



# DEPARTMENT OF FINANCE

## AUDIT DIVISION

AP/GCT - 3

### STATEMENT OF AUDIT PROCEDURE

COMBINED RETURNS  
THE THIRTY DAY RULE

#### I. BACKGROUND

The New York State Tax Appeals Tribunal has issued two decisions dealing with the State Franchise Tax Regulations for combined reports. These decisions relate to the requirement, which is also found in the City's General Corporation Tax Regulations, that all requests to file on a combined basis must be made no later than thirty days after the close of the taxpayer's taxable year (see General Corporation Tax Regulation section 5-28).

In Autotote Limited (April 12, 1990), the Tribunal held that if it is determined upon audit that the correct tax due can only be calculated by including two or more corporations in one combined report and that filing separately leads to an incorrectly high tax, the failure of a taxpayer to request permission to file combined within thirty days after the close of its taxable year will not prevent permission from being granted to file on a combined basis. Under the law, the Commissioner has the discretion to allow a taxpayer to file on a combined basis where the facts so warrant. The Tribunal ruled that, notwithstanding the thirty day rule, the Commissioner must exercise his discretion in this situation and allow a combined filing.

In Chudy Paper Co., Inc. (April 19, 1990), the Tribunal held that taxpayer's failure to comply with the requirement of the regulations to request permission to file on a combined basis within thirty days of the close of its taxable year prevented it from filing on a combined basis. Since no audit had been done, the Tribunal refused to accept taxpayer's assertion that an audit would have shown that a combined filing was proper.

This Statement of Audit Procedure will set forth the guidelines for auditors to determine those instances in which to compute an audited taxpayer's tax liability on a combined basis even though the taxpayer did not request permission to file on a combined basis within thirty days after the close of its taxable year.

2. A corporation may apply within 15 days of cessation for an extension of time to file its final return by submitting an application for an extension together with a payment of the properly estimated tax due for the final tax period.
3. The Department of Finance will grant a two and one half month filing extension to all taxpayers that properly apply for filing such extension within 15 days of cessation.
4. Taxpayers which fail to properly file their final return on a timely basis, together with payment of any tax then due, or which fail to properly apply for an extension of time to file may be subject to late filing and late payment penalties computed from the original due date of the final return.

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## II. PROCEDURE

The Audit Division of the Department of Finance conducts examinations which range from an initial screening of returns for potential audit to full scope field audits.

### A. Desk Audit

A desk audit review of separately filed General Corporation Tax returns is a process in which filed returns are screened for internal consistency and possible errors. The desk auditor may examine income and capital reported, deductions and credits claimed, computations and allocations made, as well as all other information reported on the face of the return and the attachments filed with the return. A taxpayer may be contacted and asked to submit additional information in connection with the specific issues raised by the review.

In general, a desk audit review of separately filed General Corporation Tax returns is limited to issues raised by the face of the return. It does not include, among other things, a detailed examination of intercompany transactions, ownership of related corporations or the conduct of a unitary business by related corporations.

Accordingly, the desk auditor may deny the request of a taxpayer to file on a combined basis where the taxpayer failed to ask for permission within thirty days after the close of its taxable year.

### B. Field Audit

A full scope audit is a complete and comprehensive examination of a taxpayer's books and records in order to ascertain the taxpayer's correct tax liability. If the auditor, after such an examination of a General Corporation Tax return filed on a separate basis, has ascertained that:

1. the taxpayer and one or more related corporations meet the requirements of section 5-25 of the General Corporation Tax Regulations for filing on a combined basis,
2. the taxpayer's tax liability will be properly calculated only if the taxpayer files on a combined basis, and
3. the sole reason not to compute taxpayer's tax liability on a combined basis is that the taxpayer has failed to request permission to file on a combined basis within thirty days after the close of its tax year,

then the auditor shall recompute the taxpayer's tax liability on a combined basis. The auditor shall make this recomputation even

if it results in a smaller tax liability than the taxpayer originally reported.

If the scope of the audit of a separately filed General Corporation Tax return was limited to issues that did not require the auditor to review all the records and facts required to determine whether or not filing on a combined basis properly reflects the tax liability of the taxpayer, then the auditor shall not recompute the taxpayer's tax liability on a combined basis in response to a delinquent request by the taxpayer for such a recomputation.