstanding docketed warrants, but the 7 remaining vendors had 16 outstanding docketed warrants totaling \$679,946 in unpaid tax debt according to DOF records.⁴ We met with DOF officials in November 2017 and observed as they searched through their GenTax system to find out why the holds had been removed from the 21 vouchers in our sample. That search found that the holds had been removed for various reasons, as follows:

- Six vouchers were released because the six vendors in question had no open tax warrants.
- Nine vouchers earmarked for seven vendors were released because DOF initiated steps to collect the vendors' tax debt through other means, specifically, either a payment plan or a bank levy.
- Six vouchers earmarked for five vendors were released because of ongoing reviews within DOF by, a legal unit or the audit unit, among others.

A subsequent DOF report—the BTS Docketed Warrant file we received from DOF on February 5, 2018—indicated that the 7 vendors in our sample who collectively had 16 warrants outstanding in October 2017 (about three and a half months earlier), still had the same 16 warrants outstanding in October 2017. In addition, one new warrant had been docketed in the intervening three months, and the balance of taxes owed on the 17 warrants had increased to \$713,554. The seven vendors included three whose cases had been under internal review and four for whom DOF had initiated alternative collection methods, i.e., a payment plan or a bank levy.

Thereafter, as of May 4, 2018, DOF provided us with updated information regarding the 7 vendors and 17 warrants reflected in the BTS Docketed Warrant File: the agency informed us that two vendors had paid their three warrants, totaling \$50,873, in full, and one vendor had its tax liability—\$460,098 for unpaid commercial rent tax—cancelled because, as a non-for-profit educational institution, it was determined to be exempt from that tax. However, the four remaining City vendors still had outstanding tax warrants totaling \$202,582. A summary of the relevant tax-warrant and payment-voucher activity regarding each of the four vendors follows.

⁴ The warrant file included warrants docketed between January 8, 2015 and January 9, 2018 only.

- **“Vendor A”:** In May 2016, DOF docketed three warrants totaling \$43,179 against “Vendor A,” a business corporation that provided services to handicapped students. That same month, DOF restrained one payment voucher totaling \$24,540 earmarked for the vendor, which DOF then released because the vendor entered into a payment agreement. Thereafter, four additional warrants were docketed against “Vendor A”; the balance owed on all seven warrants as of January 2018 had risen to \$80,508, while the vendor made only two payments to DOF— totaling \$4,170—in June and July 2016 and then defaulted on its payment agreement. The records DOF provided to us show no evidence of any additional collection from Vendor A. Nevertheless, as a result of DOF’s releasing payment vouchers, between May 2016 and January 2018, “Vendor A” collected \$428,518 in payments from the City while it owed the City more than \$80,000 in docketed tax debt. Moreover, as of November 2017, “Vendor A” as a corporate entity had been dissolved, according to DOF’s GenTax records, which puts DOF’s ability to collect the vendor’s City tax debt in doubt. Thus, by forgoing its opportunity to offset this vendor’s tax debt against vouchered City payments, DOF appears to have lost its ability to collect more than \$80,000 in City taxes.
- **“Vendor B”:** From July through October 2015, DOF docketed one tax warrant in the amount of \$21,224 against “Vendor B,” and restrained three payment vouchers totaling \$2,883 earmarked for the vendor for supplies, materials and equipment it provided to the City. DOF released the vouchered funds on June 10, 2016, noting only that the vendor was in compliance, with no further explanation recorded in FMS. Eleven months later, in July 2017, DOF attempted to collect the same outstanding warrant through a bank levy but was informed that no account was found. After releasing the vouchered funds on June 10, 2016, DOF restrained none the subsequent payment vouchers earmarked for “Vendor B,” which, as of January 22, 2018, totaled \$17,961 (\$12,973 prior to the bank levy attempt and \$4,988 subsequent to its failure). The result was that “Vendor B” received vouchered payments totaling \$20,844 from the City while owing the City a docketed tax debt that had grown to \$27,403, including interest, as of January 22, 2018. DOF records show nothing collected from the vendor since the warrant was docketed in July 2015. Again, by forgoing its offset process, DOF missed the opportunity to collect a portion of Vendor B’s tax debt from the funds the City paid to the vendor.
- **“Vendor C”:** In the third case, in February and December 2016, DOF docketed two warrants totaling \$96,456 against “Vendor C,” which resulted in DOF’s placing restraints on nine payment vouchers totaling \$14,040 earmarked for the vendor. In addition, DOF had a payment agreement with Vendor C for taxes due for 2014 and 2015. On June 29, 2017, DOF released the nine payment vouchers, indicating in FMS that the vendor was in compliance. Vendor C made 11 payments, from January to December 2017, totaling \$53,603 from its payment agreement. However, according to DOF, “Vendor C” subsequently defaulted on its payment agreement and, as of February 14, 2018, had an outstanding warrant balance of \$40,316. Again, by forgoing its offset process, DOF missed an opportunity to collect on a portion of “Vendor C’s” tax debt.
- **“Vendor D”:** In October 2015, DOF docketed a tax warrant against “Vendor D,” and approximately six months later, on May 3, 2016, when the warrant balance totaled \$9,980, DOF restrained one payment voucher totaling \$5,000 to compensate the vendor for expenses and fees it incurred in connection with court proceedings. DOF removed that restraint just over one month later, on June 8, 2016, without recording an explanation in FMS. Thereafter, two additional warrants totaling \$31,209 were docketed against the vendor, in July 2016 and July 2017, and no further payment vouchers were issued. DOF records indicate the three warrants remain unpaid, with a balance due of \$69,131, as of

April 25, 2018. DOF has not provided records indicating whether it collected any tax debt from the vendor. According to FMS, the \$5,000 payment voucher that DOF restrained and released in 2016 has not been disbursed as of May 4, 2018.

Of the four cases summarized above, three—those involving Vendors A, B, and C—show that DOF released City payment vouchers exceeding \$115,000 that DOF, instead, could have collected and applied to the three vendors' tax debt by completing its own offset process. All four vendors owed past-due taxes to the City when DOF released their vouchered payments, and they continue to owe most of those taxes.

Overall, of the six sampled cases where the vendor-tax debtors owed tax debt to the City when DOF released their City payment vouchers, DOF ultimately collected two judgments in full and two judgments in part for a total of \$104,476, but the majority of the City tax debt those six vendors owed—\$217,358— remains outstanding and uncollected.⁵

⁵ The seven sampled cases were reduced to six because the seventh vendor was a not for profit educational institution exempt from taxes.

Recommendations

DOF should:

1. Develop and implement a system to track and measure its compliance with and the effectiveness of its procedures for the collection of docketed City tax debt from City vendors.

DOF Response: “DOF agrees with this recommendation. DOF is working diligently to reduce our manual processes. As of January 2018, DOF's new Business Tax System (BTS) became operational for all warranted business tax debt which is assigned to Collections for review and resolution. BTS is the system of record for business tax financials and case history. However, the information pertaining to City vendors payment suspensions are not captured in BTS, but are only reflected in the City's Financial Management System (FMS). We will utilize BTS to improve reports in order to track and measure collection activities relating to suspended vendor payments due to warranted business tax debt. We will also discuss with the City Comptroller's FMS team the feasibility of receiving a direct data feed from FMS to BTS containing vendor voucher information.”

2. Revise its operations and procedures to enhance the ability of the DOF Collections Unit to take direct actions to collect docketed tax debt through offset from City vendors, including training staff on how to complete the offset process and increasing staff access to FMS.

DOF Response: “DOF agrees with this recommendation. DOF Collections will revise its vendor payment suspension notice and ensure that relevant staff is authorized to move from suspension of payments to seizing such payments when necessary. We also will train staff to understand the circumstances under which this last resort should be used.”

3. Revise its written procedures to require that whenever a payment voucher earmarked for a City vendor with an open, docketed tax warrant has been restrained, and a specific time period (to be determined by DOF) has elapsed, and other collection methods have not been successful, the Collections unit must generate a “Comptroller assignment memo” requesting that the Comptroller's Office assign the withheld payments to DOF, unless (a) the warrant has been fully satisfied, or (b) a decision has been made and recorded in GenTax, to suspend collection efforts for a limited time (to be determined by DOF) to allow DOF to review the case.

DOF Response: “DOF agrees with this recommendation. DOF Collections will produce a written procedure relating to vendor payment suspensions that gives a standard number of days before proceeding to seizure of a vendor's funds. Our system of records, BTS, will contain a notation of our action(s).”

4. Not release a payment voucher until the docketed tax warrant or judgment is substantially satisfied, vacated by a court or withdrawn by DOF after appropriate documentation has been filed in GenTax indicating the basis for that action.

DOF Response: “DOF agrees with this recommendation. Please note that DOF's definition of ‘substantially satisfied’ includes not only payment in full but also an active payment plan. BTS will be modified so that DOF Collections is notified when a payment plan put in place as a result of a suspended vendor payment is defaulted due to non-

payment or the filing of a new business tax warrant. A vendor payment may also be released if our attorneys advise us to do so pursuant to legal action or litigation.”

5. Request and obtain FMS access as needed for the offset process.

DOF Response: “DOF agrees with this recommendation. In our discussion with FISA, functional changes were made to FMS in January 2018. DOF may now request additional FMS access.”

6. If other collection methods have not proven to be successful, use the City payment vouchers that are on hold to offset open docketed warrants totaling approximately \$5.7 million in City tax debt owed by City vendors.

DOF Response: “DOF agrees to this recommendation. We will review all the cases audited by the Comptroller's Office to determine whether other collection methods have been proven to be successful. If not, we will pursue seizure of the vouchers that are currently suspended.”

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 covers the period from July 1, 2015 to February 5, 2018, regarding DOF's collection of taxes from City vendors conducting business with the City of New York.

We met with DOF officials to obtain an understanding of the controls and processes in place with regard to tax collection from City vendors who conduct business with the City of New York. We requested DOF's standard operating procedures regarding the collection process; however, DOF officials informed us that DOF does not have formal procedures for the collection process. We reviewed the written standard operating procedure (SOP) for DOF's "GenTax FMS Vendor Restraint Process," which is used for business tax collections. We were informed that this SOP that DOF provided might not reflect recent system changes as DOF was still in the process of configuring its new BTS. We were subsequently provided with an updated SOP for the GenTax FMS Vendor Restraint Process. We also reviewed the various collection letters sent to City vendors that owe taxes, including the Offset Notification letter. DOF sends an Offset Notification letter to City vendors when their cases have been referred to the Collections Unit and the City vendors have open warrants for business tax debt. The Offset Notification letter informs the City vendor of the amount of the tax warrant, the amount of the vendor payment voucher(s) DOF has put under restraint, and DOF's intent to offset funds from payments due to the vendor to satisfy the unpaid tax warrants.

To determine the number of vendor payment vouchers that DOF placed on a PPF-V hold, and the length of time those payment vouchers had been on hold, we requested that DOF provide us with a list of vendor payment vouchers that were still on hold. DOF officials provided us with four reports:

1. An FMS generated report of payment vouchers with current hold type PPF-V, covering parameters from a hold start date of July 15, 2015 to October 19, 2017;
2. BTS Vendor Hold Add/Releases, a BTS report detailing added voucher restraints and releases, generated by DOF;
3. BTS Vendor Restraints Report, a BTS report with information sent from FMS to DOF. The BTS Vendor Restraints report (BTS report) provided the following information: (A) Vendor ID; (B) Voucher ID; (C) Collection ID; and (D) Collection Amount, which is the amount of taxes outstanding. We were informed by DOF officials that the BTS Vendor Restraint Report was generated solely per our request with limited report criteria available, and is not a report that DOF uses; and
4. The final report is a file containing the vendors with open warrants, docketed from January 8, 2015 through January 9, 2018, in DOF's GenTax file including the corresponding vouchers that have PPF-V holds.

We generated an FMS report with PPF-V holds from January 1, 2010 through October 19, 2017 to compare against DOF's generated FMS report (DOF's FMS report) with PPF-V holds from July 15, 2015 through October 19, 2017, and found the difference of the total dollar amount of payment vouchers on hold to be less than 8 percent. The difference in the two reports was due to the timing difference of the reports. We analyzed information contained in the FMS report, such as the number of vouchers, corresponding dollar amount, and length of time that each voucher had been on hold and prepared an aging schedule.

To determine whether the 192 City vendors listed in DOF's GenTax file showing open warrants totaling \$5,680,733 had holds on current payment vouchers in FMS, we matched 186 names of the 192 City vendors (97 percent) and found that the payment vouchers had holds in FMS. The remaining six City vendors did not have payment vouchers to place on hold.

To assess the reliability of the information contained in the BTS report, we determined whether all of the vouchers that were on hold according to DOF's FMS report appeared on the BTS report. There were 836 vouchers on DOF's FMS report, 73 (9 percent) of the vouchers did not appear on the BTS report, thus 91 percent of the vouchers on DOF's FMS report were on the BTS report. We judgmentally selected 13 of the 73 vouchers and followed up with DOF to find out why these vouchers from FMS did not appear on the BTS report. According to DOF officials, the BTS report does not show vouchers held by other agencies under different hold codes, and that is why those entities did not appear on the BTS Vendor Restraints report. All of the cases, except for one in which the hold was removed due to DOF receiving payment, had the hold code PAP-PR, which was placed by another City agency. Despite these results, our review determined that the information was sufficiently reliable for audit test purposes.

We also did a comparison to determine if there were any vouchers listed on the BTS report that were not on DOF's FMS report of vouchers with holds. The BTS report contains 1,781 unique vouchers. 1,019 (57 percent) of those vouchers were not listed in DOF's FMS report, which would indicate those vouchers were not under restraint or on a DOF placed PPF-V hold. We judgmentally selected 56 vouchers and went to the Payment Hold Activity Table in FMS and searched to see if the PPF-V holds were removed on those vouchers. In all cases reviewed, the holds were removed. Therefore, we decided to not solely rely on the information contained in the BTS report but also use GenTax and FMS.

We then we judgmentally selected 21 of those vouchers and observed DOF officials as they searched in GenTax to find out why the holds were removed in addition to the current collection amount, i.e., outstanding dollar amount of taxes due.

To determine the number of times that DOF exercised its option to offset funds from any vendor payment vouchers that were due to the City, we requested a list of vendor payment vouchers that had been assigned to DOF from July 1, 2015 to present. We also requested that DOF provide us with identifying information such as vendor legal name, vendor identification number and dollar amount associated with each case. We also requested from DOF, in the event it had not exercised its option to offset funds vendor payment vouchers since July 1, 2015, that its officials provide us with the last date that DOF exercised that option. DOF officials informed us that the information we requested was not maintained as such and not readily available and such report did not exist.

To obtain an understanding of what the voucher assignment process entails once DOF submits necessary documentation to the Comptroller's Office to offset funds, and the length of time it would take for such funds to be made payable and submitted to DOF, we met with the Bureau Chief of Accountancy for the Comptroller's Office.

The results of the above tests, while not statistically projected to their respective populations, provide a reasonable basis for us to assess whether DOF effectively restrains and seizes payments due to City vendors with outstanding tax warrants.



Department of Finance

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Ms. Marjorie Landa
Deputy Comptroller for Audit
Office of the City Comptroller
1 Centre Street, Room 1100 North
New York, NY 10007

June 22, 2018

Re: Audit Report on the New York City Department of Finance's Restraint and Seizure of Payment to City Vendors with Tax Warrants (SR17-111A)

Dear Deputy Comptroller Landa,

The Department of Finance (DOF) has reviewed the draft "*Audit Report on the New York City Department of Finance's Restraint and Seizure of Payment to City Vendors with Tax Warrants (SR17-111A)*" dated June 13, 2018 by the New York City Comptroller's Office (the Comptroller). DOF appreciates the Comptroller's positive findings that payment vouchers due to City vendors with outstanding tax warrants are effectively restrained.

Introduction

The Comptroller's Office audit generally encourages DOF to make greater use of seizing City vendor payments to satisfy outstanding tax warrants. DOF's practice is to first restrain (i.e. suspend) such payments and notify the affected vendors to achieve payment of the outstanding debt. DOF only seizes vendor payments if payment suspension is unsuccessful. While DOF is in broad agreement with the report's recommendations to improve the clarity and timeliness of our processes, we want to emphasize that any delay in moving from payment suspension to payment seizure does not result in a loss of funds or otherwise harms the City. Once payments are suspended, they remain suspended until DOF releases the suspension. The funds are not released to the vendors until DOF proactively makes an appropriate system entry. During this time the funds remain in the City's bank account. Furthermore, until the City vendor makes payment, the delinquent amount continues to accrue interest to protect the City's interest.

The DOF Collections Division is responsible for the collection of judgment/warranted debt for outstanding business taxes, parking summonses, and Environmental Control Board (ECB) adjudicated summonses. Its goal is to fairly collect outstanding debt while providing exceptional customer service. Taxpayers' situations are not all the same. We, therefore, do not apply a "one size fits all" solution, but take into consideration the challenges a taxpayer faces when bringing a taxpayer into compliance.

The Collections Division has several tools to resolve debt, with the levying of a taxpayer's funds being a last resort. The vendor restraint process allows DOF to suspend payments. The vendor restraint process consists of sending a weekly file requesting a hold be placed on vouchers of taxpayers with warranted business tax debt, notifying the taxpayer of its outstanding debt, and informing the taxpayer that its vouchered funds have been placed on hold pending resolution of the debt. A taxpayer may instruct DOF to "take" the funds by signing and returning an offset notification document. If no preapproval is received from the taxpayer, after the specified waiting period DOF may submit the Comptroller's assignment memorandum and supporting documentation, requesting assignment of the funds to DOF. During the time that a vendor restraint is in place, the City's opportunity cost is covered as interest continues to accrue until the debt is resolved.

Please note while a vendor payment is suspended DOF may respond to vendor-initiated requests or actions. We may review alleged taxpayer account errors and penalty abatement requests, await the outcome of a court challenge, or commence a payment plan. Account and penalty abatement evaluations as well as the outcome of court challenges may lead to a reduction of the debt. A payment plan allows the City to be paid in full, including interest that accrues during the period of the agreement, while being responsive to the vendor's current financial condition. A payment plan may also allow the vendor to continue to deliver goods or services to the City as called for in the vendor's contract. Please note that vendors reviewed by the Comptroller's Office during this audit are small to mid-size businesses that could be adversely affected by seizing a vendor payment too quickly. DOF finds that vendor payment restraints lead to successful resolution of the outstanding debt in the vast majority of instances. When it does not, the City's interest is protected because the vendor is not compensated unless and until DOF releases the payment suspension.

DOF agrees with the Comptroller's Office that our notification letter to vendors does not accurately describe our process and will amend it to be clearer. Also, while we strongly support the use of payment plans to be responsive to the needs of delinquent vendors, we do agree that defaulted payment plans, if not quickly addressed by the vendor, should lead to offset of vendor payments. We also plan to include the docketing of a new City tax warrant against a vendor in our definition of a defaulted payment plan.

Responses to Recommendations

1. DOF should develop and implement a system to track and measure its compliance with and the effectiveness of its procedures for the collection of docketed City tax debt from City vendors.

DOF agrees with this recommendation. DOF is working diligently to reduce our manual processes. As of January 2018, DOF's new Business Tax System (BTS) became operational for all warranted business tax debt which is assigned to Collections for review and resolution. BTS is the system of record for business tax financials and case history. However, the information pertaining to City vendors payment suspensions are not captured in BTS, but are only reflected in the City's Financial Management System (FMS). We will utilize BTS to improve reports in order to track and measure collection activities relating to suspended vendor payments due to warranted business tax debt. We will also discuss with the City Comptroller's FMS team the feasibility of receiving a direct data feed from FMS to BTS containing vendor voucher information.

2. DOF should revise its operations and procedures to enhance the ability of the DOF Collections Unit to take direct actions to collect docketed tax debt through offset from City vendors, including training staff on how to complete the offset process and increasing staff access to FMS.

DOF agrees with this recommendation. DOF Collections will revise its vendor payment suspension notice and ensure that relevant staff is authorized to move from suspension of payments to seizing such payments when necessary. We also will train staff to understand the circumstances under which this last resort should be used.

3. DOF should revise its written procedures to require that whenever a payment voucher earmarked for a City vendor with an open, docketed tax warrant has been restrained, and a specific time period (to be determined by DOF) has elapsed, and other collection methods have not been successful, the Collections unit *must* generate a "Comptroller assignment memo" requesting that the Comptroller's Office assign the withheld payments to DOF, unless (a) the warrant has been fully satisfied, or (b) a decision has been made and recorded In GenTax, to suspend collection efforts for a limited time (to be determined by DOF) to allow DOF to review the case.

DOF agrees with this recommendation. DOF Collections will produce a written procedure relating to vendor payment suspensions that gives a standard number of days before proceeding to seizure of a vendor's funds. Our system of records, BTS, will contain a notation of our action(s).

4. DOF should not release a payment voucher until the docketed tax warrant or judgment is substantially satisfied, vacated by a court, or withdrawn by DOF after appropriate documentation has been filed in GenTax indicating the basis for that action.

DOF agrees with this recommendation. Please note that DOF's definition of "substantially satisfied" includes not only payment in full but also an active payment plan. BTS will be modified so that DOF Collections is notified when a payment plan put in place as a result of a suspended vendor payment is defaulted due to non-payment or the filing of a new business tax warrant. A vendor payment may also be released if our attorneys advise us to do so pursuant to legal action or litigation.

5. DOF should request and obtain FMS access as needed for the offset process.

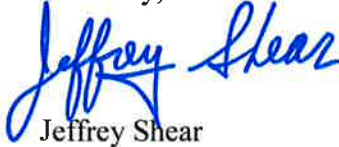
DOF agrees with this recommendation. In our discussion with FISA, functional changes were made to FMS in January 2018. DOF may now request additional FMS access.

6. If other collection methods have not proven to be successful, DOF should use the City payment vouchers that are on hold to offset open docketed warrants

totaling approximately \$5.7 million in City tax debt owed by City vendors.

DOF agrees to this recommendation. We will review all the cases audited by the Comptroller's Office to determine whether other collection methods have been proven to be successful. If not, we will pursue seizure of the vouchers that are currently suspended.

Sincerely,



Jeffrey Shear

Deputy Commissioner for Treasury and Payment Services

cc: Jacques Jiha, Ph.D., Commissioner, DOF
Michael Hyman, First Deputy Commissioner, DOF
Samuel Mayer, Senior Director, Internal Audit, DOF
Celia Carino, Director of Internal Audit, DOF
George Davis III, Deputy Director, Mayor's Office of Operations