

**JOINT FISCAL COMMITTEE**

Legislative Office Building, Rooms 210-211

Concord, NH

Wednesday, July 10, 2013

**MEMBERS PRESENT:**

Rep. Mary Jane Wallner (Chair)

Rep. Cindy Rosenwald

Rep. Dan Eaton

Rep. Ken Weyler (Alt.)

Rep. Bernard Benn (Alt.)

Sen. Chuck Morse

Sen. Bob Odell

Sen. Jeanie Forrester

Sen. Sylvia Larsen

Sen. President Peter Bragdon (Alt.)

(Convened at 10:20 a.m.)

**(1) Acceptance of Minutes of the June 7, 2013 meeting.**

CHAIRWOMAN WALLNER: Good morning. Is this on?

REP. ROSENWALD: Check in the back.

CHAIRWOMAN WALLNER: We've already forgotten how to get the microphones going.

REP. ROSENWALD: It should be on now.

CHAIRWOMAN WALLNER: Okay. There it is. Thank you. Good morning. Welcome to the Fiscal Committee meeting of July 10<sup>th</sup>, 2013, and the first item on the agenda today is the acceptance of the June 7<sup>th</sup>, 2013, minutes.

**\*\*** REP. EATON: Move the item.

CHAIRWOMAN WALLNER: Representative Eaton moved and Senator Morse second the item be approved. Any discussion of

the minutes? Changes? Seeing none. All in favor? Any opposed? The motion passes.

\*\*\* {MOTION ADOPTED}

(2) Old Business:

CHAIRWOMAN WALLNER: Old Business. We have three items that are still on the table.

REP. ROSENWALD: Madam Chair.

CHAIRWOMAN WALLNER: Yes, Representative Rosenwald.

\*\* REP. ROSENWALD: I move that Item 13-040 be removed from the table.

REP. BENN: Second.

REP. ROSENWALD: Representative Rosenwald moved and Representative Benn seconds to remove Item 040 off the table. Any discussion?

SEN. PRESIDENT BRAGDON: Non-debatable.

CHAIRWOMAN WALLNER: Non-debatable. Thank you for reminding me. All in favor?

\*\*\* {MOTION ADOPTED}

CHAIRWOMAN WALLNER: And I believe we may have a letter from Amy Ignatius asking that the item be withdrawn.

\*\* SEN. LARSEN: Move acceptance of the letter.

CHAIRWOMAN WALLNER: All in favor of accepting the letter?

REP. EATON: Seconded.

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REP. WEYLER: Who made the second?

REP. EATON: I did.

CHAIRWOMAN WALLNER: Representative Eaton seconds. Okay. So Item 13-040 is withdrawn from the table, and we won't see that one again.

\*\*\* {MOTION ADOPTED}

CONSENT CALENDAR

(3) RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 from any Non-State Source:

CHAIRWOMAN WALLNER: Let's move on to the Consent Calendar. This is Tab 3. Is there anyone who would like to take any of these items off the table -- off the Consent Calendar?

\*\* REP. EATON: Move approval.

CHAIRWOMAN WALLNER: Representative Eaton moves approval.

SEN. MORSE: Second.

CHAIRWOMAN WALLNER: Senator Morse seconds. All in favor? Any opposed?

REP. WEYLER: Eaton and Morse?

CHAIRWOMAN WALLNER: Eaton and Morse.

REP. WEYLER: Thank you.

\*\*\* {MOTION ADOPTED}

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(4) RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 from any Non-State Source and RSA 124:15 Positions Restricted:

CHAIRWOMAN WALLNER: Moving to Tab 4. This also is a consent item, but it is the only item on this tab.

\*\* REP. EATON: Move approval.

CHAIRWOMAN WALLNER: Representative Eaton moves approval.

REP. BENN: Second.

CHAIRWOMAN WALLNER: Representative Benn seconds. Any discussion of this item? All in favor? Any opposed? The motion passes.

\*\*\* {MOTION ADOPTED}

(5) RSA 124:15 Positions Restricted:

CHAIRWOMAN WALLNER: And we move on to Item 5.

\*\* REP. ROSENWALD: Move approval.

REP. BENN: Second.

CHAIRWOMAN WALLNER: Representative Rosenwald moves approval. Representative Benn seconds. Is there any discussion of this item? Seeing no discussion, all in favor? Any opposed? The item passes.

\*\*\* {MOTION ADOPTED}

(6) Chapter 144:164-166, Laws of 2013, Legislative Employees

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CHAIRWOMAN WALLNER: Moving on to Item 6.

\*\* REP. EATON: Move approval.

CHAIRWOMAN WALLNER: Representative Eaton moves approval.

SEN. LARSEN: Second.

CHAIRWOMAN WALLNER: Senator Larsen seconds. All in favor? Any discussion? I'm sorry, any discussion of this item? Seeing no discussion. All in favor? Any opposed? Great. Item passes.

\*\*\* {MOTION ADOPTED}

(7) Miscellaneous:

CHAIRWOMAN WALLNER: That was pretty fast. Wow! We do have a miscellaneous item that came in as a late item that we will -- I'll ask Mr. Pattison to bring to the table.

JEFFRY PATTISON, Legislative Budget Assistant, Office of Legislative Budget Assistant: Newly-appointed Commissioner Beardmore has supplied you with a letter dated July 8<sup>th</sup> which provides you with information about the status of tobacco revenue -- tobacco tax revenue collections for '12 and '13 as they compare to '10 and '11. The letter has been distributed to all of you. If you have any questions, Commissioner Beardmore is here and he'd be happy to answer those.

CHAIRWOMAN WALLNER: Do we have any questions about the letter? Seeing no questions. It's there for you as an informational item.

(8) Informational Materials:

CHAIRWOMAN WALLNER: There are several informational

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items in the packet for you to look at at your convenience. And I think -- are we ready now to move into the audit?

MR. PATTISON: Yes.

**AUDITS:**

RICHARD MAHONEY, Director, Audit Division, Office of Legislative Budget Assistant: Good morning, Madam Chair, Members of the Committee. For the record, I'm Richard Mahoney, Director of Audits for the Office of Legislative Budget Assistant. Joining me this morning is Jay Henry. Jay is a Senior Audit Manager with our office and was responsible to conduct the audit at DRA and is here to present a report to the Committee.

CHAIRWOMAN WALLNER: And, also, Mr. Beardmore has joined you.

JOHN BEARDMORE Commissioner Department of Revenue Administration: And with me is Phil Lawrence, Director of Collections.

CHAIRWOMAN WALLNER: Thank you.

JAY HENRY, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning, Madam Chair, and Members of the Committee. My name, for the record, is Jay Henry, and I'm a Senior Audit Manager with the LBA Audit Division. I'm presenting our performance audit of the Department of Revenue Administration's Collection of Delinquent Taxes during State Fiscal Years 2011 and '12. We specifically reviewed the efficiency and the effectiveness of the Division of Collections handling of taxes owed to the State. Our Executive Summary starts on Page 1.

While the Department collected approximately \$1.2 billion

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in 2012, the Division of Collections had 29 million in outstanding taxes, interest, penalties, and fees that was working on collecting as of June 30<sup>th</sup>, 2012. While the Division demonstrated great -- greater efficiency in its operation during the audit period, our Observations indicate that its effectiveness could be improved by implementing stronger internal controls.

On Pages 3 through 5 we summarize our 13 recommendations. The Department fully concurs with 10 and partially concurs with three. None of the Observations require direct legislative action.

Starting on Page 7, we provide some background information on the Division and how tax notices are assigned for collection. The Division can impose liens, make payment arrangements, seize assets of a person or business, suspend or revoke meals and rental operators' licenses, and offset tax refunds from other DRA collected taxes. The Division also has the ability to abate taxes, penalties, and interest owed by taxpayers. According to the Department records, the Division approved 6,208 abatement transactions totaling \$3 million during our audit period. As of June 2012, the Department had assigned \$7.8 million of out-of-state cases to a private debt collector. During State Fiscal Year 2012, this vendor collected \$130,000 for the Department.

Table 1 on Page 8 shows that the number of filled Division positions went from a high of 16 to a low of eight within two years. And the Division expenditures were reduced by \$341,000 or 34% as shown in Table 2. During the audit period, the Division re-engineered some of its work processes, including increasing reliance on telephone contacts with taxpayers and reducing the number of compliance officers out in the field. The Division also re-focused its collection efforts on business taxes and de-emphasized field collection activities on Meals and Rental Taxes.

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Table 4 on Page 10 shows that when Meals and Rental Tax and Business, which is a combination of Business Profit and Enterprise Taxes, are taken together, they represent about 90% of the value of the Division's caseload and 87% of the number of cases. In addition to collecting delinquent taxes with its eight positions, the Division also licenses meals and rental operators, sells tobacco stamps and conduct tobacco compliance operations at retailers. However, we did not audit these other activities.

During the audit period, the DRA implemented improvements in its main information system. The ongoing upgrade of the Division's computer system, along with DRA-wide employee reductions, resulted in tax return processing backlogs during Calendar Year 2012. This also negatively affected the timely identification of delinquent taxes during this period.

Starting on Page 13, in the first of our seven Observations dealing with Division's administration, we found abatement rules were not clear or comprehensive. Abatement reasons tracked in computer systems were not consistent. Delegation of authority was not clear. There were delays in processing abatement decisions, and abatements were not adequately documented.

In Observations 2 and 3, starting on Page 16, we recommend the Department establish rules for the use of payment agreements and liens. The Department is required to have written payment agreements with taxpayers if a taxpayer has clearly demonstrated its inability to pay in full. The Department is also required to use liens, but there are no rules explaining how the Department should implement these requirements. Without rules, the Department risks treating taxpayers inconsistently.

In Observation No. 4 on Page 18, we recommend a policy and procedures manual be developed to help ensure Division actions

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will be consistent and compliant with laws and rules. The Division's current manual provides some guidance but is not authoritative.

On Page 20 in Observation No. 5, we recommend the Department enhance its ability to retain and retrieve case information and to comply with its own record retention policy.

Starting on Page 21 in Observation No. 6, we found a number of weaknesses in the controls over the Department's information technology environment, such as the implementation of new computer systems did not follow Department of Information Technology guidance. Disaster recovery and business continuity plans were not readily available or tested, and user accounts were not always disabled according to policy.

In Observation No. 7 on Page 25, we found the DRA lacked written policies and procedures, did not complete risk assessments, had weak controls over third-party service providers, had no recent external or internal audits of its IT systems, lacked a quality control system to identify and correct bad data, and did not designate an employee to be responsible for managing risk.

Our next section has six Observations dealing with Division operations. Starting on Page 29 with Observation No. 8, we found a number of issues with the tax notices not being assigned to collections in a timely manner. Some delays were the result of computer system programming. We were unable to quantify the extent of the problem or explain all the reasons for the delays because of the nature of the data and the lack of information in the 57 randomly selected case files reviewed during the audit. Timely debt collection is in the State's interest. The more a tax liability ages, the less likely it will be collected.

In Observation No. 9 on Page 31, we recommend the

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Department establish rules for settlement agreements and offers-in-compromise. They are not found in statute. However, they may be involved with abatement and payment arrangements. Undocumented practices could not inform the public on how they can apply for settlement agreements or offers-in-compromise. Further, employees have no process to follow or criteria for which to base decisions on potentially resulting in inconsistent treatment of taxpayers.

In Observation No. 10 on Page 32, we recommend the Department provide sufficient guidance on its Website to inform taxpayers on payment options.

In Observations No. 11 and 12, starting on Page 34, we recommend the Department develop training for collection employees and improve its use of its new computer system to maintain case notes from different departmental units.

In Observation No. 13 on Page 36, we recommend the Division discontinue the practice of requiring meals and rental operators to provide bank account information, such as passwords, to the Department. While none of our recommendations require legislative action, the other issue we present on Page 37 lists collection practices that are used in other states but not here in New Hampshire. The Department and Legislature may wish to consider them, but some would require changes in State law.

Additionally, in Appendix B, we present the results of a 2010 survey that rank-ordered nine effective debt collection methods. We also list collection practices currently used by the Department.

Lastly, I'd like to thank the Department for their assistance and cooperation with our audit. And at this time if the Committee has any questions, we'd be happy to answer them.

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CHAIRWOMAN WALLNER: Thank you. Representative Weyler.

REP. WEYLER: Thank you, Madam Chair. Referring back to Table 4 on Page 10, gambling winnings. Didn't we have legislation to cease taxing gambling winnings? What was the effective date on that?

MR. BEARDMORE: You did, and it is no longer a tax. I believe the effective date 2010.

PHILIP LAWRENCE, Director, Division of Collections, Department of Revenue Administration: May of 2011, I believe.

MR. BEARDMORE: '11. It passed in the 2010 session, went away a year later, I believe. It was law for a period of time so these cases relate to that period of time.

REP. WEYLER: My second question is the 7 million that was collected, was that 7 million of the 29 that was owed or what is the percentage of collections of the amount that is sent to you for collection that you actually collect? I didn't see that in the report.

MR. HENRY: Well, it's an ongoing sort of process. If you think in general, they have a -- they have \$30 million that they're sort of collecting. And if you look at Table 3 on Page 9, you'll see the amount they have collected over the last four years. So you can sort of do a little percentage off of that.

REP. WEYLER: It doesn't tell me what -- so the 29 that's referred to in the first part --

MR. HENRY: As of date.

REP. WEYLER: As of date. So they're collecting less than a third.

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MR. MAHONEY: Representative -- if I may, Representative Weyler? I believe the number is about \$32 million at the end of 2011 compared to the \$29 million in 2012. So the revenue number that you see generated in 2012 on Table 3 is not related directly to the \$29 million balance as of June 30<sup>th</sup>, 2012; but it may be related to some of the balance that was outstanding as of the previous year and during that Fiscal Year.

REP. WEYLER: Lastly, how does this compare with other states in their delinquent taxes? Did we do any of that?

MR. HENRY: We didn't do a lot of that work. And one of the reasons is because of New Hampshire's tax structure is so different from many other states, since most states have an income tax, and we found that comparison would be even more problematic for us.

REP. WEYLER: Thank you. Thank you, Madam Chair.

CHAIRWOMAN WALLNER: Thank you. Representative Benn.

REP. BENN: Thank you, Madam Chair. On Page 7, I'm assuming that your tools for collecting in-state delinquencies are different than the tools for collecting out-of-state delinquencies. And you hired an out-of-state firm, evidently, debt collector, who was only able to collect \$130,000 out of 7.8 million. What other possibilities do you have for -- how do you go about chasing these people down?

MR. BEARDMORE: Phil, how long has the out-of-state debt collector been in practice; a year roughly?

MR. LAWRENCE: This one's two years.

MR. BEARDMORE: Two years. So the out-of-state debt collector is a fairly new function for the Department. The

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Department is at Governor and Council this morning seeking a contract with a second place out-of-state debt collector that is a law firm that will be able to bring out-of-state companies to court to collect on these debts, and we believe we'll be more effective in securing out-of-state debt collections. And both of these contracts work off a percentage basis of dollars recovered. So when the law firm brings a company to court to collect our debt, we will pay no out-of-pocket costs for court fees or attorney time. They will recover a percentage of the proceeds they recover. That firm will also be able to effectively suggest a lawsuit may result and collect funds without going to court and collect a lower amount of the funds if they don't have to go to court.

Phil, those are two primary tools for out-of-state. Am I missing any?

MR. LAWRENCE: Well, I think we could clarify a little bit. When we first engaged the out-of-state collection agency in 2010, we had built up an inventory over the past 10 years of about \$7 million worth of receivables, much of which was sent to the out-of-state agency just to more or less vet it, make sure. So I think the out-of-state agency's collections during the past year represent 14% of what we assigned to them for the collection during the past year. So I think it -- put in that perspective it changes how we look at them, at least.

REP. BENN: Sounds a little better. Could I just follow-up?

MR. HENRY: I'd like to just mention this is after the Department has done all it can with these cases trying to contact out-of-state taxpayers. So work had already been done in the state and at a certain point they say okay, we'll send it to that private debt collector. They have nothing to lose at that point.

REP. BENN: What's the percentage that, in general, that

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they keep for their fee for collections?

MR. LAWRENCE: 18%.

REP. BENN: 18%.

CHAIRWOMAN WALLNER: Representative Rosenwald.

REP. ROSENWALD: Thank you, Madam Chair. Good morning, Commissioner.

MR. BEARDMORE: Good morning.

REP. ROSENWALD: Could you tell us, please, what the status of the Department's move to allow credit card tax payment is at this point? Is that still moving forward?

MR. BEARDMORE: It is. It will be part of our E-file initiative. The budget that just passed allowed for some positions to allow us to move towards E-file and our goal is to have that up and running within the next couple years. It is legislatively authorized. And the taxpayer for business and interest, dividends taxes, would have to pay the credit card fees. Phil, we do allow it for meals and rooms; correct?

MR. LAWRENCE: Not credit cards at this time because there's no processor.

MR. BEARDMORE: Okay. Admin Services is in the process of securing a vendor to process the credit card payments.

REP. ROSENWALD: Thank you.

CHAIRWOMAN WALLNER: Further question. Mr. Beardmore, would you like to say a few words or, I'm sorry, we kind of jumped right into questions.

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MR. BEARDMORE: I would. I would just like to thank the LBA for their thoughtful and comprehensive audit. We, as a Department, are in the process of planning our action steps over the next Fiscal Year. And at the top of that plan for the Collections Division is to respond to each and every observation in a thorough manner and to report back to this Committee and the LBA by the end of the year on the status of our actions. I will just note that while the audit is critical in nature, and I understand that very well, and it's designed to find our flaws and it has done that, I think the Collections Division has done an extraordinary job in pressing on with their mission in a climate that halved their position complement. So I just wanted to put that on the record publicly. But we take this very seriously and we will address every single Observation. We concur with most. And even those that we do not concur with, we tilt more towards concur than not concur. They are concur, in part. But we will address every one. Thank you.

CHAIRWOMAN WALLNER: Thank you. Further questions? Thank you. And we appreciate all the work that the LBA did on this and all the work that the employees at the Department did. Thank you. And Representative Weyler.

**\*\*** REP. WEYLER: Madam Chair, I move we accept the report, place it on file, and release in the usual manner.

CHAIRWOMAN WALLNER: Representative Weyler moved and Representative Benn second. All in favor? Any opposed? Great.

**\*\*\*** {MOTION ADOPTED}

REP. ROSENWALD: Do we need to set a next meeting?

CHAIRWOMAN WALLNER: Yes, that's the only thing we have left, the next meeting. Any preference? Week in September was mentioned.

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SEN. MORSE: Second week of September. I don't care what date it is.

CHAIRWOMAN WALLNER: Second week of September. Date that works for people or let's hear -- is there something that doesn't work? Okay. So any date. Any day in the second week. What day would you like the meeting?

REP. EATON: Ominous. Friday the 13<sup>th</sup>?

SEN. MORSE: My choice.

CHAIRWOMAN WALLNER: That your choice? Okay. Friday the 13<sup>th</sup>. I think it's dangerous but, okay. Friday the 13<sup>th</sup>. We will -- September 13<sup>th</sup> we will have the next Fiscal Committee meeting. The agenda will probably be a little fuller, I bet, at that meeting. Great. Thank you. Meeting adjourned.

(Meeting adjourned at 10:45 a.m.)

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CERTIFICATION

I, Cecelia A. Trask, a Licensed Court Reporter-Shorthand, do hereby certify that the foregoing transcript is a true and accurate transcript from my shorthand notes taken on said date to the best of my ability, skill, knowledge and judgment.

Cecelia A. Trask  
Cecelia A. Trask, LSR, RMR, CRR  
State of New Hampshire  
License No. 47

