

## New York State Tax Upstate Summit: an Information Windfall for Practitioners

Following last year's sold-out downstate Tax Summit, on June 2, the New York State Department of Taxation and Finance held its inaugural upstate Tax Summit to a packed audience eager to hear updates and tips from the Department's staff. Nonie Manion, the Executive Deputy Commissioner and Acting Commissioner, who was introduced by Joe Carzo, Director of the Audit Division, stressed the Department's goals of "efficiency, integrity and fairness," no small feat given the large number of returns processed by the Department each year. Last year, 12.5 million personal income tax returns and 1.3 million corporate tax returns were filed with the Department.

The first panel addressed general topics. Laura Fallon, who manages the Department's website, touted the Tax Professionals landing page (<https://www.tax.ny.gov/tp/default.htm>) and urged tax professionals to subscribe (<https://public.govdelivery.com/accounts/NYTAX/subscriber/new>). She demonstrated the website's search capabilities, where "less is more" (*i.e.*, the use of fewer search terms is more likely to generate relevant target pages than on traditional search engines). The website is regularly updated based on caller requests. The most frequent request for help—you guessed it, lost user names and passwords (no, they don't get posted on the website). Tax professional online services accounts were the focus of a presentation by Beth Ostwald, Director of Enterprise Services. More than

19,000 tax professionals, representing more than 400,000 clients, have taken advantage of these accounts since they debuted in 2006. Another nifty improvement is the Department's "Respond to Department Notice" feature, discussed by Melissa Pratt, Taxpayer Services Administrator, Enterprise Services, which allows recipients of certain notices to respond to the notice online. A checklist is even provided to aid the user in responding. The Department's goal is to expand this feature so that it can be accessed on all types of devices and so that all types of notices are included.

One of the long-awaited improvements was discussed by Jennifer Sim—the one-page form POA-1, the power of attorney form that can be used not only before the Department, but also by New York City and both the State and City Tax Appeals Tribunals. The form is the culmination of years of study (the powers of attorney, or POAs, used by the IRS and other states were reviewed and considered). The new POA-1 is set to be unveiled this summer and should avoid some of the pitfalls and complexity that plague the current form POA-1. The current form POA-1 is four pages in length and requires many (but not all) grantors to have their signatures witnessed or notarized; representatives are also currently required to sign the POA-1. The current form POA-1 also automatically revokes all prior POAs unless the copies of the prior powers were provided and the form indicated that they were not to be revoked. The

Department routinely rejects about 28 percent of the powers of attorney. The new form POA-1 will not require grantor signatures to be notarized or witnessed, will not require representatives' signatures and will not automatically revoke prior POAs. Also in the pipeline is a POA web application, which will allow tax practitioners to submit powers of attorney for their clients online, using Online Services (OLS); Clients will receive a letter of confirmation when a form POA-1 is submitted on their behalf. We look forward to these improvements!

Other Department improvements were discussed by Tax Compliance Manager Patrick Glisson in the Civil Enforcement Division, including those made to the installment payment request process (certain agreements can now be requested through OLS), the ability to make quick payments and the use of income executions without the need for the Department to first issue a warrant, which can negatively impact credit ratings and access to financing. Warrantless executions were first authorized for three years by legislation in 2014, and the authorization was recently extended for another three years.

Kristin Dence, Director of the Income Franchise Desk Audit Bureau, spoke on the Department's voluntary disclosure agreement (VDA) program, which started in 2008. Approximately 2,000 VDAs have been issued each year (most of them for personal income tax), but, despite being issued at the request of taxpayers, many taxpayers fail to execute them. According to Kristin, the Department maintains that, while VDA requests will not be disclosed to the IRS or other states or localities, returns filed under the VDA can be exchanged with other tax authorities. In addition, if an executed VDA is violated, the information disclosed to the Department in connection with the VDA application *can* be disclosed and used against the taxpayer. Kristin also provided a few reminders to the attendees:

- The Department may attempt to pursue VDA participants for taxes others than those covered by the VDA.
- One VDA application should be filed for each tax type.
- If a VDA that involves a combined filing is sought, all subsidiaries and their FEINs should be provided.
- Powers of attorney should not be filed until the Department contacts the requester, since the Department must enter the taxpayer on its system.

Sales tax was the focus of the second panel, featuring Taxpayer Services Administrator Shelby Harrison, Taxpayer Services Specialist Martha Bond, Transaction Desk Audit Bureau Director Brian Galarneau and Civil Enforcement Division Deputy Commissioner Argi O'Leary. The panel introduced New York Business Express (<https://www.businessexpress.ny.gov/>), a new website that addresses the state's requirements for new businesses. The website offers handy links to sites that new businesses may find useful. The panel also discussed tips for success in making reasonable cause penalty abatement requests. (Hint: "my dog ate my sales tax return" probably won't do the trick.) Practitioners were reminded of the State's reporting requirements for bulk sales, *i.e.*, when a business sells business assets (other than in the ordinary course of its business). Failure of the purchasers of the assets to timely (within 10 calendar days of the expected sale or possession of the assets) file Form AU-196.10, Notification of Sale, Transfer or Assignment in Bulk, can result in a first priority lien filed against the purchaser for the seller's outstanding sales tax liabilities (without penalties or interest; limited to the purchase price or the fair market value of the assets). Currently, about 10 percent of purchasers fail to comply with the process and get hit with the seller's unpaid sales tax obligations. The panel also discussed the merchant card data matching program, which

compares debit and credit card payments with the sales tax information reported by businesses.

Personal income tax (PIT) was the third panel's focus. Taxpayer Services Specialists William Carter (Contact Center Division), Jo-An Marshall (Business Tax) and Kevin Wood (Business Tax); Linda Jordan (attorney in the Office of Counsel); Taxpayer Services Administrator Rick Lovely in Personal Income Tax and Kristin Dence weighed in with their insights and tips. One statistic of note: 95 percent of PIT returns were filed electronically. Apparently, Luddites are a dying breed (or they are going to paid preparers) and the e-file mandate is working.

Corporate tax reform was the fourth panel's topic, with Tax Policy Analyst Matthew Gokey in the Office of Tax Policy Analysis, senior attorney David Markey in the Office of Counsel and Taxpayer Services Specialists (Business Tax) John Peek and Michael Rosa sharing their wisdom and experiences with the first major overhaul of the corporate franchise tax since 1944. So far, eight draft regulations have been posted on the Department's website for comment, with more than a dozen additional topics slated for the regulatory process, including such topics as income and capital, capital losses, corporate partners, special entities, net operating losses and tax credits (<https://www.mayerbrown.com/files/uploads/Documents/PDFs/2017/June/Corporation-Tax-Reform.pdf>). Attendees were reminded to submit comments (even if after the specified "comment by" deadline) because the Department's goal is to have a collaborative process with taxpayers and representatives to streamline finalization of the regulations through the State Administrative Procedure Act process. The Department has also set up a task force to address questions on corporate tax reform that have been raised both inside and

outside the Department on corporate tax reform. To date, more than 1,000 inquiries have been received, with the task force continuing to meet regularly to grapple with some of the tougher questions. The Department has published its responses on the Corporate Tax Reform FAQs web page ([https://www.tax.ny.gov/bus/ct/corp\\_tax\\_reform\\_faqs.htm](https://www.tax.ny.gov/bus/ct/corp_tax_reform_faqs.htm)) addressing many of the questions.

Recent decisions and advisory opinions were discussed by Mary Ellen Lanouceur, Principal Attorney, Office of Counsel. It is clear that there is no dearth of issues (some of them even worthy of a chuckle or two) facing taxpayers and the Department.

Last, but not least, was the policy maker panel, with Nonie Manion, Deputy Commissioner and Counsel Amanda Hiller, Deputy Commissioner for Tax Policy Robert Plattner, Argi O'Leary, Joseph Carzo and Office of Processing Services Director Andrew Morris on the dais. Nonie spoke about tax fraud and some of the tools implemented by the Department to thwart identify theft. Joe urged taxpayers or their representatives to elevate cases up the audit chain without fear of auditor backlash, particularly when identifying inconsistent treatment between offices on an issue. Amanda mentioned that the Department's counsel are being urged to become familiar with protested cases earlier in the process to determine whether a path to resolution exists. Andrew circled back to the Department's web enhancements, including OLS and the soon-to-be-unveiled POA website. Rob noted the role of the Tax Policy team in tax reform, a seven-year project, and its goal of taxing e-commerce, including the Department's continued efforts to impose collection obligations on marketplace providers. Argi stressed that the Department's goals include increasing efficiency, ensuring that people are available if the personal touch is needed and computerizing routine tasks.

Kudos to the Department for fostering an open dialogue with taxpayers and practitioners and for dedicating resources to educate the community. It was evident that the Department is well on its way towards its goals of “efficiency, integrity and fairness” in the tax administration process.

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