



AUDITOR GENERAL

DAVID W. MARTIN, CPA



DEPARTMENT OF REVENUE

TAXPAYER REFUNDS AND PRIOR AUDIT FOLLOW-UP

Operational Audit

SUMMARY

This operational audit, for the period March 2006 through February 2008, focused on the Department of Revenue (Department) policies and procedures for taxpayer refunds. Our audit also included a follow-up on prior audit findings related to taxpayer audits, dispute resolution, contracts, and Department utilization of the MyFloridaMarketPlace and People First systems. Our audit disclosed:

TAXPAYER REFUNDS

Finding No. 1: The Department did not always maintain adequate documentation related to refunds as follows:

- The Department did not always maintain case activity reports to document the activity and decisions made during the tax refund claim process.
- The Department did not always have a required Power of Attorney on file when refunding taxes claimed by taxpayer representatives.
- The Department could not always provide an explanation of record for the difference when tax refunds were paid in amounts less than amounts appearing on original documentation.

Finding No. 2: The Department did not always timely remove terminated employees' access privileges for the Refund Management System (RMS), and the Department did not periodically review the appropriateness of employee access privileges in RMS.

TAXPAYER AUDITS

Finding No. 3: Department tax audit files did not always contain required Sampling Agreements and Sampling Plans.

DISPUTE RESOLUTIONS

Finding No. 4: The Department did not always maintain on file written closing agreements evidencing the understanding between the Department and the taxpayers regarding settlements and compromises greater than \$30,000.

CONTRACT PROCUREMENT

Finding No. 5: The Department had not adopted policies and procedures for ensuring that, for contracts greater than \$25,000, all staff involved in the selection of contractors and the negotiation of contracts attest to their independence and impartiality. Our audit tests disclosed that attestations were not always completed for contracts greater than \$25,000 and one attestation lacked the signatures of the staff involved in the selection process.

BACKGROUND

The Department is the primary collection point for most of Florida's taxes. As such, the Department has a variety of tax-related responsibilities including, but not limited to, tax auditing activities; tax collection and enforcement; development, maintenance, and management of information systems for tax return processing and taxpayer registration; and taxpayer

assistance. Pursuant to State law,¹ the Department's tax processing responsibilities include the processing of collections and tax returns.

FINDINGS AND RECOMMENDATIONS

Taxpayer Refunds

Taxpayer refunds can originate in three ways. Refunds may originate from taxpayers filing tax returns which show that the taxpayers overpaid taxes during the taxation period and are due refunds. Refunds may also originate from taxpayers requesting refunds by submitting appropriate forms to the Department. These refund requests may be attributed to overpayment of taxes due to errors, changes in conditions affecting the calculation of the taxes, or changes in tax laws affecting the amount of taxes due. Refunds may also be initiated by the Department when errors are made by taxpayers. During the audit period, the Department refunded approximately \$820 million to taxpayers.

Refunds originating from tax returns are processed through the Department's System for Unified Taxation (SUNTAX). SUNTAX is an automated system developed from a commercial off-the-shelf enterprise resource planning software package that has been modified to meet the needs of the Department. SUNTAX was designed to provide various functions, and one such function is the processing of all tax returns, payments, and related correspondence. SUNTAX performs an automatic return reconciliation and flags returns if errors are discovered. Department staff are to review flagged returns and any noted errors are to be corrected before a refund is approved.

Tax returns are entered into SUNTAX either by taxpayer electronic filings or by Department scanning of taxpayer-submitted paper returns. After information has been entered into SUNTAX, no hard copy documents are retained.

Refunds originating from taxpayer requests are processed through the Department's Refund

Management System (RMS). RMS is a database-supported system used to approve, deny, withdraw, or reactivate refunds. All decisions and actions occurring in RMS are manually initiated and are to be supported by paper files.

Finding No. 1: Tax Refund File Documentation

Due to the materiality of amounts refunded to taxpayers, it is important for documentation to be maintained that supports decisions made, approvals, and amounts paid and that demonstrates compliance with the laws and rules that govern the refund process.

Our audit of tax refunds identified needed improvements in the Department's maintenance of documentation related to refunds. Specifically, we noted that:

- When Department tax auditors review refund claims, Department procedures require the completion and maintenance of case activity reports to document all activity and decisions made during the claim review process. For 3 of 50 applicable refund claims, the Department did not have a case activity report on file and, for 4 claims, the case activity reports did not contain sufficient information to document the review and approval process. For example, one case activity report did not document the events leading up to the approval of the refund, and another case activity report indicated that the refund request was denied and then later approved with no information disclosing what precipitated the change. These 7 refund claims ranged in amount from \$9,975 to \$941,746 and totaled \$2,499,090.
- If a refund was requested by a representative of the taxpayer, Department procedure required that a Power of Attorney be submitted to document that the representative was authorized to act on behalf of the applicant. Our test of 30 refund applications processed through RMS included eight refund applications submitted by a representative of the taxpayer. For one of these eight refund applications, the associated refund file did not contain a Power of Attorney.
- The refunded amounts for 3 of the 19 SUNTAX-processed refunds we tested were

¹ Section 20.21(2)(g), Florida Statutes.

less than the amounts shown to be due by the original tax return and other available information. The differences ranged in amount from \$2,648 to \$26,127 and totaled \$34,350. In response to our inquiry, the Department indicated that the differences were due to adjustments made by tax auditors during the tax refund review process. Subsequent to audit inquiry, the Department determined, with respect to 1 of the 3 refunds, that an additional \$5,957 was due to the taxpayer.

Absent documentation to support actions taken by the Department with regard to the review and authorization of refunds, the Department may not always be able to demonstrate that refunds were processed and paid in accordance with governing laws and procedures.

Recommendation: We recommend that the Department maintain documentation supporting changes to all refund amounts and ensure that tax auditors maintain case activity reports documenting all activity related to the processing of refunds. We also recommend that the Department obtain and maintain on file Powers of Attorney when required.

Finding No. 2: RMS Access Privileges

Access to information technology systems should be strictly controlled to protect sensitive information and critical programs. Access capabilities should be removed in a timely manner when an employee terminates or no longer requires access because of a change in job responsibilities. Also, management should make a periodic review of access rights to ensure that access privileges granted to users remain appropriate. This review should, at a minimum, consist of preparing a report of all users' access rights and having the manager of those users review and acknowledge that the access is still appropriate.

We obtained from the Department a listing of all employees with access to RMS at May 19, 2008. This listing contained the names of 357 Department employees. We compared this listing with a listing of Department employees who had terminated during the audit period and noted that 9 terminated employees

continued to have access to RMS. The termination dates of these 9 former employees ranged from January 2007 to February 2008. We also noted an additional employee who had terminated employment in November 2003 and who still had access privileges. Because the Department did not maintain a record of information used to logon to RMS, the Department was unable to determine whether the access privileges of the 10 former employees were used after the dates of their termination. Department staff also indicated that the Department does not perform periodic reviews of the appropriateness of employee RMS access privileges.

Absent timely removal of access privileges for employees who terminate employment, are reassigned within the Department, or otherwise no longer need access privileges, there is an increased risk that access privileges could be misused. In addition, failure to conduct periodic reviews of access privileges increases the risk that terminated or reassigned employees' access privileges will not be timely removed.

Recommendation: We recommend that the Department adopt procedures requiring that periodic reviews of RMS user access privileges be performed to verify that access privileges remain commensurate with employees' job responsibilities and that RMS access privileges of terminated and reassigned employees are timely removed. In addition, the Department should consider maintaining a record of RMS logons so that the appropriateness of access can be verified.

Taxpayer Audits

Finding No. 3: Sampling Plans and Sampling Agreements for Tax Audits

State law² authorizes the Department to audit or inspect the records and accounts of taxpayers and, in the event of a tax deficiency, to assess the taxpayer for amounts due. The Department's *Auditor Handbook* requires that, for each taxpayer audit in which sampling is utilized, the audit working paper file contain a Sampling Plan and a copy of a Sampling

² Section 213.34, Florida Statutes.

Agreement, signed by the taxpayer. The Sampling Plan outlines the sampling methodology the auditor will utilize to test the taxpayer's records and, if errors are noted, to calculate and project any excess or deficiency of taxes paid. The Sampling Agreement serves to document the taxpayer's understanding of the Sampling Plan. In the absence of a taxpayer signature on the Sampling Agreement, auditors are to document in the Standard Audit Report the reasons given by the taxpayer for the refusal to sign.

In audit report No. 2007-022, we noted that the Department's taxpayer audit working paper files did not always contain a Sampling Plan or Sampling Agreement. In addition, when Sampling Agreements were present, they were not always signed by the taxpayer, and the Department's audit files did not always contain a notation indicating the reasons the taxpayer had declined to sign the Agreement.

We tested 35 taxpayer audit working paper files that were required to contain a Sampling Agreement and a Sampling Plan to evaluate the Department's actions to correct the prior audit finding. While we did note improvement in the level of *Auditor Handbook* compliance, we noted deficiencies in 4 of the 35 audit files. Specifically:

- Two did not contain a Sampling Plan or a Sampling Agreement.
- Although one file contained a Sampling Agreement signed by the taxpayer it did not contain a Sampling Plan.
- Another file contained a Sampling Agreement that was not signed by the taxpayer and the file did not contain an explanation by the auditor indicating why the taxpayer did not sign.

Absent a Sampling Plan and a Sampling Agreement documenting that the taxpayer understood and agreed with the audit sampling methodology described in the Sampling Plan, the Department may find it more difficult to obtain taxpayer concurrence with audit determinations.

Recommendation: We recommend that the Department continue its efforts to include in the

audit files, when applicable, Sampling Plans and Sampling Agreements. In addition, Department audit files should contain Sampling Agreements appropriately signed evidencing the taxpayer's understanding of the Sampling Plan or, in the absence of the taxpayer's signature, contain an explanation for why the Sampling Agreement was not signed.

Dispute Resolutions

Finding No. 4: Closing Agreements for Taxpayer Dispute Resolutions

State law³ authorizes the Executive Director of the Department, or his or her designee, to enter into closing agreements with any taxpayer settling or compromising the taxpayer's liability for any tax, interest, or penalty. If the amount of the tax, penalty, or interest compromised exceeds \$30,000, then the agreement must be in writing. Once a closing agreement has been approved and signed by the appropriate Department designee and the taxpayer, it is final and conclusive except upon a showing of fraud or misrepresentation of material fact. The Department cannot make any additional assessments for the time specified in the closing agreement and the taxpayer is not entitled to institute any judicial or administrative proceeding to recover any tax, interest, or penalty paid pursuant to the closing agreement.

In audit report No. 2007-022, we noted that the Department did not always maintain on file written closing agreements evidencing the understanding between the Department and the taxpayers regarding settlements and compromises greater than \$30,000.

Effective December 2006, the Department implemented procedures requiring written closing agreements; however, our review of documentation for eight settlements or compromises greater than \$30,000 and occurring after December 2006 disclosed that none were supported by written closing agreements. These compromises totaled \$3,238,868 and ranged in amount from \$30,283 to \$2,610,152.

³ Section 213.21(2)(a), Florida Statutes.

The dates of these compromises ranged from April 2007 to February 2008.

The failure to obtain written closing agreements may lead to misunderstandings and future protests or disputes, which could result in administrative or judicial proceedings to recover any tax, interest, or penalty due pursuant to the closing agreement.

Recommendation: We again recommend that the Department implement appropriate procedures to ensure that written closing agreements for settlements or compromises greater than \$30,000 are prepared, signed by the taxpayer and the Department’s representative, and maintained in Department records.

Contract Procurement

Finding No. 5: Conflict of Interest Statements from Procurement Contract Evaluators

State law,⁴ requires that for any procurement in excess of \$25,000 accomplished without competition, the individuals taking part in the development or selection of criteria for contract evaluation, the evaluation process, and the award process attest in writing as to their independence from the entities evaluated and selected. Although such attestations are not required by law for procurements accomplished with competition, the documentation of the independence and impartiality of individuals involved in evaluating and selecting such contractors would, as a good business practice, help ensure, in fact and appearance, a fair and open procurement process.

In audit report No. 2007-022, we noted that the Department did not always obtain attestations for both competitive and noncompetitive procurement contracts. We recommended that the Department require attestations of independence from all staff involved in the selection and negotiation of goods and services contracts, for both competitive and noncompetitive purchases, with projected costs in excess of \$25,000. A similar finding was also included in audit report No. 2005-041.

⁴ Section 287.057(20), Florida Statutes.

To evaluate the extent to which the Department had taken action to address the lack of independence attestations, we tested seven competitively awarded contracts and three noncompetitively awarded procurement contracts. Our test disclosed that for six competitively awarded contracts and one noncompetitively awarded contract, no attestation of independence was on file. Also, one of the attestations of independence on file for a noncompetitively procured contract did not contain the signatures of all individuals involved in the selection process and did not contain a description of each individual’s role in the selection process.

Recommendation: We again recommend that the Department obtain attestations of independence from all staff involved in the selection and negotiation of goods and services contracts, both noncompetitive and competitive, with projected costs in excess of \$25,000.

PRIOR AUDIT FOLLOW-UP

As part of our audit, we determined that Department staff had corrected, or were in the process of correcting, the applicable findings included in audit report Nos. 2007-022, 2007-076, and 2007-087, unless otherwise noted above.

OBJECTIVES, SCOPE, AND METHODOLOGY

This operational audit focused on Department policies and procedures for refunding taxes to taxpayers. Additionally, it included a follow-up on audit findings disclosed in audit report No. 2007-022 relating to taxpayer audits, dispute resolutions, and contracts; and Nos. 2007-076 and 2007-087, related to the Department’s use of the MyFloridaMarketPlace and People First systems, respectively.

The objectives of this audit were:

- To evaluate the effectiveness of established internal controls in achieving management’s control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the relevance and reliability

of records and reports; and the safeguarding of assets.

- To evaluate management's performance in achieving compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the relevance and reliability of records and reports; and the safeguarding of assets.
- To determine whether management had corrected, or was in the process of correcting, all applicable deficiencies disclosed in prior audit report Nos. 2007-022, 2007-076, and 2007-087.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

We conducted this operational audit in accordance with applicable 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.

Our operational audit included examinations of various transactions (as well as events and conditions) occurring during the period March 2006 through February 2008. In conducting our audit, we:

- Examined Department procedures for receiving, reviewing, accepting or denying, and processing tax refund requests and evaluated whether those procedures were adequate for ensuring that taxpayers were eligible for refunds paid to them and that refunds amounts were accurate.
- Tested 40 refund requests and examined documentation to determine whether the acceptance or denial of refund requests was justified.
- Tested 40 refunds paid and 40 refunds credited to taxpayer accounts and examined documentation to support the taxpayer's eligibility for the refund, the amount paid, and whether the refund was processed timely.

- We reviewed general and access controls for information technology systems supporting the tax refund process to determine if they were sufficient to provide reliable information.
- Evaluated Department actions taken to correct the deficiencies disclosed in audit report No. 2007-022. Our audit included reviewing contract files for the existence of independence attestations for evaluators, reviewing audit files for sampling plans and sampling agreements, and reviewing required documentation for settlements and compromises.
- Evaluated Department actions taken to correct the deficiencies disclosed in audit report No. 2007-076 by reviewing the extent of MyFloridaMarketPlace system utilization, security provided for confidential information, and the effectiveness of steps taken to prevent duplicate payments. The results of our survey of Department MFMP utilization will be disclosed in our operational audit report issued on the Department of Management Services.
- Evaluated Department actions taken to correct the deficiencies disclosed in audit report No. 2007-087 by reviewing audits the Department performed on leave balances recorded in People First.
- Performed various other audit procedures as necessary to accomplish the objectives of the audit.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a biennial basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT RESPONSE

In a letter dated October 15, 2008, the Executive Director provided a response to our preliminary and tentative audit findings. The letter is included at the end of this report as **APPENDIX A**.

This audit was conducted by Yueh-Lin Degrove, CPA, Aaron Franz, CPA, and Lisa Strickland, CPA, and was supervised by Don Reeder, CPA. Please address inquiries regarding this report to Kathryn D. Walker, CPA, Audit Manager, by e-mail (kathrynwalker@aud.state.fl.us) or by telephone (850 487-9085).

This report and other audit reports prepared by the Auditor General can be obtained on our Web site (<http://www.myflorida.com/audgen>); by telephone (850 487-9024); or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

APPENDIX A
MANAGEMENT RESPONSE



Executive Director
Lisa Echeverri

Child Support Enforcement
Ann Coffin
Director

General Tax Administration
Jim Evers
Director

Property Tax Oversight
James McAdams
Director

Administrative Services
Nancy Kelley
Director

Information Services
Tony Powell
Director

October 15, 2008

Mr. David W. Martin, CPA
Auditor General
Office of the Auditor General
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Mr. Martin:

As required by section 11.45(4)(d), Florida Statutes, attached is the Department's response to the preliminary and tentative findings and recommendations of your Operational Audit of the Department of Revenue, Taxpayer Refunds and Prior Audit Follow-Up, for the period March 2006, through February 2008.

We appreciate the professionalism displayed by your audit staff. If further information is needed, please contact Bob Bliss, Director of Auditing, at 487-0701.

Sincerely,

Lisa Echeverri

LE/BB/bso

Attachment

cc: Sharon Doredant
Bob Bliss

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APPENDIX A
MANAGEMENT RESPONSE (CONTINUED)

**Operational Audit of the Department of Revenue
Taxpayer Refunds and Prior Audit Follow-Up
For the Period March 2006 through February 2008
Response to Preliminary and Tentative Report**

Finding No. 1: The Department did not always maintain adequate documentation related to refunds as follows:

- 1. The Department did not always maintain case activity reports to document the activity and decisions made during the tax refund claim process.**
- 2. The Department did not always have a required Power of Attorney on file when refunding taxes claimed by taxpayer representatives.**
- 3. The Department could not always provide an explanation of record for the difference when tax refunds were paid in amounts less than amounts appearing on original documentation.**

Recommendation: We recommend that the Department maintain documentation supporting changes to all refund amounts and ensure that tax auditors maintain case activity reports documenting all activity related to the processing of refunds. We also recommend that the Department obtain and maintain on file Powers of Attorney when required.

Response:

1. On May 6, 2008, we implemented procedures to assure that each refund case has a case activity report and that every activity is documented. A new detailed case activity report has been created to be used by **all refund auditors**. Refunds Management has also put in place new procedures to ensure that fully completed case activity reports are included with each processed refund request. Management will continue to reiterate to all audit staff the importance of maintaining complete Case Activity Reports that document all the activities and decisions made during the refund audit process. In addition, we intend to expand our Audit Quality and Efficiency initiative to the Refund Process within the next several years. This initiative is focused on the importance of a quality product and provides specific guidelines, evaluation tools and scoring criteria to ensure audit quality.
2. We have reminded the audit personnel of the importance to always secure a Power of Attorney (POA) form whenever we are dealing with a person other than the taxpayer. Once our Refunds Management System is converted to a SAP Refunds Case Management system, we are planning to utilize a POA imaging function that will allow us to house, in SAP/SUNTAX, master POA information obtained by Refund Auditors for each taxpayer who submits a POA form. This would allow POA information to be accessible and available for review on a taxpayer's SAP/SUNTAX account. We expect

APPENDIX A

MANAGEMENT RESPONSE (CONTINUED)

the refund case management system to be migrated to the SAP environment by June 30, 2009.

3. With the mainframe migration, the refund processing functionality will be transferred into SAP. To effectively correct the documentation issue, the Refunds Section has updated our refunds procedures regarding the SUNTAX processed refunds to include recording comments on the SUNTAX comments page detailing the auditors' activities during the refund audit process. This information would include but not be limited to communication with the taxpayer, additional documentation requested and received from the taxpayer, adjustments to the refunds made by the auditors and reasons to support such adjustments. As with the case activity reports, management will continue to reiterate the importance of maintaining detailed records of the auditors' activities when processing refunds.

Finding No. 2: The Department did not always timely remove terminated employees' access privileges for the Refund Management System (RMS), and the Department did not periodically review the appropriateness of employee access privileges in RMS.

Recommendation: We recommend that the Department adopt procedures requiring that periodic reviews of RMS user access privileges be performed to verify that access privileges remain commensurate with employees' job responsibilities and that RMS access privileges of terminated and reassigned employees are timely removed. In addition, the Department should consider maintaining a record of RMS logons so that the appropriateness of access can be verified.

Response: The Department acknowledges that security access is an important issue and, as such, is currently reviewing at a global level its procedures to safeguard against unauthorized access. Several options to tighten procedures are currently being explored. The Department's Administrative Services Program (ASP) will continue to work with the Information Services Program (ISP), as well as other key agency stakeholders, to address the overall employee separation process.

By January 2009, a policy and procedures document will be ready for all supervisors to guide them through the process and help them better understand their role. These policies and procedures will include information for supervisors regarding how to timely and accurately notify the appropriate areas for access removal from DOR systems. The longer-term goal is to incorporate technology in the employee separation process to improve efficiency and effectiveness.

In the interim, with respect specifically to the Refund Management System (RMS), the Refund Section will provide a refresher for managerial and support staff regarding the current procedures for RMS access. Currently, when an employee is terminated or is transferred into a new position, the Refunds Section is required to notify the ISP of the change. This is done by fax and/or e-mail using form IS-600006, Removal of Security Access for Terminated Employees. ISP will supplement this process by adding a quarterly review of user privileges.

APPENDIX A

MANAGEMENT RESPONSE (CONTINUED)

With regard to the correlation between access and job responsibilities, the appropriateness of access to RMS is determined by the job duties and roles assigned to the position. There are three different roles used in the Refunds Section: auditors, supervisors, and Computer Audit Analysts. Each role has access to certain transactions. These have been defined by the job requirements and to ensure adequate segregation of duties. These roles and the access to the various system transactions are maintained by our ISP.

Finding No. 3: Department tax audit files did not always contain required Sampling Agreements and Sampling Plans.

Recommendation: We recommend that the Department continue its efforts to include in the audit files, when applicable, Sampling Plans and Sampling Agreements. In addition, Department audit files should contain Sampling Agreements appropriately signed evidencing the taxpayer's understanding of the Sampling Plan or, in the absence of the taxpayer's signature, contain an explanation for why the Sampling Agreement was not signed.

Response: The Compliance Support Process has published a reminder regarding the importance of Sampling Agreements/Plans in its August 2008 newsletter.

The Department has increased the number of audits reviewed to ensure signed Sampling Plans and Sampling Agreements are included in the audit files when needed. However, it is our position that a Sampling Agreement is not needed unless we are sampling and projecting liabilities due to compliance errors discovered in the records tested.

Standard procedure is for auditors to test accounts subject to tax for accuracy, completeness, consistent application and adherence to company procedures and then determine the types of errors in the system. If procedures and tests reveal reasonable compliance by the taxpayer and no additional tax is due, the audit is closed as a "No Change." Two of the four cases cited were "No Change" audits. These audits should not have been included in this finding since sampling was not employed in these particular "No Change" audits, and therefore not relevant. However, since the DOR auditors in these two specific cases referred to their preliminary reviews of the taxpayers' accounts as "sampling" versus "testing," this reference created confusion for AG audit purposes. We will reiterate to our audit staff the importance of using precise language when referring to their audit activity.

Finding No. 4: The Department did not always maintain on file written closing agreements evidencing the understanding between the Department and the taxpayers regarding settlements and compromises greater than \$30,000.

Recommendation: We again recommend that the Department implement appropriate procedures to ensure that written closing agreements for settlements or compromises greater than \$30,000 are prepared, signed by the taxpayer and the Department's representative, and maintained in Department records.

APPENDIX A

MANAGEMENT RESPONSE (CONTINUED)

Response: The Department does maintain a written closing agreement on all audit and discovery assessments greater than \$30,000. The Department has reissued GTA-PB06ADM003 reminding collectors to obtain a formal closing agreement on penalty waivers greater than \$30,000. However, the General Tax Administration program believes that this requirement is an administrative burden on taxpayers, practitioners and the Department in the collection process. In the audit and discovery program, closing agreements are used to resolve any disputes about the tax liability and circumstances for not remitting the tax voluntarily. In the collection process almost all of the penalty assessments are for late filing or late payment, and the taxpayer requests relief for "reasonable cause." This is acknowledged by the Department and documented in the taxpayer's history. The waiver is also reviewed by at least one, if not more, levels of management, depending on the dollar amount.

The Department will pursue administrative remedies to eliminate this requirement for billings associated with the collection process.

Finding No. 5: The Department had not adopted policies and procedures for ensuring that, for contracts greater than \$25,000, all staff involved in the selection of contractors and the negotiation of contracts attest to their independence and impartiality. Our audit tests disclosed that attestations were not always completed for contracts greater than \$25,000 and one attestation lacked the signatures of the staff involved in the selection process.

Recommendation: We again recommend that the Department obtain attestations of independence from all staff involved in the selection and negotiation of goods and services contracts, both noncompetitive and competitive, with projected costs in excess of \$25,000.

Response: On May 5, 2008, the Department updated its Purchasing and Contract Management Manual to include the requirement to obtain a competitive no-conflict of interest attestation for the following types of competitive procurements:

- Invitations to Bid;
- Requests of Proposals;
- Invitations to Negotiate;
- Alternate Source Contracts (GSA, or other governmental entities); and
- Alternate Source Contracts established from State Contracts which require competition (such as certain IT consulting services).

The purchasing office created a No-Conflict of Interest Form for competitive purchases in concert with the May 2008 update of the Purchasing and Contract Management Manual.

State Term Contracts that do not require competition do not require the attestation since the competitive component of the purchase was achieved by the Department of Management Services and use of the contracts are mandatory.

The Department will obtain an attestation for noncompetitive purchases for purchases in excess of CATEGORY TWO (currently \$25,000) that are achieved without competition. The Department will use DMS form PUR 7662 to gain this attestation.