

PP-2008-13

3/20/08

## STATEMENT OF AUDIT PROCEDURE

### COURTESY CONFERENCES

#### I. BACKGROUND

Occasionally, a taxpayer fails to make a timely protest of an asserted tax deficiency and then receives a final demand or warrant that it believes is incorrect. While a statute of limitations cannot be waived, the Commissioner of Finance may, pursuant to statutory authority, revise, adjust, or re-determine a tax liability that has been incorrectly or erroneously asserted. This Statement of Audit Procedure explains when and how a taxpayer may request that the Department reevaluate a determination of tax deficiency after it has become final.

#### II. SCOPE

Courtesy conferences provide the Department with an opportunity to review documentation supplied by a taxpayer trying to demonstrate that there was an obvious error or miscalculation of the tax at issue, and to revise, adjust, or re-determine the liability if appropriate. This procedure only applies to outstanding tax liabilities where a statutory right to protest is not available. By agreeing to a courtesy conference, the Department does not waive its right to raise any claim or defense, including but not limited to, the statute of limitations barring a legal right to protest the determination.

#### III. PROCEDURE

##### Requesting a Courtesy Conference

Once the statutory period to protest a notice of an income or excise tax deficiency has expired, the Collections Division takes various actions authorized by the Administrative Code to collect the notice amount. If at that point a taxpayer believes the underlying income or exercise tax liability is incorrect, the taxpayer may ask the Collections Division for a courtesy conference so the matter can be reviewed.

Collection activities will be suspending once a courtesy conference is requested.

Granting a courtesy conference is in the sole discretion of the Commissioner of Finance or her designee. Whether to grant a courtesy conference will depend on:

- the nature of the issue and whether there is a clear legal precedent for the adjustment;
- the taxpayer's conduct (or the conduct of the authorized representative) in the case or inquiry that led to the determination, including whether the taxpayer was cooperative in the audit, responded to inquiries, and was forthcoming with information or documentation requested by the auditor; and
- the fiscal condition of the taxpayer, including information regarding the dissipation of assets that may be available for collection of the liability.

When necessary, the Collections Division may ask the Audit Division to review the audit file to help determine if granting a courtesy conference is appropriate. If the Collections Division decides not to grant a courtesy conference the taxpayer will be notified by regular mail.

Once a courtesy conference is granted it should be held within 30 days. If there is sufficient documentation in the file to consider the taxpayer's claim without an actual conference, that review should be completed within 30 days.

#### Possible Outcomes After A Courtesy Conference

If the taxpayer claims that the statutory notice was improperly mailed, the Department will review the mailing records and if the taxpayer is correct, the deficiency will be cancelled and any warrant vacated.

If a deficiency is shown to be erroneous by documentary evidence, for example, a cancelled check is provided showing full payment, then the deficiency will be cancelled and any warrant vacated.

If evidence is presented showing that a portion of the deficiency is clearly erroneous and the taxpayer agrees to pay the balance due, the deficiency will be reduced to the correct amount and the warrant vacated upon payment of the reduced deficiency.

The Collections Division will notify the taxpayer of the results of the courtesy conference by regular mail. Where the courtesy conference has been referred to the Audit Division, any written findings will be sent to the Collections Division and incorporated in the response to the taxpayer.

