

## **Legislative Records Committee Appeal**

### **Salt Lake Tribune, Petitioner, vs. Office of Legislative Auditor General, Respondent Case No. 03-01**

The majority of Legislative Records Committee: Speaker Martin R. Stephens, Senator Mike Dmitrich, and Representative Brent H. Goodfellow met on November 4, 2003. They held a hearing in which background, statutory information, testimony, and evidence was presented. M. Gay Taylor, Legislative General Counsel, gave legal and factual background. Kirsten Stewart and Michael P. O'Brien spoke on behalf of the Salt Lake Tribune. Wayne Welsh, Darin Underwood, and John Schaff of the Legislative Auditor General, gave a summary of the mailing packet regarding reasons for not disclosing select audit data. And Marc Johnson, Rod Marrelli, and Susan Barnum, representing the State Tax Commission, presented information to the Committee about why certain records should be protected.

After consideration of all the information, the Legislative Records Committee unanimously issues the following order:

As to the red, Non-Public Version of a Limited-Official-Use Report to the Utah Legislature, Number 2003-08, "A Performance Audit of the Utah State Tax Commission's Division of Taxpayer Services," dated September 2003, the following changes were made to redacted information:

<b>Page</b>	<b>Record</b>	<b>Order and Rationale for public disclosure or continued redaction</b>
ii	1st bullet 2 <sup>nd</sup> full paragraph	Public - Tax Commission has changed policy on handling lien expirations.
14	References to threshold References to number of notices, calls, or times	Public - Tax Commission is not restricted by policy on number of notices or calls; and lien threshold amount has changed since audit.
15	References to threshold References to number of notices, calls, or times and sentence redacted	Public - Tax Commission is not restricted by policy on number of notices or calls; and lien threshold amount has changed since audit.

<b>Page</b>	<b>Record</b>	<b>Order and Rationale for public disclosure or continued redaction</b>
15	Last paragraph, reference to number of cases and percentage	Public - Reference to number of cases and percentage not properly classified as protected.
16	First paragraph, Figure 4 and information surrounding it, and last paragraph and call-out	Public - Reference to number of cases and percentage not properly classified as protected.
17	1st paragraph	Protected - Reveals Tax Commission collection methods whose disclosure would interfere with collections. Utah Code Annotated Sec. 63-2-304(14) (2003).
17	2 <sup>nd</sup> paragraph	Public - Information is from averages created by Legislative Auditors, not from Tax Commission collections methodology.
25	Bulleted information 2 <sup>nd</sup> paragraph and call-out	Public - Tax Commission has changed policy on handling lien expirations.
26	2 <sup>nd</sup> paragraph	Public - Release as a restatement of existing law.
26	3 <sup>rd</sup> paragraph	Protected - (all of 1 <sup>st</sup> sentence) - Reveals Tax Commission collection methods whose disclosure would interfere with collections. Utah Code Annotated Sec. 63-2-304(14) (2003). Public - (2 <sup>nd</sup> and 3 <sup>rd</sup> sentence) - except for time period which is protected as it reveals Tax Commission collections methodology; Public - (4 <sup>th</sup> sentence) - as not properly classified as protected, as it is not a Tax Commission procedure.
26	2 <sup>nd</sup> call-out	Protected - (1 <sup>st</sup> sentence) - Reveals Tax Commission collection methods whose disclosure would interfere with collections. Utah Code Annotated Sec. 63-2-304(14) (2003). Public - (2 <sup>nd</sup> sentence) - This is not a Tax Commission collections methodology.

<b>Page</b>	<b>Record</b>	<b>Order and Rationale for public disclosure or continued redaction</b>
26	4 <sup>th</sup> paragraph and bullet 2 and bullet 4 in list	Public - Tax Commission has changed collections methodology. Also, bullet 4 is not a procedure, just information from Legislative Auditors.
27	1 <sup>st</sup> and 2 <sup>nd</sup> paragraph and both call-outs	Public - Tax Commission policy on these provisions has changed.
27	3 <sup>rd</sup> paragraph	Public - (1 <sup>st</sup> sentence and last sentence) - This is not a Tax Commission collections methodology. Protected - (3 <sup>rd</sup> sentence, redacted information) - it reveals a time period during which Tax Commission focuses its work on cases. This reveals Tax Commission collection methods whose disclosure would interfere with collections. Utah Code Annotated Sec. 63-2-304(14) (2003).
27	4 <sup>th</sup> paragraph	Public - (1 <sup>st</sup> sentence and 2 <sup>nd</sup> sentence through the word "expire" and all of last sentence in paragraph) - Tax Commission policy on handling lien expirations has changed. Protected - (3 <sup>rd</sup> and 4 <sup>th</sup> sentences) - Reveals Tax Commission collection methods whose disclosure would interfere with collections. Utah Code Annotated Sec. 63-2-304(14) (2003).
28	Heading and 1 <sup>st</sup> paragraph and 1 <sup>st</sup> call-out	Public - Tax Commission has changed policy on handling lien expirations.
28	Figure 6 and 2 <sup>nd</sup> call-out	Public - Tax Commission has changed policy on handling lien expirations.
28-29	Last paragraph on page 28 which continues through top of page 29	Public - Not a Tax Commission collections methodology, rather a finding of Legislative Auditor General
29	2 <sup>nd</sup> paragraph	Public - Tax Commission has changed policy on handling lien expirations.
29	3 <sup>rd</sup> paragraph	Public - Tax Commission has changed policy on handling lien expirations.
29	Heading and 4 <sup>th</sup> and 5 <sup>th</sup> paragraphs and 2 <sup>nd</sup> call-out	Public - Tax Commission has changed policy on handling lien expirations.

<b>Page</b>	<b>Record</b>	<b>Order and Rationale for public disclosure or continued redaction</b>
30	2 <sup>nd</sup> Paragraph	Public - Tax Commission has changed policy on handling lien expirations.
30	3 <sup>rd</sup> Paragraph	Public - Tax Commission has changed policy on handling lien expirations.
30	5 <sup>th</sup> Paragraph	Protected - Reveals Tax Commission collection methods whose disclosure would interfere with collections. Utah Code Annotated Sec. 63-2-304(14) (2003).
30	Last two paragraphs	Public - Tax Commission has changed policy on handling lien expirations.
31	1 <sup>st</sup> Paragraph (which is continuation of paragraph on page 30)	Public - (after the word “have” through end of sentence - and all of 2 <sup>nd</sup> sentence) - Not a Tax Commission collections methodology.
31	1 <sup>st</sup> Paragraph - last sentence	Protected - Reveals Tax Commission collection methods whose disclosure would interfere with collections. Utah Code Annotated Sec. 63-2-304(14) (2003).
31	Figure 7 and remainder of page including call-out	Public - Tax Commission has changed policy on handling lien expirations.
32	Figure 8 and remainder of page	Public - Tax Commission has changed policy on handling lien expirations.
33	Figure 9 and 1 <sup>st</sup> paragraph	Public - Tax Commission has changed policy on handling liens and previously confidential taxpayer information has been rounded so it cannot identify an individual taxpayer.
33	2 <sup>nd</sup> Paragraph	Public - Tax Commission has changed policy on handling lien expirations.
34	Figure 10 and 1 <sup>st</sup> paragraph	Public - Tax Commission has changed policy on handling lien expirations.
34-35	“Sample B” (2 <sup>nd</sup> paragraph) through Figure 11 on page 35 and surrounding data	Public - Tax Commission has changed policy on handling lien expirations.

<b>Page</b>	<b>Record</b>	<b>Order and Rationale for public disclosure or continued redaction</b>
35	Heading, both call-outs and 2 <sup>nd</sup> and 3 <sup>rd</sup> paragraphs	Public - Tax Commission has changed policy on handling lien expirations.
36	1 <sup>st</sup> line	Public - Tax Commission has changed policy on handling lien expirations.
36	1 <sup>st</sup> full paragraph	Public - (1 <sup>st</sup> two sentences) - Tax Commission has changed policy on handling lien expirations. Protected - (4 <sup>th</sup> sentence) - dollar figure reveals Tax Commission collections methods whose disclosure would interfere with collections. Utah Code Annotated Sec. 63-2-304(14) (2003).
36	2 <sup>nd</sup> full paragraph	Public - Tax Commission has changed policy on handling lien expirations.
36	3 <sup>rd</sup> full paragraph	Public - (2 <sup>nd</sup> sentence) - is not confidential as individually identifying taxpayer information because Legislative Auditor General was instructed to round the numbers given. Public - (Remainder of paragraph) - Tax Commission has changed policy on handling lien expirations.
37	Heading, call-out, 1 <sup>st</sup> , 2 <sup>nd</sup> , and 3 <sup>rd</sup> paragraphs	Public - Not a Tax Commission collections methodology.
37-38	Last two paragraphs of page 37 and continuing to p. 38	Public - No attorney/client protection as previously classified where Legislative Auditor General drafted the information that was reviewed and edited by an assistant attorney general.
38	Last paragraph	Public - Tax Commission has changed policy on handling lien expirations.
39	1 <sup>st</sup> paragraph	Public - This is not a Tax Commission collection methodology.
39-40	3 <sup>rd</sup> and 4 <sup>th</sup> paragraphs, continuing to top of page 40 (reference to number of attempts and percentage)	Public - Information is part of a contract with the Tax Commission that is a public document; and number of calls can be released as it is not a Tax Commission policy.

<b>Page</b>	<b>Record</b>	<b>Order and Rationale for public disclosure or continued redaction</b>
40	Bulleted list in 1 <sup>st</sup> full paragraph	Protected - Reveals Tax Commission collection methods whose disclosure would interfere with collections. Utah Code Annotated Sec. 63-2-304(14) (2003).
40	Last paragraph and call-out	Public - Tax Commission has changed policy on handling lien expirations.
42	Figure 13	Public - Information is not confidential as individually identifying taxpayer information because Legislative Auditor General was instructed to round the numbers given.
42-43	2 <sup>nd</sup> paragraph and Recommendations	Public - Tax Commission has changed policy on handling lien expirations.
46	2 <sup>nd</sup> full paragraph	Public - Does not reveal Tax Commission collections methodology.
46	3 <sup>rd</sup> full paragraph and call-out	Protected - Reveals sales tax collection methods whose disclosure would interfere with collections. Utah Code Annotated Sec. 63-2-304(14) (2003).
49	2 <sup>nd</sup> and 3 <sup>rd</sup> paragraphs (reference to time periods)	Public - Information is from averages created by Legislative Auditors, not from Tax Commission collection methodology.
50	1 <sup>st</sup> and 2 <sup>nd</sup> paragraphs (reference to time periods and redacted sentence)	Public - Information is from averages created by Legislative Auditors, not from Tax Commission collection methodology.
69-70	Last paragraph of page 69 and top of page 70, (reference to bankruptcy information)	Public - Tax Commission has changed collections methodology relating to collections of bankruptcy cases.
71	Bulleted list in last paragraph	Public - Tax Commission has changed policy on handling lien expirations.

As to the cherry colored, Non-Public Version of a Limited Official Use Report entitled “Report on Tax Commissioner Offer in Compromise and Waiver Program and Practices,” September 8, 2003, the following changes were made to the redacted information:

<b>Page</b>	<b>Record</b>	<b>Order and Rationale for public disclosure or continued redaction</b>
3	3 <sup>rd</sup> full paragraph	Protected - (1 <sup>st</sup> and 2 <sup>nd</sup> sentences) - Reveals Tax Commission collection methods whose disclosure would interfere with collections. Utah Code Annotated Sec. 63-2-304(14) (2003).
3	3 <sup>rd</sup> full paragraph	Public - (3 <sup>rd</sup> and 4 <sup>th</sup> sentences) - Information is available online from Tax Commission pamphlet on their website.
5	1 <sup>st</sup> full paragraph	Public - not confidential as there is no individually identifying taxpayer information. No figure was given as to debt of taxpayer, only a percentage.
6	1 <sup>st</sup> paragraph (continuing from page 5)	Public - Tax Commission has changed policy on handling lien expirations.

### **Audit Work Papers**

There were six types of non-public audit work papers:

1. Work papers which are protected because they reveal collections methods whose disclosure would interfere with collections.
2. Work papers which are confidential because they reveal information derived from individual tax returns.
3. Work papers which are protected because they disclose attorney work product under an attorney/client privilege.
4. Work papers which are protected because they disclose information which could lead to unfair competition.
5. Work papers which are protected because they disclose the identity of a person where condition was given that his/her identity would be protected.
6. Work papers which are private because they reveal data, the disclosure of which could constitute an invasion of personal privacy.

Michael P. O’Brien, attorney for the Salt Lake Tribune asserted that they are not seeking information from #2, #5, or #6. After reviewing the audit reports in detail, the determination was made that there were no work papers protected as attorney/client under #3, and the information in #4 is public because there is a public contract with the outside collections agency (OCA). This

leaves only work papers in classification #1 that the Salt Lake Tribune may wish to ask the committee to review and release.

After consultation with Kirsten Stewart and Michael P. O'Brien, the members of the Legislative Records Committee decided not to decide the question of whether to release work papers in classification #1 at this point in time.

This order is to issue by no later than Friday, November 7, 2003, and a revised audit of both the Non-Public Version of a Limited-Official-Use Report to the Utah Legislature, Number 2003-08, "A Performance Audit of the Utah State Tax Commission's Division of Taxpayer Services," dated September 2003 and the "Non-Public Version of a Limited Official Use Report entitled "Report on Tax Commissioner Offer in Compromise and Waiver Program and Practices," dated September 8, 2003, were to be released as quickly as the Legislative Auditor General can prepare it.

If the Salt Lake Tribune decides, after reviewing the substantially public reports that it still has an interest in these underlying work papers, the Salt Lake Tribune will have 30 days from its receipt of the two revised reports to renew its appeal on that issue to the Legislative Records Committee.

### **Right to Appeal**

The decision of the Legislative Records Committee may be appealed to a district court, providing the petition is filed no later than 30 days after the date of this Order. A copy of the appeals process is enclosed.

Dated this 7<sup>th</sup> day of November, 2003.



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Martin R. Stephens, Co-Chair  
Legislative Records Committee

**Legislative Records Committee**

version of a

REPORT TO THE  
UTAH LEGISLATURE  
NUMBER 2003-08



A Performance Audit

of the

**Utah Tax Commission's  
Division of Taxpayer Services**

NOVEMBER 2003

Office of  
LEGISLATIVE AUDITOR GENERAL  
State of Utah

REPORT TO THE  
UTAH LEGISLATURE

**Number 2003-08**

A Performance Audit  
of  
Utah State Tax Commission's  
Division of Taxpayer Services

November 2003

Audit Performed by:

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# Digest of A Performance Audit of the Utah Tax Commission's Division of Taxpayer Services

## Chapter I: Introduction

The Utah State Tax Commission (Tax Commission), with just over 800 employees, provides a vital function by overseeing tax laws, administering taxes and collecting various tax revenues for state and local governments in Utah. In 2002, the Tax Commission collected \$4.6 billion in state and local revenues to pay for many public services.

Because of the broad tax administration powers given to the Tax Commission, and the varied citizen responses to tax laws, auditing and collection, the Tax Commission is often the target of controversy. This audit report responds to some of this controversy, in the form of allegations made by a citizen group and by some Tax Commission employees. However, most of the audit findings and recommendations focus on Tax Commission collections methods and activities.

## Chapter II: Citizen Group's Allegations Are Unfounded

Despite allegations made against the Tax Commission of poor tax notifications and adversarial treatment—as well as voluminous other complaints—we believe the Tax Commission is treating taxpayers fairly. For the most part, the group of citizens that brought forth allegations lacked both credibility and supporting evidence for their allegations. They lacked credibility because they misinterpreted laws, cited nonsensical arguments and appeared to be challenging taxes outright. Although the group promised supporting evidence in the form of “hundreds of cases” which they claimed would show Tax Commission mistreatment, they never produced the cases. Still, we reviewed two major allegations:

First, we believe the allegation that the Tax Commission has an inadequate system of notifications is unfounded. We sampled numerous cases of taxpayers and found no evidence of inadequate notification. In fact, the Tax Commission gives more notification than required by statute.

Second, we reviewed whether the Tax Commission is too adversarial with appeals and believe this allegation is largely unfounded, as well.

**Chapter III:  
Better Case  
Screening Could  
Potentially Increase  
Revenues**

Over the last six years, the vast majority of appeals (95 percent) are handled informally, prior to formal hearings which are, often times, adversarial. In our view, the Tax Commission gives ample opportunity for taxpayers to resolve concerns through several non-adjudicative appeal procedures, as well as a formal, quasi-judicial hearing for those who seek a more formal review. It is clear that the format of the formal hearing is allowed under statute and is, by its very nature, an adversarial process.

There is a lack of screening for delinquent tax accounts within the Taxpayer Services Division (the division) at the Tax Commission. This inadequate screening is occurring in two significant areas.

- First, with cases that have liens close to expiration.
- Second, with cases that are being routed to outside collections agencies (OCAs).

First, inadequate screening occurs which allows liens that have been placed on accounts to expire without properly determining if the liens should be reissued. In many cases, there are potential assets that might have been garnished and other levy sources available to the division if the liens had been reissued to secure the division's ability to collect. In our estimation, these accounts with liens expiring in 2002 are valued at about \$20 million in delinquent taxes owed to the state. Our test of these accounts indicate that as much as \$3.9 million in potential revenues could have been pursued by the Tax Commission. Further, we believe many of the delinquent taxpayers in our sample had significant enough income or assets that the division should aggressively collection these debts.

Second, inadequate screening also occurs on cases that are sent to the outside collection agency (OCA), screening which should determine if there are assets that could be garnished by the division prior to being sent to the OCA. We sampled cases that were worked by division collectors—cases which were believed to not have income sources from which to collect—which were therefore sent to the OCA. We found income sources on an average of 47 percent of the cases from 1998 to 2000. Overall, the cases that are currently residing in OCA account for almost \$64 million dollars in delinquent accounts. Some portion of this amount could represent potential revenue for the state.

**Chapter IV:  
Improved Compliance  
Procedures Could  
Benefit State**

Improved compliance procedures could also benefit the state through potentially increased delinquent tax collections and better tax compliance. Chapter IV suggests that further review is needed in the four following areas in which we performed more limited audit work, but believe are suitable for mention in this report.

- First, there appears to be a growing number of businesses that fail to remit sales and withholding tax which, we believe, the Tax Commission should seek to hold more accountable.
- Second, by improving the screening of sales tax applicants, the Tax Commission could prevent some potential delinquent sales tax accounts from even being created.
- Third, the Tax Commission could also consider decreasing the time it takes to secure liens on delinquent taxes, in order to more quickly protect state interests and potentially increase revenues.
- Fourth, we have been told by the Tax Commission that revenues for the state could be potentially increased if they and the Department of Commerce could coordinate federal identification numbers on some businesses, in order to track some businesses that fail to file with the Tax Commission and subsequently do not pay corporate taxes.

**Chapter V:  
Improvement Needed  
in Collections  
Operations and  
Productivity**

Several years after implementation of the new collections system (the Computer Assisted Collection System for Government, or CACSG), which was meant to greatly enhance revenues and increase productivity, the Taxpayer Services Division's collection of delinquent taxes is not as productive as it should be. We have identified three major concerns that contribute to inefficiency within the collections process:

- First, current accountability and productivity measures are inadequate. Specifically, the division's use of "quality contacts" is inefficient as a unit of measure for productivity.
- Second, the division needs to remedy workload problems among district collection agents and within the bankruptcy section.
- Third, there is a major breakdown of communication and trust between many of the division employees and management, which is negatively affecting productivity and the work environment.

**Chapter VI:  
Inadequate  
Qualifications and  
Costs of Incentive  
Awards Are  
Concerning**

During a period of district workload inefficiency and productivity problems almost all employees (99 percent) of the Taxpayer Services Division (division) received performance or incentive compensation in the form of cash or administrative leave. This scenario presents two concerns:

- First, the performance and incentive compensation does not appear to be based on criteria of excelled performance, and
- Second, it comes at a time of severe state budget shortfalls.

In 2002, the Tax Commission either paid-out in cash or gave administrative leave to employees as incentives awards valuing about \$369,594. This total consisted of \$137,001 cash incentive awards paid to employees in calendar year 2002 and \$232,563 in leave hour incentives (about 9,000 hours of administrative leave) given in fiscal year 2002. Likewise, we also found other state agencies giving costly incentives during current times of state budget shortage.

Clearly, we believe that state incentive and performance awards, when administered correctly, are not only appropriate, but are essential for a healthy work environment. We agree that *select* state employees need and deserve work incentives, but such incentives should be significantly reduced in tight budget times and given with extreme care based upon outstanding or superior productivity. However, we believe this is not the case because the Tax Commission is giving incentive awards to such a large number of employees.

**Chapter VII:  
Tension Between  
Division Staff and  
Management Needs  
To Be Resolved**

Long-held tension between many employees in the Taxpayer Services Division and their division management team needs to be resolved. This tension has taken a seeming toll on division productivity and has contributed to a negative work environment. It appears to be based in a major breakdown of communication and trust between division employees and management. In fact, some complaints from employees were severe enough to allege that some delinquent taxpayers were being given preferential treatment by management. While our audit review shows these allegations to be unsubstantiated, other concerns about case management oversight and division procedures were revealed, as has been discussed in the past chapters of this report.

In an attempt to validate these concerns, and at the request of Tax Commission officials, we surveyed division employees regarding their job satisfaction. This survey focused on employees' view of two-way communication and trust, and how they were valued in the eyes of division management. The results show that a majority of respondents have negative views of division management, with 65 percent of respondents (78 of 120) *disagreeing* that "management helps contribute to a positive work environment." While we recognize that division management has begun to make course corrections, healing may be improbable without department-level intervention.

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# Chapter I

## Introduction

The Utah State Tax Commission (Tax Commission), with just over 800 employees, provides a vital function by overseeing tax laws, administering taxes and collecting various tax revenues for state and local governments in Utah. In 2002, the Tax Commission collected \$4.6 billion in state and local revenues to pay for many of the services enjoyed by Utah citizens. The Tax Commission operations are overseen by an executive director who is answerable to a bi-partisan panel of four tax commissioners appointed by the Governor.

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**Because the Tax Commission has broad tax administration powers, it is often a target of criticism.**

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Because of the broad tax administration powers given to the Tax Commission, and the varied citizen responses to tax laws, administration, auditing and collection, the Tax Commission is often the target of controversy. This audit report responds to some of this controversy, in the form of allegations made by a citizen group and by some Tax Commission employees. The audit findings and recommendations focus mostly on Tax Commission collections activities, but also briefly review tax appeals handled by the four-person commission.

### Tax Commission Often Target of Criticism

The duty the Tax Commission has to collect revenues in the form of taxes makes them one of the most controversial state agencies. By its very nature, potential controversy can be heightened when the Tax Commission proceeds to collect some delinquent taxes or conduct subsequent appeals hearings. This audit report shows that some criticism is unjustified, because we determined the Tax Commission seeks to fairly balance the rights of taxpaying citizens against the state's interest to collect revenue. However, this report identifies that significant efficiency and effectiveness concerns exist with some collections activities.

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**While this audit report shows that some criticism is unjustified, it identifies significant other concerns.**

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### Tax Commission Given Broad Powers

The **Utah Constitution** states that “there shall be a State Tax Commission consisting of four members, not more than two of whom

shall belong to the same political party . . . . The State Tax Commission shall administer and supervise the tax laws of the State” (**Utah Constitution**, Article XIII, Section 11(1) and (3)(a). See also *Utah Code* 59-1-210(5).).

Under their executive management plan pursuant to *Utah Code* 59-1-207, the Tax Commissioners enacted a rule which delegates full authority of the day-to-day management of the operations and business of the agency to the executive director. In Rule 861-1A-16(C)(1) and (3), this delegation includes performing several tasks, such as:

- overseeing relationships with the customers of the Tax Commission, and
- managing all original tax assessments, adjustments to audit assessments, and collections actions.

### **Focus of Audit Was on Delinquent Tax Collections**

As mentioned, the majority of this audit is a review of the Tax Commission’s collections activities which are performed by collections agents in the Taxpayer Services Division (the division). Collectors in the division are responsible to seek payment of hundreds of millions in delinquent taxes owed to the state. While collection agents are instructed to be “fair but firm” with delinquent taxpayers, the collection environment will likely always be a potential area for conflict between some taxpayers and the Tax Commission.

We reviewed allegations of mistreatment regarding collection and notification procedures which came from a citizen group and from internal sources at the Tax Commission. By and large, the allegations are unfounded, as will be discussed in Chapter II. For example, contrary to allegations, the Tax Commission is sending taxpayers adequate notifications of delinquent taxes owed.

In addition, we more briefly reviewed another allegation from the citizen group which implied that an adversarial environment exists when taxpayers evoke appeal rights before the Tax Commission. We found these allegations to be unfounded, as evidenced by the Tax Commission’s

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**Many external and internal allegations made toward the Tax Commission are unproven. However, we found concerns among collections functions.**

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widespread use of non-adjudicative (non-adversarial), informal appeals procedures.

We also tested allegations made by Tax Commission employees about preferential treatment of some taxpayers given by division management. While we did not find evidence to substantiate these allegations, several significant concerns with collections policies and procedures and worker productivity—amid a troubled work environment—became apparent. These topics comprise the remaining chapters of the report: Chapters III through VII.

For example, we show several significant concerns that exist in the operations, philosophy and culture of the division. Ultimately, this led us to conduct a division-wide employee satisfaction survey which showed dissatisfaction with current division management.

### **Audit Was Challenged by Some Data Difficulties**

In one final introductory topic of note, we encountered some data challenges which led to delays in the audit. Our work in addressing the voluminous allegations, responding to subsequent risk areas and reviewing internal allegations was a large, time-consuming undertaking. While Tax Commission management and staff were very cooperative on all issues, there were some challenges with their data. For example, on at least two occasions, we requested computerized data which the division had not been regularly tracking. Delays in obtaining this data affected audit timeliness.

Also, the delinquent collections cases we needed to review existed only in electronic form—in a “paperless” system. So, the audit team was completely reliant on the Tax Commission for getting case files printed. While we fully controlled the cases chosen, it did challenge our independence because of the audit standard to self-collect data. However, we are confident in the data we received because case print-outs matched data we viewed on computer monitors showing the collections case management system (the Computerized Collection System for Government, or CACGS) and the mainframe system (Legacy 3270).

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**Tax Commission staff were very cooperative, but we still had some challenges with commission data during the audit.**

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Challenges remained, however, because of the time needed to print cases and because some cases were unintentionally given to us incomplete and had to be reprinted. We also discovered that cases which contained a period of inaction had portions of the history data purged. Finally, there were several occasions where original documentation was needed for review, but only existed in microfilm format. This is because several years ago, Taxpayer Services Division management made the decision to shred all paper accounts, and use, in their place, electronic documents and microfilming. We are not necessarily questioning this decision, but merely point out the delays it created in auditing.

## **Audit Scope & Objectives**

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**Audit objectives generally consisted of reviewing allegations made against the Tax Commission and reviewing their collections management and procedures.**

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In this audit of the Tax Commission, there were issues discovered during the review of the extensive list of allegations by a citizen group. Furthermore, as we worked in allegation areas, additional concerns surfaced from Tax Commission staff, which added to the already large nature of the audit. Overall, our objectives were to:

- Review allegations brought against the Tax Commission by a citizen group which requested to remain confidential.
- Review appropriateness of Tax Commission appeals procedures as they relate to citizen allegations.
- Review methods used by the Tax Commission to collect delinquent taxes owed by taxpayers. Determine if the methods are consistent with statutory provisions.
- Respond to internal staff allegations of preferential treatment of some taxpayers being given by some Tax Commission management. Respond, as well, to varied internal complaints regarding management of the Taxpayer Services Division.

## Chapter II

# Citizen Group's Allegations of Unfair Notifications and Appeals Are Unfounded

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**Taxpayers appear to be treated fairly despite allegations from a citizen group to the contrary. This group lacked credibility and never produced supporting evidence.**

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Despite allegations made against the Tax Commission of poor tax notifications and adversarial treatment—as well as voluminous other complaints—we believe the Tax Commission is treating taxpayers fairly. For the most part, the group of citizens that brought forth allegations lacked both credibility and supporting evidence for their allegations. They lacked credibility because they misinterpreted laws, cited nonsensical arguments and appeared to be challenging taxes outright. Although the group promised supporting evidence in the form of “hundreds of cases” which they claimed would show Tax Commission mistreatment, they never produced the cases. Nonetheless, we specifically reviewed the allegations that the Tax Commission does not provide the taxpayer with sufficient notification of delinquent taxes and that the Tax Commissioners are too adversarial when handling tax appeals.

First, we believe the allegation that the Tax Commission has an inadequate system of notifications is unfounded. We sampled numerous cases of taxpayers and found no evidence of inadequate notification. In fact, the Tax Commission gives more notification than required by statute.

Next, we performed a more limited review on whether the Tax Commission is too adversarial with appeals and believe this allegation is largely unfounded, as well. This conclusion is based on our review of taxpayer appeals over the last six years which showed that the vast majority of appeals (95 percent) are handled informally, prior to formal hearings which are, often times, adversarial. In our view, the Tax Commission gives ample opportunity for taxpayers to resolve concerns through several non-adjudicative appeal procedures, as well as a formal, quasi-judicial hearing for those who seek a more formal review. It is clear that the format of the formal hearing is allowed under statute and is, by its very nature, an adversarial process.

## Majority of Citizen Group's Allegations Have No Basis

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**There were so many allegations—many of which were frivolous—it would have been improbable to review them all.**

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Most of the allegations against the Tax Commission, brought forth by a group of citizens, have no basis in fact. In addition, the allegations were so numerous it would have been improbable for the audit team to review them all. Finally, it was clear to us that some allegations were simply frivolous. It appeared that some in the group seemed more intent on tax avoidance, through their misinterpretation of laws and use of nonsensical tactics, than on working with the Tax Commission toward tax resolution.

Because we were never provided with substantial evidence, even after several meetings, we questioned the credibility of some in the group who ultimately severed ties with the audit team. They stated that our office lacked the independence to conduct an audit because we received a paycheck from the same source as the Tax Commission. To the contrary, our office maintains organizational independence from executive branch departments because we report directly to the Legislature. This section contains our evaluation of the citizen group and their allegations taken as a whole.

In this report, we refer collectively to the group of citizens requesting the audit as the “citizen group” (or “group”). References to the group can mean one or more individuals from the group. However, our conclusions about the group as a whole do not necessarily reflect our findings or opinions about each individual within the group.

For example, one individual seemed to have more credible arguments and was not attempting to avoid taxes. This individual claimed harassment from the Tax Commission. As we reviewed the case, we found a lengthy history of delinquent taxes, which we believe warranted collection efforts. This individual, at one time, admitted to likely needing to hire an accountant.

In the end, we simply were unable to investigate every complaint from every individual because the individuals did not want us to use their own cases. Still, we took the allegations very seriously and met with each member of the group in order to understand their concerns. We reviewed documents given to us by the group, examined official Tax Commission account histories, and reviewed Tax Commission policies and procedures. We also spent time reviewing applicable laws and visiting initial (informal)

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**We were unable to investigate every case because the citizen group did not want us talking about their cases with the Tax Commission.**

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and formal hearings. As with any audit, we reviewed allegations according to risk, but would likely not have been able to respond to all allegations in any scenario.

### **Attorney General Responded On Behalf of Tax Commission**

This audit came about after a number of individuals separately approached a legislator with concerns about the Tax Commission. The legislator suggested that, together, they might consolidate their complaints. The resulting document given to the Legislative Audit Subcommittee was an extensive list of over fifty allegations, most against the Tax Commission, with some against the judicial branch of state government.

We believe the Attorney General's initial response to the allegations, on behalf of the Tax Commission, is accurate and informative. The response shows the legalistic nature of many of the allegations, which would have required a legal review, rather than an audit. Also, the following excerpts from the response provide a good backdrop for our general evaluation of the allegations:

The letter [of allegations] appears to be based upon legal theories that have routinely been found to be without merit and frivolous by both federal and state courts. . . . The letter reflects the increased growth in noncompliant taxpayers who belong to these fringe taxpayer groups. Such taxpayers are becoming more aggressive and more populous. They are increasingly deluging the courts with incoherent documents draining the resources of judges and court staff. Their actions continue to usurp valuable time from the Commissioners, the Divisions and the Utah Attorney General's Office.

### **Citizen Group Making the Accusations Lacks Credibility**

In our opinion, most of the individuals in the group do not represent the average taxpayer who is seeking to be compliant with tax laws. Instead, they were challenging the Tax Commission at every turn, with unusual legal theories and philosophies. So, it followed that the

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**The Attorney General said the allegations appear "to be based on legal theories that have routinely been found to be without merit and frivolous by both federal and state courts...."**

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**Many in the citizen group lacked credibility and do not represent the average taxpayer who seeks to be tax compliant.**

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allegations themselves became suspect when the group’s credibility was called into question.

The group came to us with the understanding that their names would be kept confidential. Although we can relate some specific examples that demonstrate their lack of credibility, other examples might compromise the identity of the group members, so we have chosen, in some cases, to speak in general terms about the kind of arguments that many noncompliant taxpayers use.

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**The citizen group promised to provide “hundreds of cases” showing taxpayer mistreatment, but the cases were never provided.**

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**“Hundreds of Cases” Promised Never Materialized.** When we began to meet with the group, they assured us they had “hundreds of cases” that would substantiate their allegations. However, they never produced the promised cases. In fact, in a very bold twist, one member of the group said that, given our permission, the group could use their existing Internet and radio contacts to call for others to come forth with similar complaints against the Tax Commission, at the request of the Legislative Auditor General. Clearly, this would have been inappropriate.

So instead, we were left with a lengthy list of allegations and no supporting evidence, except for their existing cases which we could not discuss with Tax Commission officials because members of the group did not want a confidentiality breach.

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**One member of the group admitted to not paying income tax. This member also does not recognize U.S. currency or checks as being legal.**

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**Citizen Group Had Nonsensical Arguments.** Quite simply, many of the individuals within this small group do not believe they need to pay income tax. One individual rationalizes not paying income tax because of the view it is unconstitutional. This view is held despite the fact that both the **United States Constitution** (16<sup>th</sup> Amendment) and the **Utah Constitution** (Article VIII, Section 4(2)) specifically allow for an income tax. This same individual told us that neither United States currency nor a check from a financial institution are legal tender for debts, although this individual admits to using both.

By and large, others who hold similar beliefs, as this group, use many unreasonable theories and arguments to evade taxes. Some of the common noncompliance strategies include:

- claiming they are not citizens of the United States because they do not live in the United States, but live independent as a sovereign nation unto themselves, and

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**Some in the group appear to be hiding their income in questionable trusts.**

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- disputing their identity because their name was printed in all CAPITAL LETTERS on correspondence from taxing authorities.

**Some in the Group Challenged Taxes Outright.** One citizen admitted to having never filed an income tax return and intended never to do so. Philosophically, this person did not agree with the income tax; rather, the person did not think personal income taxes needed to be paid because the company this person works for pays taxes and already does the community good by employing people. Others tried to avoid the income tax by hiding their income in questionable trusts and making frivolous arguments like those mentioned above.

**Citizen Group Accused Judiciary of Conflict of Interest.** Not only did the group accuse the Tax Commission of wrongdoing, but the judiciary as well. The courts were accused of colluding with the Tax Commission and having a conflict of interest because they “both have the same boss and the same paymaster.” The citizen group also accuses the courts of “working hand in glove to violate taxpayers’ due process.” On its face, the argument seems unreasonable; the citizen group could provide us with no evidence to substantiate this claim.

### **Citizen Group Misinterpreted Laws**

Finally, many of the allegations depended on the group’s own interpretations of laws which, in many cases, were already ruled to be incorrect by the courts. For instance, they allege that the Tax Commission is “violating UCA [59]-10-513 by refusing to sign or give written declaration on any forms or records or assessments or notices.” *Utah Code 59-10-513* says:

Except as the commission shall otherwise provide by rule, any return, declaration, statement, or other document required to be made under any provision of this chapter, or under rules promulgated hereunder, shall contain or be verified by a written declaration that it is made under the penalties of perjury.

The courts have made it clear that this wording applies only to returns to be made by taxpayers, not notices sent by the Tax Commission.

In some of the other numbered allegations, it was unclear how the cited reference related to the allegation. For instance, the citizens claim

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**Many of the allegations listed were deemed unjust because they were based on the citizen groups’ mis-interpretation of laws.**

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that the Tax Commission violated *Utah Code* 59-10-102 and 59-10-103 by “not requiring a verified and certified assessment from the IRS before proceeding against Utahns.” These sections have no relevance to that claim. However, noncompliant taxpayers frequently try to use this argument to escape paying state taxes when they file a fraudulent zero return with the Internal Revenue Service. They try to argue that because they have filed a zero return (fraudulently as it is) with the IRS, their state tax is zero because the state personal income tax is derived from calculations in the federal tax.

To put it simply, after making their list of allegations, the group did not substantiate any of their claims. Not only did they fail to produce cases illustrating their claims, but they made interpretations of the law inconsistent with the way courts have ruled.

### **Audit Review Was Improbable Due to Limits Imposed by Group**

For the reasons enumerated above, we informed both the Speaker of the House and the President of the Senate that we would distance ourselves from the specific cases of the citizen group. In addition to the group lacking credibility and being unable to provide evidence substantiating their claims, we determined that a fair evaluation was not possible and that many of their allegations required legal interpretation and review, not an audit review. Finally, after we began to distance ourselves from the citizen group, they made accusations about our office. They left our final interview saying that any further contact would come from them. No further contact was ever made.

**Group Did Not Want Specifics Revealed to Tax Commission.** At one point, the group told us not to ask the Tax Commission about the merits of their specific arguments because the arguments would identify them. So, confronted with this requirement, we were unsure how to perform a fair review without addressing the specific arguments with the Tax Commission. In fact, it would violate our audit standards to disallow the auditee the opportunity to review specific concerns.

**Group Said Auditor General Could Not Be Impartial.** Next, during one of our several meetings with the group, we were accused of not being able to be impartial because we, like the Tax Commission, get paid by the state. As mentioned previously, the group also accused the

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**For many reasons, we informed legislative leadership that we would be distancing our office from the citizen group. Many of their allegations required legal interpretations, not an audit review.**

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**Members of the group did not want us to discuss their cases with the Tax Commission.**

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state courts of having a conflict of interest and of colluding with the Tax Commission because they “both have the same boss and the same paymaster.” Yet the group could provide no evidence to substantiate their claim. In our opinion, these kinds of general allegations against government only cast further doubt on the group’s credibility.

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**The group said our office could not be impartial because we receive salary from the same source as the Tax Commission. They failed to understand our organizational independence.**

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With respect specifically to our office’s ability to be impartial, we again note that the Office of the Legislative Auditor General maintains organizational independence from the entities we audit. Our office is within the legislative branch and we report only to the Legislature. This organizational independence allows us to make objective evaluations of departments and programs and provide the Legislature with objective information. In addition to organizational independence, we adhere to generally-accepted audit standards and ethics codes which require us to carry out audits in an objective manner.

So, in the end, the group told us they would contact us if they wanted to meet again, which they never did. Despite the group’s lack of evidence and questionable credibility, we still reviewed Tax Commission operations for fairness to the taxpayer and compliance with laws in the areas of taxpayer notifications and taxpayer appeals in response to allegations of a lack of notifications and overly adversarial appeals procedures. Our audit findings dispute these two allegations, as shown in the remainder of this chapter.

## **Tax Commission Has Valid Notification Processes**

Despite allegations to the contrary, we concluded that the Tax Commission has a very strong notification process. This is based on our detailed review of 51 cases, and an additional review of nearly 12,000 cases that contain notices, taken from the Tax Commission database. We believe that taxpayers are more than adequately notified of existing tax assessments through a series of notifications which are given prior to any liens being filed against taxpayers.

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**Despite allegations, we conclude that the Tax Commission has a strong system of notifications for tax delinquencies.**

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## **Delinquent Taxpayers Are Made Aware of Tax Debt**

The Tax Commission appears to do a good job of informing taxpayers of outstanding taxes still owed. They accomplish this through letters, phone calls and, when necessary, through visits to the taxpayer's residence or business.

Informing taxpayers, however, is not always enough to get action from them. When people refuse, or are otherwise unwilling to pay, the state must secure its interests, which is done by placing a lien on property. Some of the individuals in the citizen group complained that liens were unfairly placed before they knew about their tax liability. However, our review of randomly-selected taxpayer files did not show evidence that liens were being placed without fair notification.

## **Taxpayers Are Sufficiently Notified Before Receiving Liens**

Our audit work shows that taxpayers are given notice when they have tax liabilities. Also, before liens are placed, appropriate notice and demand for payment is given. In fact, at least two notices are typically sent to taxpayers prior to liens being placed on their property.

To test compliance with the lien statutes, we took two different samples: a smaller, detailed random sample of 51 cases and a larger sample of nearly 12,000 cases. These reviews were limited to notices required by statute, and not of garnishment notices or notices sent by the outside collection agency under contract with the Tax Commission.

Generally speaking, before a lien is placed, the law requires the Tax Commission to give notice and demand for payment of the tax liability. The section of the code that discusses the Notice & Demand requires the Tax Commission to:

. . . give notice to each person liable for any amount of tax, addition to tax, penalty, or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof (*Utah Code* 59-10-528(2)).

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**We used two separate notification samples to validate the adequacy of the notification process.**

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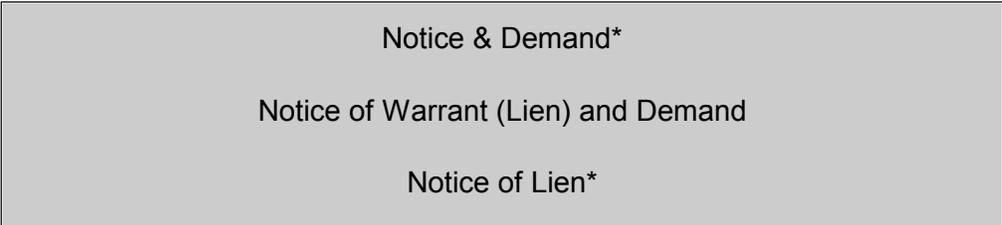
**Law requires the Tax Commission to "...give notice to each person liable for any amount of tax...which has been assessed but remains unpaid..."**

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Statute further states that if the person neglects or refuses to pay after the Notice & Demand, the amount due becomes a lien upon the property belonging to that person (*Utah Code* 59-01-302.1). The Tax Commission usually files a warrant with the courts to place a public lien or judgment on taxpayer’s real property, therein becoming a judgment creditor. This process serves the purpose of letting other creditors and specifically the courts know that the person has a tax liability with the state.

In our two samples, we found that the Tax Commission did, in fact, send the notices required by law before the liens were placed. Figure 1 shows the typical notifications sent.

**Figure 1. A Typical Collections Notification Scenario Includes Two Notices Before a Lien.** The Notice & Demand and Notice of Lien are the typical notices sent before a lien. Other notices may also be sent. (Note: Only those notices marked with an asterisk are required by law.)



**Detailed Random Sample Shows Sufficient Notice.** In our first sample, we performed a detailed review of 51 delinquent tax cases of individual income and business taxpayers with two purposes in mind: first, to find out if taxpayers were being notified of their tax debt; second, to find out if taxpayers were receiving the notice required by law before a lien can be placed—the Notice & Demand. In our review, we found that each taxpayer had indeed been made aware of the taxes owed and if the taxpayer had received a lien, he or she had also received the Notice & Demand. In fact, in general terms, before a lien is placed, the Tax Commission actually sends an additional notice not required by law called the “Notice of Warrant & Demand.”

The 51 cases included in this sample were randomly selected from the universe of all delinquent case files in the CACSG (collections) database

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**We found that the Tax Commission is sending the notices mandated by law.**

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**We reviewed, in detail, 51 cases for proper notification. On average, the taxpayer received more than the required notifications.**

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for the period 1999–2002. The cases were divided into two groups: Those taxpayers owing more than \$1,000 (29 cases), and those owing \$1,000 or less (22 cases).

In the group owing more than \$1,000, we found that each taxpayer had received an average of six notices and that each had been telephoned an average of four times. Clearly these taxpayers had been made aware of their tax debt. In addition, each of the notices required by law had been sent. Figure 2 summarizes the cases of taxpayers owing more than \$1,000 in our sample, by tax type.

First however, we note one important caveat that the numbers shown in this particular sample of notices and phone calls represent the average number received by a particular taxpayer over the course of the debt. In other words, some taxpayers in our sample were delinquent for multiple tax periods and thus received notices for each of those tax periods. We verified that with each new debt, the required notices were sent.

**In our sample, we recorded notices received throughout the life of a taxpayer’s debt. So, if new debt occurred, there would be new notices, as required by law.**

**Figure 2. Detailed Sample of 29 Cases Owing Over \$1,000 Shows Taxpayers Were Made Aware of Their Tax Debt.** Taxpayers in this sub-sample were sent an average of six notices and received an average of four phone calls. Evidence suggests that sufficient notice was given to these taxpayers.

**Of those cases owing over \$1,000, taxpayers were sent an average of six notices and received an average of four phone calls.**

Tax Type	Number of Cases	Average Taxes Owed	Average Notices Sent	Average Calls Made
Sales Tax	16	\$13,849	7	3
Withholding Tax	8	17,895	5	6
Individual Income Tax	5	1,718	4	2
<b>All Tax Types</b>	<b>29</b>	<b>12,874</b>	<b>6</b>	<b>4</b>

Figure 2 shows that the Tax Commission sent several notices and made several phone calls toward collecting these delinquent taxes. It also highlights a problem that we will discuss further in Chapter IV: some taxpayers collect sales and withholding taxes for the state, but do not

**Although cases with balances less than \$1,000 have lower priority collection, the Tax Commission still sent the required notices.**

remit them. As Figure 2 suggests, there are businesses which owe the state over \$10,000.

Next, in the group of 22 taxpayers owing *less* than \$1,000, we found that taxpayers had also received several notices, and an average of one phone call, as shown in Figure 3. This group received fewer phone calls and fewer notices than the previous group because the Tax Commission places higher priority on cases with larger dollar values.

**Figure 3. Detailed Sample of 22 Cases Owing Less Than \$1,000 Shows Taxpayers Were Made Aware of Their Tax Debt.** Taxpayers in this sub-sample were sent an average of three notices and received an average of one telephone phone call. The cases were treated with less priority because they only owed, on average, \$394.

Tax Type	Number of Cases	Average Taxes Owed	Average Notices Sent	Average Calls Made
Sales Tax	10	\$358	3	1
Individual Income Tax	12	424	2	1
<b>All Tax Types</b>	<b>22</b>	<b>\$394</b>	<b>3</b>	<b>1</b>

Figure 3 shows fewer notices and fewer phone calls to this group, but we conclude that both groups—those with balances above \$1,000 in Figure 2, and those with balances below \$1,000 in Figure 3—were given sufficient notice of their tax debts. Also, taxpayers who received liens also previously received the Notice & Demand required by law.

**Database Sample Shows Sufficient Notice Before Liens.** To test specifically whether taxpayers were unfairly receiving liens, we tested another group of 11,984 income tax cases that had been audited and found to owe taxes. Only 1,576 cases (13 percent) received a lien. In fact, the actual percentage of individuals receiving a lien is lower than 13 percent because many individuals owe taxes for multiple years and thus received multiple liens. So, in the end, only 9 percent of individuals that had been audited and owed taxes received a lien.

In our larger sample of 11,984 income tax cases, there were 1,576 taxpayers who were sent a Notice of Lien. In every case, the notice was sent “certified mail” as required by law.

Most delinquent taxpayers pay after the first or second notice (before having a lien placed on the third notice).

We also verified that each Notice of Lien was sent by certified mail to the taxpayer’s last known address, as required by law. Multiple procedures are used to find the last known address.

This data shows that most taxpayers resolve their tax debt before a lien becomes necessary. When a lien does become necessary, however, as was the situation with the 1,576 cases from our sample, we found that taxpayers did receive a Notice & Demand prior to the lien.

Figure 4 contains some summary statistics pertaining to our sample of 11,984 income tax cases. We believe these statistics provide evidence that the notification system is effective at helping taxpayers to pay their taxes. In Figure 4, each subsequent notice is sent to fewer individuals because accounts are paid off or reduced to zero.

**Figure 4. Summary Statistics of Our Sample of 11,984 Income Tax Audit Cases Representing 8,700 Individuals Show that Only a Small Percentage of Taxpayers Received Liens.** Taxpayers in this sample had pending tax due. Fifty percent were taken care of after the Notice of Deficiency. Only 9 percent of the individuals ended up receiving liens.

Type of Notice Sent	Percent of Sample Receiving Notice
Statutory Notice of Deficiency/ Notice of Audit Change	100%
Notice & Demand	50
Notice of Warrant & Demand	31
Notice of Lien	9

Figure 4 shows that half of the taxpayers in our sample who received the Notice of Deficiency also received a Notice & Demand. About one-third went on to receive the Notice of Warrant & Demand. Finally, as previously mentioned, comparatively few individuals (9 percent) in our sample received a lien.

**Required Notice of Lien Is Sent Through Certified Mail.** We also tested whether the Tax Commission sends a Notice of Lien by certified mail, as required by statute. Certified mail requires a signature on delivery, which is a confirmation that the taxpayer received the notice. Of the 1,576 Notices of Lien sent, we found that each was sent certified mail.

As a side note, unfortunately many such notices are returned to the Tax Commission because the taxpayer has moved or, in some cases, has [REDACTED]. In order to find the most current contact information for taxpayers, collections agents consult a variety of sources including the post office, directory assistance, and county assessors' offices, just to name a few. However, in the end, if a current address cannot be found, the Tax Commission has still met the standard required by statute because they send the notice to the last known address of the taxpayer.

**Significant Time Given to Comply with Notice & Demand.** In addition to receiving notice of their liability, taxpayers are also given significant time to comply before a lien is placed. In the income tax sample shown in Figure 4, the average time between the Notice of Audit Change and the Notice of Lien was nine months—a time period which, in our view, is generous to the taxpayer. We discuss the consideration of the Tax Commission placing liens sooner in Chapter IV. Next, we discuss our conclusion that the Tax Commission is not overly adversarial when handling taxpayer appeals.

## **Tax Commission Appeals Are Not Overly Adversarial**

By virtue of the vast non-adversarial and informal appeals procedures used, the Tax Commission does not appear overly adversarial as generally alleged by the citizen group. The group claims the Tax Commission conducts appeals employing an overly adversarial and intimidating system. Admittedly, the commission hearing rooms do resemble courtrooms and trial-like procedures are used at formal hearings. However, over the past six years, an average of only 5 percent of the appeals brought before the commissioners went to the level of “formal hearing”—where proceedings are court-like and potentially contentious. Our analysis shows that the commissioners rely mostly on informal processes such as division conferences, telephone status conference calls, mediation and initial (informal) hearings to resolve appeals. Furthermore, based on our observations and discussions with commissioners, it is our opinion that their attitudes are very inclined toward the informal processes, while they still seek to maintain all legal appeal rights of taxpayers. Therefore, in our opinion, it is unlikely that the average tax appellant would experience adversarial treatment.

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**In appeals, the Tax Commissioners rely mostly on non-adjudicative procedures. So, it is not likely the average tax appellant would experience adversarial treatment, as alleged.**

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Utah law allows any taxpayer the right to appeal a tax case before the four Tax Commissioners and ultimately appeal to the state courts.

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## Taxpayers Have Appeal Rights

*Utah Code* 59-1-501 states that, “any taxpayer may file a request for agency action, petitioning the commission for redetermination of a deficiency.” While most appeals are handled through less formal means, such as a face-to-face division conference, telephone conference calls, mediation or an initial hearing, some appeals are handled in the adjudicative setting of a formal hearing. Authority to conduct adjudicative proceedings is statutorily granted to the Tax Commission. These proceedings are conducted under the legal standards set by the Utah Administrative Procedures Act (*Utah Code* 63-46b) and Utah Administrative Rules R861-1A-20 to R861-1A-33.

## Tax Commission Uses Many Informal Processes to Resolve Tax Appeals Issues

In response to allegations of intimidation and over-adjudication in the hearing process, we examined the opportunities taxpayers have to resolve concerns before, during, and after the hearing process. There are several levels of recourse and appeal, which increase in level of formality, as the formal hearing is reached. First, a taxpayer who is audited can, at any time, discuss his or her case with a Tax Commission auditor whether or not an official appeal has been submitted. Next, a taxpayer can appeal through the following non-adjudicative, informal processes:

- division conferences,
- telephone status conference calls with an administrative law judge,
- mediation, and
- initial hearings, which are less formal than the “formal hearing.”

Formal hearings, on the other hand, are meant to be very structured and organized, and—by their very nature—are more adversarial because of the presence of legal counsel and other court-like techniques. Ultimately, taxpayers can take their case to state court if they are not satisfied with a formal hearing opinion issued by the Tax Commissioners.

**Most Appeal Dispositions Come Through Informal Means.** Our analysis of available database records shows that most of the work at the commission-level is likely not adversarial because it occurs before the formal hearing. In fact, on average over the past six years, only 5 percent of appeals before the commissioners were resolved using the quasi-judicial

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Statistics show that only 5% of appeals reach the formal hearing. Most appeals are handled by other less-formal procedures.

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formal hearing. The majority of appeals—excluding defaults, dismissals and miscellaneous dispositions—were resolved informally. On average, 52 percent of appeals were disposed using either an initial hearing decision or through a commission-ordered approval, which utilizes agreements made in a division conference, telephone conference call, or mediation settlement agreement.

Figure 5 shows the many levels a taxpayer can use to appeal a tax assessment. Note that use of the different levels will not surrender their right to a formal hearing.

**Figure 5. Taxpayers Have Many Opportunities to Resolve Tax Appeal Issues.** Generally, formality increases with each step.

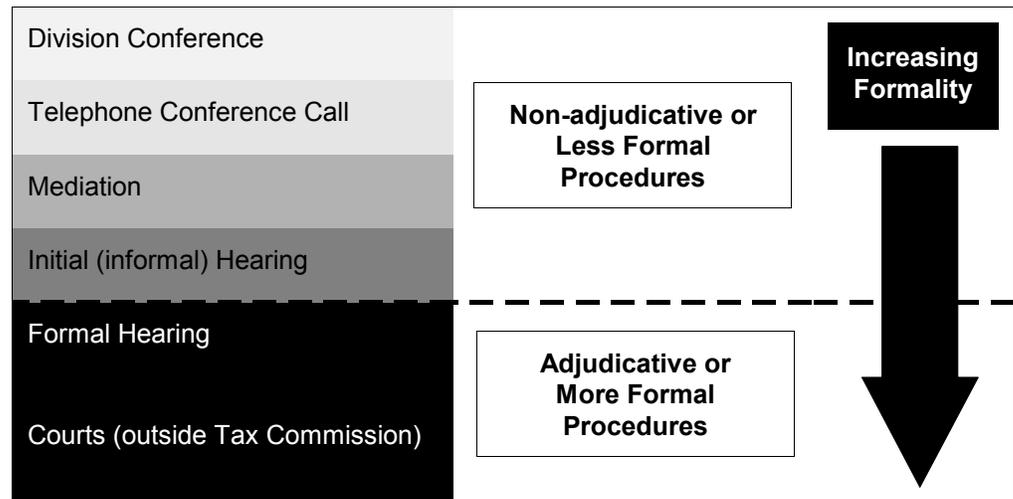


Figure 5 is meant to illustrate that each level of review offers an increased level of formality. For example, the earliest level (division conference) offers little formality because it is a conference with Tax Commission employees and middle management to discuss issues and arguments of the appeals case. The next level is a telephone conference call supervised by an administrative law judge, which may involve legal counsel, but is used more to clarify the status of the case and to explore future options. Another level offers a mediator who is provided by the Tax Commission or from outside the department, but agreed upon by both parties. This mediator helps with an independent review so that both parties can resolve the case. The initial hearing, which could occur

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Some of the less formal procedures include: division conferences, status calls, mediation, and initial (informal) hearings.

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In a division conference, “Any party directly affected by a Commission action...may request [an informal] conference with the [related] division.”

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next, is a significant move toward formality because the case is presented to an administrative law judge who hears the case and makes a ruling.

Finally, the formal hearing is a courtroom style hearing with Tax Commissioners acting as judges. Of course, the parties have the option to always appeal any decision to the state’s court system. We can see how each level of appeal raises the formality of how the case is handled, but as we have stated earlier, very few cases are appealed to the level of formal hearing or even the courts. Each of the major procedures used in appeals are discussed in more detail in the following paragraphs.

**Case Can Be Discussed with Tax Commission Auditors.** One form of resolution, which is not discussed as part of the appeals process, is the opportunity a taxpayer has to resolve tax issues with the assigned employee (auditor). This usually takes place as a telephone conversation after a taxpayer receives notice of an audit assessment, but before an appeal is sought. Typically, the audit process includes significant participation by the individual or company being audited, although sometimes the party chooses not to participate by not responding to correspondence from the Tax Commission.

**Division Conferences Are Commonly Used.** Division conferences provide another way to resolve tax questions and issues. The conferences are simply an opportunity for the taxpayer to meet with and explain their case to someone with more authority than front-line Tax Commission employees, such as a supervisor, manager or director. This is done without the uneasiness that sometimes accompanies a formal hearing. “Division Conferences” are allowed under *Utah Code* 59-10-210 and 63-46b-1:

Any party directly affected by a Commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in relation to such action. . . such conference will be conducted in an **informal manner** in an effort to clarify and narrow the issues and problems involved. . . . Such conference may be held at any time prior to a hearing, whether or not a petition for such hearing, appeal, or other commencement of an adjudicative proceeding has been filed (emphasis added).

**Mediation is an effective procedure where informal discussions between appellant parties are facilitated by a neutral third party.**

**Mediation Is an Effective Tool for Commissioners.** The Tax Commissioners and appeals division personnel generally agree that the mediation process is a well-liked, oft used and effective appeals tool. Under the Tax Commission’s administrative procedures, which are governed by statute, “. . . a resolution to any matter of dispute may be pursued through mediation.” And, if a matter remains unresolved after mediation, it can be scheduled for an initial hearing or a formal hearing because the initial hearing is an optional step. (See Rule R861-1A-32.)

In a pamphlet given to appellants considering mediation, the “Mediation Conferences” are defined as:

. . . informal discussions facilitated by a neutral third party mediator. A Mediation Conference allows opposing parties the opportunity to discuss their concerns in a nonadversarial setting and to explore whether the dispute can be resolved without further hearings. It focuses on finding a workable solution that satisfies the law.

If all parties agree to mediate the case, the Tax Commissioners will support the decision reached through an order, as described below:

If the mediation process resolves some or all of the issues under appeal, you will be asked to work with the other party to prepare and sign a settlement agreement. If some matters are left unresolved, the agreement will include a stipulation only as to the matters settled, and all other matters will be identified and reserved for further mediation discussions or a hearing.

Settlement agreements or stipulations must be submitted to the Commission for approval. If you use a mediator provided by the Tax Commission, the mediator will process the agreement document for you. If you use an independent mediator, you must submit the agreement in writing to the Tax Commission Appeals Unit for processing.

The Commission will issue you a final order that disposes of the issues settled through mediation. If any issues are reserved for hearing, or if the Commission finds that it cannot accept the agreement, your appeal will be set for a hearing.

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**An initial hearing is overseen by an administrative law judge. Afterwards, the commission issues a written opinion based on the hearing which can be appealed in the formal hearing.**

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**A Tax Commission formal hearing for appeals is court-like, with evidence presented by both sides in front of all four of the commissioners.**

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**Initial Hearings Less Structured than Formal Hearings.** Initial hearings are the next option for a petitioning taxpayer. Once an appeal is filed, taxpayers can request an initial hearing or can choose to waive an initial hearing and go straight to the formal hearing.

The initial hearing is meant to be more structured and formal than the division conference and mediation, but less formal than the formal hearing. In an initial hearing, the deliberation is not recorded. An administrative law judge (working for the commissioners) listens to evidence from both the taxpayer and the Tax Commission employees and makes a decision that is reviewed by at least three of the four commissioners. The commissioners then issue a written opinion. This opinion can be appealed in a formal hearing.

**Formal Hearing Is Final Appeal Before Going to Court.** As mentioned, if one of the parties is not satisfied with the initial hearing decision, that party can request a formal hearing—the next and final level of recourse within the Tax Commission. In contrast to the initial hearing, the formal hearing is potentially more contentious. The hearing is recorded and usually one or more of the commissioners are present.

In a formal hearing, as in the initial hearing, evidence is presented by both sides in the process of discovery. Because the formal hearing is completely separate from the initial hearing, however, parties may choose a completely different approach to argue their case than they did in the initial hearing. After commission deliberation, a written decision is issued. Of course, if after the Tax Commission procedures and hearing(s), the taxpayers (or in the case of property tax, the counties) are still not satisfied, they can take the matter to court. Note that a division of the Tax Commission cannot appeal to the court since it represents the policy direction of the commission.

To summarize, in our view, the existence of these various types of recourse provides a good safety net for the taxpayer. The taxpayer has the opportunity to present the facts of his or her case to different people of various levels of authority. We believe the system is set up appropriately and each level of review offers an increased level of formality. In the end, it is more likely that the average taxpayer will resolve an appeal through informal means than using the more adjudicative formal hearing.

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**In addition to appeals, the Tax Commission also has fair and reasonable ways to help taxpayers pay taxes in full.**

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**There will always be critics of the Tax Commission. But, overall, we believe the Tax Commission treats taxpayers fairly.**

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## **Delinquent Taxpayers Have Payment Options**

In addition to appeals procedures, we believe that a logical component of the Tax Commission's fairness is how they accommodate taxpayers who cannot pay in full. If taxpayers are not able to pay an entire debt all at once, they can pay their debt in installments, as they are able. Collections agents work with the taxpayers to establish a fair payment—one that does not debilitate the taxpayer, but at the same time, holds them responsible for the debt.

The Tax Commission also has programs for the rare circumstances where taxpayers owe the tax, but do not have the money to pay currently, and likely never will. In these programs, if the taxpayer meets certain criteria, a portion of the tax deficiency may be reduced.

As a final remark about the allegations discussed in this chapter, we believe that the audit team took the allegations seriously, made every effort to accommodate the citizen group, and followed-up in areas that we determined to be subject to audit. However, we believe that the long list of circumstances already discussed in this audit clearly show that we could not review many of the allegations.

We acknowledge that there will likely always be individuals, such as those in the citizen group which brought allegations, who disagree with the methods of the Tax Commission. While we believe that the Tax Commission makes concerted efforts to treat taxpayers and appellants fairly, it is unlikely that we could ever guarantee that taxpayers are treated fairly in every instance. Such a guarantee is unlikely and unreasonable. Therefore, overall, it is our view that taxpayers, both compliant and non-compliant are treated fairly by the Tax Commission in the areas discussed.

## **Recommendations**

1. We recommend the Tax Commissioners continue to utilize informal procedures in appeals.
2. We recommend the Tax Commissioners' staff in the Appeals Unit more consistently record the final disposition method in the appeals database in order to provide complete information on appeals procedures used.

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## Chapter III

# Better Case Screening Could Potentially Increase Revenues

There is a lack of screening for delinquent tax accounts within the Taxpayer Services Division (the division) at the Tax Commission. This inadequate screening is occurring in two significant areas.

- First, with cases that have liens close to expiration.
- Second, with cases that are being routed to outside collections agencies (OCAs).

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**There is inadequate screening of cases with liens nearing expiration and of cases sent to the outside collection agencies, which represents potential revenue for Utah.**

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First, inadequate screening occurs which allows liens that have been placed on accounts to expire without properly determining if the liens should be reissued. In many cases, there are potential assets that might have been garnished and other levy sources available to the division if the liens had been reissued to secure the division's ability to collect. In our estimation, these accounts with liens expiring in 2002 are valued at about \$20 million in delinquent taxes owed to the state. Our test of these accounts indicate that as much as \$3.9 million in potential revenues could have been pursued by the Tax Commission. Further, we believe many of the delinquent taxpayers in our sample had significant enough income or assets, that the division should aggressively pursue collection of these debts.

Second, inadequate screening also occurs on cases that are sent to the outside collection agency (OCA), screening which should determine if there are assets that could be garnished by the division prior to being sent to the OCA. We sampled cases that were worked by division collectors—cases which were believed to not have income sources from which to collect—which were therefore sent to the OCA. We found income sources on an average of 47 percent of the cases from 1998 to 2000. Overall, the cases that are currently residing in OCA account for over \$64 million dollars in delinquent accounts. Some portion of this amount could represent potential revenue for the state.

## Liens Secure State's Ability to Collection Delinquent Taxes

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Liens are placed by the Tax Commission as a means to secure the state's interest in tax delinquencies.

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The Tax Commission's ability to place a lien against a delinquent taxpayer's real property is the primary means of securing an interest against delinquent payments due the state. The lien is used as a collections tool to bring a taxpayer into compliance. Division management has told us that, on average, a person sells a home every six years and by having the lien on record makes the person have to take care of the lien before they can sell. This represents the foundation of the division's collection philosophy as it pertains to liens.

However, the life of the lien is only eight years, at which time, if not reissued, it becomes legally non-enforceable. The lien can be reissued to ensure the Tax Commission has legal action still at their disposal, but it must be reissued before expiration.

[REDACTED]. Division management has stated that any account older than [REDACTED] is not aggressively pursued, although the debt is still maintained. They have stated that their best chances at collecting taxes owed is within the first [REDACTED]. The Tax Commission only reissues a lien if they happen to know of the case or if, by happenstance, they run across a case that needs to have the lien reissued.

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Cases over two years old are often sent to an outside collection agency.

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For example, during our case review, we took a case to an agent with follow-up questions. When the agent realized that the person owed the state about \$155,000 and that the lien was about to expire, the agent reissued the lien to secure the state's interest. When asked how an agent usually reissues liens, the agent said it happens only if they know about a particular case or if they happen to be working a case and find that the lien(s) needs to be reissued. This example illustrates that no procedure exists to review all cases close to lien expiration.

The remaining paragraphs in this section focus on some of the current lien placement conditions which exist at the Tax Commission:

- Liens are placed after due notification.
- Liens are not placed on smaller delinquencies (under \$1,000).
- Many delinquent collections cases are referred to OCAs.
- Expired liens can create a tax loophole.

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**A taxpayer is sent three notifications prior to the Tax Commission placing a lien due to an unpaid tax debt.**

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As discussed in Chapter II, delinquent accounts in the collections system are sent up to three notifications before a lien is placed on the account. A lien is time-period specific to the delinquent tax period in question. Meaning, if you owe taxes for the third quarter of the year, then the lien is only placed on that quarter and not for the whole year. Hence, a taxpayer can have multiple liens corresponding to multiple periods.

Currently, the division has decided to only place automatic liens on delinquent amounts of \$1,000 or higher which have been through the statutory notification process. If the amount owed is less than \$1,000, then the taxpayer generally does not receive a lien against real property, but is instead sent a “Small Balance Letter” to inform them that monies are owed and to please pay promptly. Delinquent accounts less than a \$1,000 are clearly not given the same priority, but represent revenues which are due the state. We believe the Tax Commission needs to re-evaluate its position on the \$1,000 threshold, and consider lowering the amount, in order to ensure the state’s legal rights in collecting debts on more accounts.

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**The division does not place liens on delinquent accounts under \$1,000.**

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It is in the Tax Commission’s policy to send cases older than 24 months to the OCA after they have had an opportunity to exhaust all avenues to collect from a delinquent taxpayer. However, the Tax Commission focuses its work on cases [REDACTED] or less, and lets OCA work the older cases. Cases under \$1,000, which the Tax Commission has attempted to collect from without success, are eligible to be sent to the OCA after 12 months.

In the final analysis, cases where liens have been issued and have been allowed to expire creates a way for taxpayers to avoid paying their tax debt. Since liens are never routinely screened to see if they need to be reissued, a taxpayer can simply wait for the lien to expire [REDACTED]

[REDACTED]. We believe that a significant amount of delinquent cases are potentially collectable, and the state could greatly benefit from a procedure to reissue liens prior to expiration.

## Screening Procedure Needed to Review Liens Prior to Expiration

The division needs a procedure to review cases with liens nearing expiration to determine lien reissue and/or further collection.

Liens on delinquent tax accounts are allowed to expire without review or determination of the taxpayer's ability to pay. The division does not have controls in place to identify which liens are going to expire within the next year. Data we received indicates that liens as much as \$20 million in value, expire annually. From our audit tests, we estimate that as much as \$3.9 million in potential revenues should be pursued by the Tax Commission. Figure 6 details the extent of our tests which consisted of two separate samples.

**Figure 6. Several Expiring Liens Had Adequate Levy Sources.** The division could have reissued liens and pursued collections on liens totaling as much as \$3.9 million. (This is based on two separate samples of personal income tax liens and "responsible party" liens on businesses.)

Description	Liens Expired January to June 2002		
	Personal Liens (Sample A)	Business Liens (Sample B)	Totals
Universe of Expired Liens	456	47	503
Number of Liens Sampled	449	41	490
Number of Potential Collectible Lien Cases	176	22	198
Dollar Amount of Potential Collectible Revenue	\$638,423	\$1,139,567	\$1,777,990
<b>Dollar Amounts Annualized</b>	<b>\$1,276,846</b>	<b>\$2,612,665</b>	<b><u>\$3,889,511</u></b>

When annualized, we found liens valuing \$3.9 million that had significant enough levy sources to justify lien reissue and collections pursuit.

Figure 6 reflects a sample of both personal (income tax) and business (sales and income tax) liens that were scheduled to expire during the first six months of 2002. Generally, these liens expired without a review or screen to determine which liens may still be collectable. We believe liens that are deemed collectable need to be reissued. However, reissuing a lien is a soft enforcement tool and depends upon delinquent taxpayers paying

their delinquent tax debt in order to clear the lien so they can sell their asset or clear their credit rating. Further, the division should also identify those liens with strong levy sources (i.e. garnishment capabilities) and more aggressively pursue the collection of delinquent taxes on these liens.

If the division *did* have a procedure or a collection process in place, then they could determine which liens should be reissued. Division staff could review these accounts and determine if there is adequate collectability to reissue a lien and pursue collection.

In conjunction, the division should consider a means of flagging the accounts with liens nearing expiration. We believe it makes the most sense to incorporate this account flagging into the new collections case management system (Computer Assisted Collection System for Government, or CACSG). These conclusions are based on two samples we took of expired liens, where we believe significant potential revenue could have been secured if liens had been reissued prior to expiration.

### **Significant Percentage of Expired Liens May Have Been Collectable**

To test our belief that accounts with expired liens contain collectable revenue sources, we used IRS data available to division collectors—called the State Tax Automated Compliance System (STAXS)—to access potential levy (income) sources, such as W-2 income, 1099 income, interest income and 1098 mortgage interest paid. We sampled both income tax accounts with expired liens and business accounts where the owner, or the “responsible party,” had a lien placed (called an “RS” lien) which had expired.

**“Sample A” (Income Tax Liens) Showed Levy Sources.** In the first of two samples we performed, we reviewed 449 income tax liens of the 1,408 liens that were allowed to expire during the first six months of 2002. This sample represents \$1.5 million in accounts receivables for the state. Of the 449 sampled liens, we believe there was sufficient income sources to collect on 176 of the liens, representing 39 percent of the sample. In our estimation, if collections had been made on these 176 liens, tax revenue could have totaled \$638,423.

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**We used a research tool called STAXS to look up levy (income) sources to use as criteria for case collectability.**

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**A sample of 449 expiring income tax liens found potential collectability on 176, which totaled over \$600,000.**

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The criteria that we used to determine if the account could be collected from consisted of income sources, or evidence of existing income used for spending, in *at least* one of the following four areas:

- wages and/or salary,
- interest income,
- mortgage interest paid, or
- stocks.

First, to obtain the revenue total of \$638,423, we counted the dollar amount of any liens where individuals had wages and salary over \$20,000 in any of the three years (1998, 1999, 2000) where federal income tax data was available on STAXS.

Second, liens were counted where there was at least \$30 of interest income reported on IRS Form 1099-INT, as available on STAXS. The \$30 is based on a 3 percent annual return from investment in an average savings account. Using the \$30 as the minimum amount means that the person averaged at least \$1,000 in an account during that year.

Third, by showing that a person has paid mortgage interest, as found on IRS Form 1098, it meant that they must have had some income source with which to pay that mortgage. We felt this was allowable income criteria because it shows a strong likelihood of collectable income connected to the mortgage payment.

Finally, stocks were counted because they can be a levy source for the Tax Commission, [REDACTED]. But, the advantage of knowing that there are stocks owned by a delinquent taxpayer could be used to get the person to pay their taxes.

We acknowledge that the four criteria we used for determining which liens were eligible to collect from is a judgement on our part and that the division could develop their own standards for selecting which liens to be reissued.

Figure 7 gives a summary of the 176 liens which were determined to meet our levy criteria in at least one of the four areas. We also found that there was 67 of the 176 liens that met more than one of the criteria. Based on our review of existing levy sources, we believe the Tax

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**Our levy criteria is an audit team judgement for purposes of illustration. The division could use different criteria.**

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Commission should have reissued liens in these cases. (Of course, most of these liens have expired and cannot be reissued.) Note that in all figures in this section the lien sources only reflects delinquent taxpayers with an in-state address. [REDACTED]

**Figure 7. Multiple Levy Sources on Income Tax Accounts Could Have Been Pursued.** Based on our sample of 449 income tax liens that expired during the first six months of 2002, we believe there was sufficient levy sources to justify reissuing 176 of the 449 liens (39 percent).

Income Criteria (Lien Sources)	Number of Cases Where Criteria Was Met*
Salary and Wages	146
Interest Income	62
Mortgage Interest Paid	35
Stocks	40

\* The numbers in this column add to more than 176 because more than one source on income criteria may be met on each lien.

**Taxpayers in some of the cases where liens were allowed to expire had substantial income.**

Next, in Figure 8, we further illustrate that collection could have occurred on the expired liens, by presenting a few actual cases that had income sources in the income tax lien sample of 449. The examples show taxpayers with Utah addresses which might have been contacted prior to lien expiration. We believe that the division staff could have discovered such information if they had used the STAXS program.

**Figure 8. Several Examples Exist of Expired Liens Where There Was Probable Income Sources.** This list of taxpayers had Utah addresses listed on STAXS data. (Note: Data has been rounded.)

Taxpayer	Income	Sources	Year	Tax Owed
A	\$ 2,000	Interest Income	2000	\$34,000
	1,325,000	Stock	1999	
	32,000	Interest Income	1998	
B	56,000	Wages	2000	7,000
	55,000	Wages	1999	
	56,000	Wages	1998	
C	600	Interest Income	2000	9,000
	900	Interest Income	1999	
D	97,000	Wages	2000	13,000
	65,000	Wages	1999	
E	90,000	Wages	2000	1,000
F	69,000	Wages	2000	2,000

**Existence of STAXS data does not guarantee that there is collectability on a case. But, findings from our STAXS research shows the need for on-going review procedures.**

We recognize that the STAXS data from 1998–2000 is more than a year-and-a-half old, so it does not guarantee the individuals would have the same financial standing for 2002, when we sampled the expired liens. However, the STAXS data does illustrate two points:

- First, using STAXS to look up possible levy sources is much better than doing nothing to check for possible lien reissue.
- Second, the fact that there were levy sources in past years shows that the Tax Commission had collectable cases during those years (when liens were still valid) and took no action.

When 2001 STAXS data became available, we followed up on the six taxpayer cases shown in Figure 8. We found that if the liens had been reissued, there was potential levy sources for four out of the six cases in year 2001. This gives further evidence of the need for a procedure to screen cases for lien renewal. But, more importantly, this illustrates the need to pursue cases that appear to have the best potential for collection based on levy sources. Our 2001 follow-up data for the six cases is shown in Figure 9.

**Figure 9. Five of Six Taxpayers Shown Had Probable Income Sources in Year 2001.** This list of taxpayers had Utah addresses and levy sources listed on STAXS data. (Note: Data has been rounded.)

Taxpayer*	Taxes Owed	Potential Levy Sources Found in Year 2001
A	\$ 34,000	\$200 (Interest Income)
B	7,000	Did not meet criteria
C	9,000	200 (Interest Income)
D	13,000	Did not meet criteria
E	1,000	94,000 (Salary) 300 (Interest Income)
F	2,000	59,000 (Salary)

\* *Half of the taxpayers in this figure have not filed their tax returns in many years. Hence, the STAXS data is the most likely avenue the Tax Commission has of finding taxpayers that otherwise would have gone undetected.*

The cases shown in Figure 9 had liens which expired in the first half of 2002. Since the life of a lien is eight years, this means the liens would have been issued in the first half of 1992. We reviewed levy sources for 1993, 1994 and 1995 on Taxpayers A–F and found that only four of the six had even filed tax returns for these years. However, Taxpayer F had substantial salary in 1993 (\$81,000); in 1994 (\$70,000); and in 1995 (\$49,000). In our opinion, collection could have been pursued against Taxpayer F during these three years, while the lien was still valid.

Finally, Figure 10 gives an illustration of potential collection on the income accounts with expired liens, by showing the breakdown of salaries that were found for years 1998, 1999 and 2000. This only includes taxpayers with wages or salary greater than \$20,000 per year. Although the most common salary range shown is \$20,000 to \$40,000, it shows that, overall, there are instances where liens should have been considered for reissue.

**Figure 10. Many Cases Where Liens Expired Showed the Delinquent Taxpayers Had Earnings.** This figure shows cases of income found from individual accounts of \$20,000 or above.

Income Range	Year 2000	Year 1999	Year 1998
\$20,000 – 39,999	83	75	74
\$40,000 – 59,999	11	10	12
\$60,000 – 79,999	2	6	3
\$80,000 – 99,999	2	0	1
\$100,000 +	1	1	4
<b>Totals</b>	<b>99</b>	<b>92</b>	<b>94</b>

Looking up the levy data on STAXS was not time intensive. So, we are unsure why the division does not use STAXS more often.

It should be noted that when we sampled the 449 expired income tax liens, it only took a few days to look up the needed information using STAXS. As mentioned, this few days’ work netted information about levy sources on 176 expired liens. We believe that the Tax Commission could greatly benefit from similar use of the STAXS program when tracking taxpayers with delinquent accounts. We acknowledge that the Tax Commission uses it to a certain extent but we are unsure why it is not more widely used, particularly when it is not intensive or time-consuming work. Next, our second sample—this time of responsible party (RS) Liens—reveals similar results as this first sample of income tax accounts.

Our second sample of expired liens showed potential uncollected revenue of near \$1.1 million.

**“Sample B” (Expired RS Liens) Showed Levy Sources.** Another area where levy sources were also found was on business cases where RS liens were issued. RS liens are placed on an officer (a “responsible party”) of a corporation when it cannot meet a tax debt because they do not remit sales tax collected and/or income tax withheld for the state. The RS lien holds the officer personally responsible for taxes held in trust but not remitted by the business. In the first half of 2002, 41 RS liens expired, which represents \$1.9 million in accounts receivable for the state. We found that there were 22 accounts (53 percent) that may have been collected using one or more of the levy sources discussed in the first sample (wages and salary, interest income, mortgage interest paid, or stocks). The potential tax revenue that this would amount to is \$1.1 million.

**In the first half of 2002, 41 RS Liens expired. Our sample of 22 liens represents \$1.1 million in potential loss revenue.**

Figure 11 gives a summary of the 22 RS liens which were determined to meet our levy criteria in at least one of the four areas. We also found that there was 7 of the 22 liens that met more than one of the criteria. As with the income tax sample, this conclusion was based on our review of existing levy sources. We believe the Tax Commission should have reissued liens in these 22 cases.

**Figure 11. Multiple Levy Sources on RS Lien Tax Accounts Could Have Been Pursued.** Based on our sample of 41 RS liens that expired during the first six months of 2002, we believe there were sufficient levy sources to justify reissuing over half of the RS liens (22 of the 41).

Income Criteria (Lien Sources)	Number of Cases Where Criteria Was Met*
Salary and Wages	8
Interest Income	9
Mortgage Interest Paid	8
Stocks	4

\* The numbers in this column add to more than 22 because more than one source on income criteria may be met on each lien.

**Expired Liens Should be Reissued if Criteria is Met**

Based on the potential revenues estimated from our two samples, we believe the Tax Commission should develop a policy and procedure for examining liens that are near expiration in order to determine whether the liens should be reissued. This occurs in some surrounding states which we contacted.

For example, the IRS prints out a lien report six months before a lien is to expire and a collections agent uses this report to determine a next course of action. Three western states also have a method in place to print out records with liens before they expire to determine if a lien should be reissued. The Tax Commission has the ability to create a report of liens which are about to expire—although it was not readily available on our initial request—they need to implement a policy for deciding when to

**The Tax Commission does not have overall policies for examining expired liens or for using the STAXS program.**

reissue liens. Some decision criteria for determining lien reissue could include:

- amount owed by delinquent taxpayer,
- ability of the taxpayer to pay,
- amount and sources of levies,
- whether the levy sources are in-state or out-of-state, and
- whether the taxpayer can be located.

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**The division needs a standard policy which encourages the use of STAXS as a division-wide research tool.**

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**Expired Lien Review Policy Should Include Use of STAXS.** We believe an expired-lien review policy should also include more widespread use of the STAXS program. Currently, the Tax Commission does not have a standard policy for using STAXS as a research tool on levy sources. Some collections agents say they have only used it occasionally; agents in the garnishment division only use STAXS on delinquent income tax accounts of \$█████ or more. Clearly, our audit work reveals that data available on STAXS could increase collections of accounts receivables.

**Collection Should Be Aggressively Pursued If Strong Levy Sources Exist**

As outlined in the previous section, reissuing liens that meet certain criteria is important to secure the division’s ability to maintain collectability on delinquent cases for several more years. Then, more importantly, collection efforts should be aggressively pursued on all cases which show strong levy sources.

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**Collection efforts should be more aggressively pursued on all cases which show strong levy sources.**

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As examples, we cite the taxpayer cases shown earlier in Figure 9, where we found potential strong levy sources for five out of the six cases in year 2001. Referring back to Figure 9 on page 33, note that Taxpayer A had significant interest income in 2001; and, Taxpayers E and F had salaries ranging from \$59,000 to \$94,000. We believe these cases demonstrate strong levy sources and could be collectable. Unfortunately, the liens were not screened for reissue and have expired. In the future, we recommend that the division, upon securing liens, more aggressively pursue collection on cases which show strong levy sources.

## Other Policies and Procedures Governing Liens Need Updating

Because of our concern that the Tax Commission was losing their ability to collect revenue due to expired liens, we discussed the issue with the Attorney General's Tax and Revenue Division. The AG shared with us that there are specific areas in the Tax Commission's use of liens, beside our analysis of expired lien review, that need attention. Specifically the Tax Commission should review whether they can improve:

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**Review is also needed in other lien areas such as:**

- keeping priority
- ability to place
- length of time for enforceability.

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- the ability to maintain priority placement on a lien,
- the statutory ability to place liens, and
- the length of time that a lien remains legally enforceable.

**Tax Commission Can Lose Priority on a Lien.** When a lien is issued by the Tax Commission on a delinquent taxpayer, it can be collected based upon if it is the first lien in line, ahead of liens from other creditors. In other words, if another lien is in place before the Tax Commission's lien was issued, then the Tax Commission's lien is not enforceable until the lien ahead of it is collected.

For example, if there is a child support garnishment being collected from a taxpayer, the Tax Commission's lien, which is behind this lien, cannot be collected on until the lien in front is satisfied. The problem the Tax Commission faces is that if they reissue a lien, they lose priority in the line of liens. This needs to be addressed within the tax code.

**Tax Commission Could Improve Lien Enforceability.** One member of the Utah Attorney General's Office has indicated that improvements could be made in the tax code regarding liens. Uncertainty in the tax code exists as to when a warrant must be filed after an assessment has been issued and as to when a statutory lien expires. These uncertainties are further complicated by the fact that the current lien provisions are not entirely uniform among the different taxes under the purview of the Tax Commission. Many states have updated their lien statutes to reflect modern collection methods. Utah's lien statutes appear outdated in some material respects.

For example, Utah law infers in the corporate income tax chapter and possibly the sales tax chapter that a lien must be issued within three years from the date of assessment. No such provisions is found in the income

tax chapter. Questions exist as to the validity of a warrant issued outside of this three year period. (For clarification purposes, the reader should not confuse this three year period to issue a warrant with the three year period to make an assessment. The time to issue an assessment is clearly defined in the tax code. The time to issue a warrant is not.)

Uncertainty also exists as to the expiration of a lien. There is not a specific statute stating when a statutory lien created pursuant to *Utah Code* 59-1-302.1 expires.

Additionally, judicial liens created by warrants filed by the Tax Commission expire based upon the date of the filing of the warrant, not the date of assessment as is the case with the statutory lien created under *Utah Code* 59-1-302.1. As such, two assessments issued on the same date may have judicial liens created by warrants that expire on different dates based upon the dates the Commission issued the warrants.

To alleviate confusion, the Tax Commission could model itself after the IRS which ties the lien date and the collection date to the assessment date. In other words, from the assessment date, the clock starts ticking on the time to collect, whether or not the Commission issues a warrant.

The Legislature may want to review whether the length of time for a lien's enforceability is adequate. Finally, using the IRS standard would eliminate the problem of missing the statutory limit for issuing warrants. This is because the IRS currently has a ten-year life on tax delinquencies, meaning, that they have ten years to collect on delinquent taxes. The ten-year life is true whether a certificate of lien or levy was issued in the second year, the eighth year, or so forth. However, under this IRS system, certificate of liens are not reissued after the ten year period. Still, this is a viable area of review for the Tax Commission, and also one we recommended for a legislative study committee.

Overall, we believe the area of reviewing expired liens needs significant attention by the Tax Commission. Another area where we see needed improvement is with screening procedures used with cases being sent to outside collections agencies.

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**The Legislature may want to review whether the length of time for a lien's enforceability is adequate.**

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## Cases Sent to Outside Collection Agencies Need Better Screening

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**We believe cases currently being sent to outside collectors are not being adequately screened for collectability.**

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Cases which are being sent to the outside collection agency (OCA) are not being screened adequately for levy sources which could be pursued by the Tax Commission. From 1996 to 2002, the Tax Commission sent 53,912 accounts worth \$116.6 million to an outside collector—an average of 7,701 accounts (\$16.6 million) each year. During those seven years, the OCA collected \$8.3 million, or just over seven percent of the delinquent dollars. We believe that some of these cases could have had collection action at the Tax Commission before being sent to the OCA. Having the Tax Commission act as primary collector is important because it costs less to collect a delinquent account at the Tax Commission than it does to pay the OCA fees. As with expired lien review, the STAXS program can be a valuable tool for improving case screening.

### **Tax Commission Relies on Outside Collections Agencies**

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**The Tax Commission has sent cases totaling almost \$75 million to outside collectors.**

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When the Tax Commission exhausts their efforts (or seemingly exhausts their efforts) in trying to find delinquent taxpayers, they send the cases to an OCA. As of December 2002, there were 25,382 cases assigned to the OCA, which represents 32 percent of the active cases currently at the Tax Commission. Cases that are currently residing in OCA, or are waiting to go to the OCA, account for over \$64 million dollars in delinquent accounts.

The Tax Commission actually uses two OCAs to collect on some of their delinquent accounts. The primary OCA uses a credit reporting system that is unavailable to the Tax Commission and makes three attempts to contact the taxpayer. If they cannot contact the taxpayer or get them to make a payment, the case is recalled to the Tax Commission for review. Following the review, the case can be sent to a secondary OCA by the Tax Commission. The second vendor makes three attempts and, if unsuccessful, they send the case back to the Tax Commission where it is usually routed to uncollectible status as a bad debt account.

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**Outside collectors charge a 17% fee on accounts they collect. We are told this is much more costly than in-house collection.**

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The OCA fee for collecting on an account is 17 percent of the collectable total, which is significantly more costly than in-house collection. If the OCA finds a levy source on an account, they let the Tax Commission know so it can be garnished. The OCA does not have the

authority to do garnishments, as does the Tax Commission. But, if the Tax Commission garnishes, the OCA is still entitled to the 17 percent fee. Because the Tax Commission can do garnishments and the OCAs cannot, it is very important that the Tax Commission use all available resources to find delinquent taxpayers prior to cases being sent to the OCAs.

**Division Needs to Use  
STAXS for OCA Screening**

Within the Division of Taxpayer Services at the Tax Commission there are five districts that are assigned to collecting delinquent taxes. The district collections agents have many tools at their disposal to help them track down and contact delinquent taxpayers, but they need to rely more on the STAXS system to identify levy sources in a way similar to the expired lien cases discussed earlier. Procedures most used, as outlined in division policies and procedures, include:



To test how well district agents are screening cases, we obtained a sample of 135 cases that were sent to the OCA in the year 2002. These cases had been worked by the districts and believed not to have levy sources that the Tax Commission could have collected from.

However, using the STAXS program, we were able to find possible levy sources for accounts that were sent to the OCA, as shown in Figure 12. Note that as with the earlier expired lien samples, the criteria used for Figure 12 to determine collectability on a case, was if an account had wages or salary over \$20,000, or interest income greater than \$30 in a year. Also, as discussed earlier, we acknowledge that we are using older data (year 2000 data to collect on cases that are in year 2002). However, this is the most recent data available from STAXS and still shows that

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**As with research on expired liens, the division could also benefit from STAX in screening cases for levy sources prior to being sent to an OCA.**

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potential levy sources were available for collecting before cases were sent to the OCA.

**Figure 12. A Significant Percentage of Worked Cases Sent to the Outside Collection Agency in 2002 Had Probable Levy Sources.**

Of the 135 cases in the sample, we found 63 (or 47 percent) with levy sources.

Description	2000	
	Cases	Percent
Accounts with Levies*	63	47%

\* The total number of cases that have at least one levy source of either income and/or bank account with a levy source for that year.

In Figure 12, we used the STAXS program to access income data over a three year period. The figure shows that 47 percent of the time there was levy source on cases which the Tax Commission agents could have pursued prior to management sending them to the OCA. We were able to find multiple cases that had potentially high interest incomes as well as personal incomes that may be (garnishment) levy sources. In our opinion, the division should have determined if these levy sources were available prior to sending the cases to the OCA.

In fact, several garnishment agents within the division shared with us that there are numerous times that they have seen cases that should have been garnished by the Tax Commission but, instead, they were sent to the OCA. We believe the STAXS program could be used more to screen these cases.

For purposes of further illustration, we provide some actual examples of accounts with very large interest income accounts, which we believe could have been levied by the Tax Commission prior to being sent to the OCA. These examples are shown in Figure 13.

**Based on our sample of 135 cases sent to OCA in 2002, 47% had potential levy sources at some point in the preceding 3-year period which could have been pursued by the division.**

Some cases sent to OCA had significant interest accounts as a potential levy source, and could have been worked by the division.

**Figure 13. Examples of Cases Which Could Have Had Levies Placed on Significant Interest Income Accounts.**

Case	Funds in Year 2000 Interest Income Accounts
1	\$7,000
2	1,000
3	1,000
4	1,000
5	1,000

The cases in Figure 13 show interest income which was found by accessing data through the STAXS program for 2000. We believe these delinquent accounts could have been levied by the Tax Commission, but were sent to the OCA instead. These examples illustrate the research value of the STAXS program.

In summary to this chapter, we believe that with improved policies and procedures in expired lien review and lien administration, and screening of cases to the outside collections agencies, the Tax Commission can potentially increase revenues and otherwise benefit the state. We conclude by presenting specific recommendations which may benefit the Tax Commission as they review these areas.

### Recommendations

1. We recommend the Tax Commission track liens which are near expiration and create procedures and criteria for determining whether any liens should be reissued prior to expiration.
2. We recommend the Tax Commission assign a collections agent to screen the expiring liens, using the STAXS program or other sufficient means of identifying levy sources. We further recommend that the commission more fully incorporate the use of STAXS in all relevant facets of the collection process.

3. We recommend the Tax Commission, upon developing the lien renewal procedure identified in Recommendation 1, more aggressively pursue collection on cases which show levy sources.
4. We recommend the Tax Commission review areas of the tax code which govern lien administration and enforceability in order to strengthen their use of this compliance tool. Specifically, the Tax Commission should review:
  - lien prioritization,
  - the length of time that is limiting lien placement, and
  - length of lien enforceability.
5. We recommend that the Legislature consider forming a study committee to review issues of lien prioritization, statutory time limits on lien placement, the length of time a lien remains enforceable and other statutory tax areas deemed appropriate for review.
6. We recommend the Tax Commission review their policies and procedures for screening cases sent to outside collections agencies (OCAs) to determine whether adequate levy sources exist before sending cases out. We further recommend that this policy include more widespread use of the STAXS system for researching levy sources.

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## **Chapter IV**

### **Improved Compliance Procedures Could Benefit State**

Improved procedures in areas beyond those discussed in Chapter III could also benefit the state through potentially increased delinquent tax collections and better tax compliance. This chapter suggests that further review is needed in the four following areas in which we performed more limited audit work, but believe are suitable for mention in this report.

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**We did limited audit work in four tax compliance areas we believe need further review by the Tax Commission.**

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- First, there appears to be a growing number of businesses that fail to remit sales and withholding tax which, we believe, the Tax Commission should seek to hold more accountable.
- Second, by improving the screening of sales tax applicants, the Tax Commission could prevent some potential delinquent sales tax accounts from even being created.
- Third, the Tax Commission could also consider decreasing the time it takes to secure liens on delinquent taxes, in order to more quickly protect the state's interests and potentially increase revenues.
- Fourth, we have been told by the Tax Commission that revenues for the state could be potentially increased if they and the Department of Commerce could coordinate federal identification numbers on some businesses, in order to track some businesses that fail to file with the Tax Commission and subsequently do not pay corporate taxes.

### **Businesses Who Fail to Remit Tax Should Be Held More Accountable**

Crucial to overall compliance, is the need for tougher sanctions against corporate officers who fail to remit tax money which is due to the state in the form of sales and withholding taxes. In our opinion, such failure to remit deserves tough sanctions because the officers of the corporation choose to keep tax money that was never legally theirs to begin with. With regards to sales and withholding taxes, they are acting as the state's fiduciaries—legally responsible to collect tax money from employees and

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**Tougher sanctions are needed against corporate officers who fail to remit sales and withholding tax.**

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**In hard economic times, it is enticing for some businesses to spend sales and withholding taxes, rather than remit them to the Tax Commission.**

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those who purchase products and services. Currently, it appears that existing Tax Commission penalties are not fully deterring non-remittance.

During the course of this audit, we have been reminded many times how big of a problem delinquent business taxes are. When difficult economic times occur, as they have recently, there is an increasing enticement for businesses to “borrow” from the state’s tax funds, by using sales tax and withholding tax which should be held in trust for the state. It seems there are instances where this occurs, and a business owner has “good intentions” to pay back the funds when things improve, which may or may not occur.

As mentioned in Chapter III, through the RS (responsible party) lien, the Tax Commission can assess corporate officers personally if they fail to remit sales and withholding taxes owed to the state. The Tax Commission is able to collect some of the monies owed in this manner, but the process of finding the responsible people is often very timely and complex. We believe that tougher sanctions should be pursued in order to deter such behavior.

### **Sales Tax License Application Process Needs Better Screening**

One way the Tax Commission may help limit sales tax compliance problems is to improve the sales tax application process. [REDACTED]

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**The Tax Commission does not [REDACTED]**

**[REDACTED] This is problematic if the applicant owes previous sales tax.**

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### **Documentation Should be Required During Application**

However, although we did not audit the process of obtaining a sales tax license in depth, the Tax Commission may want to consider the following suggestions to help alleviate sales tax compliance problems at the application level:

- The sales tax applicant should provide the Tax Commission with a copy of legal documentation proving that the business does in fact exist, such as a copy of a corporation’s Articles of Incorporation which has been accepted by the Department of Commerce.
- The sales tax applicant should provide an Employer Identification Number (EIN) if applicable.

We believe that if measures are taken to determine if a sales tax applicant owes delinquent taxes the Tax Commission may be able to recoup some of the debt, or at least prevent the applicant from opening a new account until the debt is resolved.

### **Tax Commission Should Consider Placing Liens Sooner**

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**We believe that the Tax Commission could place liens sooner without jeopardizing the existing notification process.**

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In addition to increasing sanctions and improved screening discussed in the previous sections, we believe the Tax Commission could better protect the state’s interests, and potentially increase revenues, by expediting the lien process. As discussed in Chapter III, liens are an essential tool for protecting the states interests in outstanding tax revenues. In theory, the sooner the lien is placed, the greater the likelihood of recovering taxes owed to the state. We believe the Tax Commission could place liens sooner, without jeopardizing the adequate notification already provided, by discontinuing the second of three notifications sent—the “Notice of Warrant & Demand.” The Tax Commission should also review the effects the collections billing cycle has on timeliness of liens.

We have found the pattern in the following hypothetical scenario about COMPANY ABC to be too common.

For several months, COMPANY ABC withheld thousands of dollars in income tax from their employees, and withheld thousands in sales tax which was collected from customers. Then, COMPANY ABC used the money themselves, instead of properly remitting it to the state. Eventually, COMPANY ABC fell upon hard economic times, and declared bankruptcy. By the time the Tax Commission tried to collect outstanding sales and withholding taxes from ABC, the company and its responsible parties were

shielded by bankruptcy, had nothing left to recover, or fled the state.

The trend demonstrated in the COMPANY ABC example has been on the increase, as shown by current data. From 1996 to 2001, the number of tax liens against businesses for failing to pay sales and withholding taxes grew steadily, increasing by an average of 34 percent each year, or 298 percent overall. In 2001, there were 13,514 liens filed compared to only 3,393 in 1996. Figure 14 shows the details for business tax liens issued for both sales tax and income tax withholding. (Note: another disturbing trend is the ever-increasing bankruptcy filing rate in Utah, which rose 204 percent from 1995 to 2002. Bankruptcy is discussed further in Chapter V.)

**Tax liens against businesses have increased 298% from 1996 to 2001.**

**Shortening the time before issuing a lien could help keep delinquent balances owed from escalating.**

**Figure 14. Liens Issued for Delinquent Sales and Withholding Taxes Are Increasing.** Three times as many liens were issued in 2001 as in 1996.

Year	Sales Tax Liens	Withholding Tax Liens	Total	Percent Annual Increase
1996	2,155	1,238	<b>3,393</b>	–
1997	2,764	1,738	<b>4,502</b>	33%
1998	3,264	1,954	<b>5,218</b>	16
1999	6,078	3,674	<b>9,752</b>	87
2000	7,893	4,891	<b>12,784</b>	31
2001	8,146	5,368	<b>13,514</b>	6

Figure 14 shows that liens for both sales tax and withholding tax have increased since 1996. As would be expected, the total dollar value of those liens has increased, as well, from a value of \$15 million in 1996 to \$38 million in 2001. It is interesting to note that the average amount owed decreased from \$4,400 to \$2,800 in this time period.

We recognize that since the time the liens were placed, some of those delinquent dollars have probably been paid. However, the fact that

**We are concerned that \$38 million worth of sales and withholding taxes have not been remitted to the state, even after months of inquiry.**

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**The dollar value of liens issued on businesses due to delinquent sales and withholding taxes was \$38 million in 2001.**

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\$38 million worth of sales and withholding taxes were not remitted to the state, even after months of inquiry, is concerning.

It is a likely assertion that liens are increasing because more and more businesses are wrongfully choosing to use the state's money for themselves instead of paying the state, as discussed earlier. We also believe the Tax Commission has likely become more effective at placing liens, with the aid of CACSG—the new collection information system. Whatever the case, we believe the Tax Commission could potentially increase revenue and protect the state's interests sooner by expediting the lien process.

As we mentioned in Chapter II, income tax liens take an average of nine months from the time the taxpayer receives the first notice of taxes owed. Although we have not done detailed analysis on sales tax and withholding tax liens, we expect that the results would be similar for these taxes because they have a comparable number of notices and similar billing cycles. In our opinion, nine months seems an excessive period of time to allow to pass before protecting the state's interests.

### **Tax Commission Should Consider Discontinuing One of Three Notices**

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**More notices are issued than are required by law. Discontinuing 1 of the 3 notices could decrease the lag time between tax assessment and placement of the lien.**

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The first item of action to decrease the lag time between the assessment and the lien is to discontinue sending one of the three notices which is not required by law. The law only requires that the Tax Commission give "Notice & Demand" before a lien is placed. Currently, however, they send a notice called "Notice of Warrant & Demand" after the Notice & Demand (with the third notice, the "Notice of Lien," actually informing the taxpayer that a lien has been placed). We estimate that by removing the one of the notices from the process, the Tax Commission would decrease the time before issuing liens by two or three months.

Consequently, since the time of our discussion with the Tax Commission on this matter, they reported that they dropped the Notice & Demand, in order to expedite the lien process, and have renamed the required notice the "Notice of Warrant & Demand For Payment of Taxes." We believe that even without the one additional notice, taxpayers are still given adequate notice and time to comply with collections requests.

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**The Tax Commission needs to review whether it is feasible to lessen time between billings.**

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## **Review of Billing Cycle Effects on Liens Timeliness Needed**

The next item of action to expedite the lien process is for the Tax Commission to review the billing cycle and determine what changes could be made to decrease the time between notices in the process, and whether such changes are feasible. Currently, the time between notices is approximately two to three months. Without question, the taxpayer must be given adequate time to pay after each notice is received, but even so, we believe the time between notices can be decreased.

The delay in notices being sent occurs, in part, because the billing cycle is set up so that for each tax type (sales, withholding, income, etc.), one batch is sent each month. For example, sometimes a notice that could be sent on the 16th of the month is not sent that month because the billing cycle for that month already occurred on the 15th. Consequently, in this scenario the notice would not be sent until the following month. This suggests that the Tax Commission may need to review their billing process for changes that could reasonably occur without damaging customer relations or efficiencies currently built in to the process.

## **Federal ID Numbers Should be Coordinated**

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**Some corporations fail to file with the Tax Commission and, therefore, do not pay corporate franchise tax.**

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Currently, the Tax Commission cannot easily identify corporations that fail to file with the Tax Commission and, consequently, do not pay Utah corporate franchise tax. The Tax Commission has suggested, and we agree, that the solution lies in having the Department of Commerce collect the Federal Employer Identification Number (FEIN or federal ID) and then share the information with the Tax Commission.

Corporations that conduct business in Utah are required by law to register with the Division of Corporations & Commercial Code within the Department of Commerce, and also to file with the Tax Commission (*Utah Code* 59-7-104, 16-10a-1501). However, some corporations register with the Department of Commerce but do not file with the Tax Commission.

At the present time, the Tax Commission has access to Commerce's registration data, but the data from the two systems cannot be easily

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**Data coordination between the Department of Commerce and the Tax Commission could resolve the issue of some corporations not filing with the Tax Commission.**

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matched to find out what corporations are registered with Commerce but are not filing with the Tax Commission. A clean match is not possible because Commerce and the Tax Commission use different unique identifiers. The Tax Commission uses the federal ID, whereas Commerce uses an entity number that they create internally.

Based on recent discussions with Tax Commission staff, we know that they, as well as Commerce, are aware of this problem and are also aware of the potential revenues that could come from data coordination. To resolve the data incompatibility, we believe it makes sense to have Commerce collect the federal ID from corporations that register with them.

The federal ID number would provide a common, unique identifier that would assist the Tax Commission in performing matches to determine who should file with them and pay the requisite corporate franchise tax. It is reasonable to believe that this improvement would result in higher tax compliance and potential increased tax revenue. However, estimates on how much increased revenue are not currently available.

Finally, federal ID coordination could also help the Tax Commission maintain more accurate contact information for corporations and their officers. It could also simplify collection of other potentially delinquent taxes such as sales and withholding.

## **Recommendations**

1. We recommend that the Tax Commission review whether they can strengthen current sanctions and deterrents for businesses and their officers who fail to remit sales and withholding taxes.
2. We recommend the Tax Commission review the sales tax application criteria needed for receiving a sales tax license, in order to prohibit businesses with tax delinquencies from opening new sales tax accounts.

3. We recommend that the Tax Commission consider expediting the lien process by following through on their intent to discontinue sending the second of three notices regarding delinquent tax, particularly since this second notice is not required by law.
4. We recommend that the Tax Commission review its billing cycle and determine how it can be structured so that the time between notices is shortened in order to further expedite the lien process.
5. We recommend that the Tax Commission work further with the Department of Commerce about having them gather federal ID numbers when corporations register, so that the Tax Commission can track corporations that do not file corporate taxes.

## Chapter V

# Tax Commission Needs to Improve Productivity of Collections Operations

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**Several years after the Tax Commission implemented a new computer system designed to improve collections, there are still significant productivity issues.**

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Several years after implementation of the new collections system (the Computer Assisted Collection System for Government, or CACSG), which was meant to greatly enhance revenues and increase productivity, the Taxpayer Services Division's collection of delinquent taxes is not as productive as it should be. We have identified three major concerns that contribute to inefficiency within the collections process:

- First, current accountability and productivity measures are inadequate. Specifically, the division's use of "quality contacts" is inefficient as a unit of measure for productivity.
- Second, the division needs to remedy workload problems among district collection agents and within the bankruptcy section.
- Third, there is a major breakdown of communication and trust between many of the division employees and management, which is negatively affecting productivity and the overall work environment.

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**Measures used to determine collections agents' productivity are not adequate. Also, the work load assigned to the agents is below capacity.**

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Prior to the implementation of CACSG, management measured individual and team productivity by the number of cases closed and/or the dollars collected. However, during the years that CACSG has been in operation, management has not tracked cases closed or dollars collected, but has used "quality contacts" as the unit of measurement to determine accountability and productivity. We believe the division's reliance on quality contacts to measure productivity is ineffective because its interpretation is too broad and because a quality contact can be too easily achieved by an employee who does not want to work hard. In fact, many contacts can be made in as little as a few minutes, while other contacts can take a longer time if a payment agreement or legal action is required. In our opinion, the quality contact does not measure the productivity of an individual or a collections team and allows employees to be less productive.

Next, the amount of workload assigned to the general collection agents (known as the district collections agents) is significantly below capacity—which means the agents are managing far fewer cases than they

are capable of processing. At the same time, division management is sending thousands of cases to outside collections agencies who are paid a generous commission from the percentage of the collections they recover. In addition, the section which processes bankruptcy cases appears to be under-staffed. This problem is compounded by the fact that bankruptcies in Utah have increased significantly during the past few years, while the Tax Commission has been forced to reduce its staff. Management needs to examine workload issues throughout the division and reassign staff accordingly.

Finally, there is a general attitude problem or lack of trust between many employees and management in the division which is negatively impacting productivity. Although this topic is handled separately in Chapter VII, the following paragraphs contain some overview.

### **Relationship Between Management and Staff Is Negatively Affecting Productivity**

In part, some of the relationship problems between management and staff began four years ago, with the implementation of CACSG, which altered the job description of the district collections agent significantly. This change caused great frustration and conflict between management and many employees. Management decisions and actions since have not resolved these feelings. In our opinion, the conflict between management and employees within this division is severe, and has a negative impact on the productivity of collections operations.

Over several years, many employees have polarized to one side or the other. In fact, during the audit we were frequently contacted by employees regarding concerns of poor treatment and incompetent management. Although this report does document some significant management concerns, the most difficult issue to correct is the lack of trust and communications between employees and management. In our opinion, the relations between employees and management is out of control and only action by department officials can bring harmony into the organization.

In an attempt to validate these concerns, we administered a division-wide employee satisfaction survey, which focused on relations, communications, and trust with management. Overall, the results—which are available in Chapter VII—are concerning.

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**Strained relations exist between collections staff and management. This is discussed further in Chapter VII.**

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**We conducted a division-wide employee satisfaction survey to determine the level of trust and communication between staff and management. (See Chapter VII.)**

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## **Division Needs Accountability and Productivity Measures**

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**Collections agents' productivity is currently measured by the number of "quality contacts" made to taxpayers. This is an ineffective measure.**

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We believe the division does not have an acceptable system to measure accountability or productivity of district collection agents. We believe that "quality contacts," the unit of measure used to identify an agent's productivity or accountability, is ineffective and needs to be changed. Also, using quality contacts as a unit of measure is far too broad and is not directly related to the end result of what the division is trying to achieve. We believe the current system, which basically expects an agent to average eight quality contacts a day, actually encourages inefficiency because the emphasis is put on counting contacts rather than closing cases or collecting delinquent tax dollars. In addition, we believe that the division's current incentive and performance measures (the Star Program and Win/Win Performance Agreement) lack substance and are detrimental to overall productivity. Concerns with these specific incentive and performance programs are discussed in the next chapter (Chapter VI).

### **Key Indicators Which Measure Productivity Have Been Abandoned**

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**The more effective productivity measures of "cases closed" or "dollars collected" were stopped years ago.**

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The basic goal or outcome of the division is to close delinquent tax cases and collect taxes dollars owed to the state. Years ago, the division used the number of cases closed and dollars collected as measures of productivity and accountability; both of which seem to measure the division's goal. But, with the implementation of CACSG, the division changed its units of measure for accountability or productivity to quality contacts, as recommended by the CACSG consultants. We believe this change has had a negative impact on the effectiveness and efficiency of the division's collections operation. This is concerning to us because most Tax Commission officials we talked with seemed to agree that the primary mission of the division is to both close delinquent tax cases and collect delinquent tax dollars.

In October 2002, we asked division officials to provide us the number of cases closed by each district team and each district agent during the last few years. We also asked for information concerning how many delinquent tax dollars had been collected by each individual. We intended to compare this information with information available prior to CACSG implementation, in order to determine if the division was actually performing better since CACSG. Unfortunately, we were told the

division could not provide either indicator (closed cases or dollars collected) by team or by individual.

The division does not keep information on delinquent dollars collected by team or individual agent because they claim it puts pressure on the agents to collect dollars. Their concern is that it may appear to the public that the agents are not independent, but are only after money.

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**The decision to no longer use “dollars collected” as a productivity measure was related to the IRS no longer using it.**

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Division officials explained that the decision not to use dollars collected as a indicator was also related to an IRS ruling. Apparently, the IRS stopped using dollars collected as a unit of measure in order to appear more receptive to the public.

Finally, we were told by department and division officials that certain legislators had encouraged them not to be heavy-handed with the public. We are unsure how this relates to the division measuring productivity with dollars collected or cases closed. Also, we are unsure what the intent of the Legislature is concerning this point. Therefore, we take issue and believe the measure of dollars collected is an important indicator for management.

### **Division Should Return to Using Key Indicators to Measure Productivity**

Since it is the function of the Tax Commission to collect taxes, dollars collected should be used as an indicator of productivity. In our opinion, division and the department leadership should consult with both the Legislature and the Tax Commissioners and obtain direction regarding the use of this indicator.

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**Because it is the division’s goal to collect taxes, we believe they should return to using “cases closed” and “dollars collected” as productivity measures.**

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Until such time, we believe that the division should use cases closed as a unit of measure for productivity and accountability. As mentioned, when we initially requested data regarding the number of cases closed per agent and team, we were told that no data was available. However, management agreed to do a special computer run to obtain the data. The special run of cases closed by team and individual showed a surprising low number of cases closed (compared to previous years). This prompted management to ask for the run on a regular basis. Also the division was working some bugs out of the program to ensure they were getting credit for all cases closed. Division management already agrees that this

indicator is important and should be part of any future determination of productivity and accountability.

### **Current Productivity Measure Is Too Broad to Be Effective**

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**Difficulty in determining what constitutes a “quality contact” makes it hard to use as a productivity measure.**

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Another reason we became concerned about the use of quality contacts was that when reviewing case files we noticed a broad difference in the interpretation of what was being counted as a contact. For example, some contacts take as little as a few minutes to call a client and when he/she does not answer, the agent can leave a message on an answering machine. After making a notation in the computer system, the agent can then count this as a quality contact, although it took just a few minutes. Meanwhile, another agent can have a lengthy discussion with a client, followed by action such as processing a legal document or develop a payment contract, all of which can take the better part of an hour.

Such a sizeable difference in time requirements makes the concept of a quality contact questionable because agents may be motivated to just make contacts rather than take the actions necessary to move a client to closure.

For example, an agent that makes many contacts may appear more productive in this system than another agent making far less contacts during the same period of time. But, the agent making large numbers of contacts may actually not be moving as many cases to completion while the second agent that appears slower and less productive may be closing more cases or may be responsible for collecting more delinquent tax dollars.

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**In some cases, different agents were making calls to the same taxpayer without moving the case toward closure because they get credit for contacts, not case closure.**

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**Case Review Shows Concern with Quality Contact Measure.** Our review of tax records revealed some indication of the concern of using quality contacts as a measure of productivity. For example, cases coming from the CACSG case pool, agents may make calls and leave messages to the same client, month after month, with no action being taken. This occurs until one agent finally initiates a legal document taking action against the taxpayer.

In talking to one agent who initiated legal action, we were told that he had no choice but to take the legal action, which should have been done months ago, but the other agents were more interested in just getting

credit for contacts and not moving the delinquent tax case forward. This agent went on to say that once he took the legal action, the system automatically assigned the case permanently to him. Consequently, an agent may feel he/she has too many assigned cases and does not want to take any action that will increase their assigned workload.

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**Division management agreed that the “quality contact” is not consistently applied and that some agents concern themselves only with contacts.**

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We took a number of these cases to the division director and explained the problem. He agreed that many of the actions taken by the district agents were not consistent with the quality contact concept. We asked what would be done to better control agents reporting such ineffective contacts. He explained their quality contact program to us and how some of each agent’s contacts are tested by supervisors and the agents are rated on what percentage of contacts are deemed as quality contacts.

We did not test the supervisory review of the quality contacts since we do not agree with the entire measurement program and it would have made little sense to do further work. However, we do not believe the supervisory testing provides assurance that contacts made are really quality contacts. Still, the real problem is that quality contacts are not a true measure of productivity because they do not measure what the division wants to achieve.

### **Measuring Quality Contacts May Not Contribute to Efficiency**

We also believe using quality contacts as a unit of measure may actually contribute to a less efficient operation. This concern is based upon observations we have made during months of working with the collections agents.

As part of our review, we sampled various tax cases. During this work, we interviewed the collections agents involved in each case. After months of working with many agents, we began to notice a trend: some collections agents were almost always available and at their desks in the mornings, but in the afternoons, some were involved in idle discussions with coworkers, or were otherwise hard to find.

We found it difficult to locate some agents in the afternoon, who had not left for the day, but were somewhere in the building. On a few afternoons we held audit team meetings in the Tax Commission’s cafeteria and noted collection agents in the cafeteria for what appeared to be an

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**Using the “quality contact” measure negatively affects productivity because of the ease of obtaining the minimum number required each day.**

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**There seems to be little incentive to work beyond the low standard of 8–10 quality contacts per day.**

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extended period of time. We discussed this with one supervisor who suspected these agents were from his team and said the behavior had been a problem for some time. Consequently, our audit team simply stopped looking for agents in the afternoon or attempted to make an appointment with them to ensure they would be available.

What we believe to be happening with some agents is that after they complete their eight to ten quality contacts in a day, they subconsciously believe they have done a day's work. It becomes easy, then, for them to rationalize that it is acceptable to do things other than work. With no incentives to work beyond the low standard of eight to ten quality contacts, this is not surprising.

Of greater concern is that we also believe that the district agents, as a whole, are not as productive as they should be. This is evidenced by comments made by other employees in response to our employee satisfaction survey discussed in Chapter VII. A number of employees made unsolicited comments about the low or questionable productivity of the district agents.

We informed management of these concerns about the afternoon work ethic of some of the district agents and even asked them to perform follow-up observations. Later, they agreed that they were concerned about the same issues. However, management stated that their current system did not provide sufficient documentation regarding individual accountability or productivity to allow them to take action against an individual based on a lack of performance. This provides another reason why new measures are needed.

Therefore, we recommend that management change their unit of measure to "cases closed" and/or "dollars collected" and other indicators as they see fit. We believe using these measures in conjunction with realistic expectations will improve performance of the district agents. Next, we discuss the division's need to review workload assigned to collections agents.

## District Collections Agents Should Manage More Cases

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**Workload given to the district collections agents is below capacity; agents are managing fewer cases than they could be.**

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**Tax Commission officials requested additional collectors when existing workload capacity was not yet filled.**

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**Although we point out that workload issues should have already been addressed, we acknowledge that the division has cooperated with us in our review.**

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The workload assigned to the district collections agents is significantly below their capacity, which means the agents are managing far fewer cases than they are capable of processing. This is largely because the new case management system, CACSG, does not distribute enough collections cases to the districts to keep the collections agents fully productive. Division management has not adjusted the CACSG system parameters to direct more cases to the districts, even though the system was implemented four years ago. Consequently, the collections agents are processing all the cases in the system but can only work the cases that are available. Management should determine whether the workload for district agents needs to be increased or whether existing agents should be reassigned to other functions.

This workload problem creates two concerns. First, it impacts the Tax Commission's efficiency in collecting delinquent taxes. Second, we are concerned that, in recent years, the Tax Commission has discussed the idea of increased legislative funding to hire additional collections agents when existing workload capacity was not yet filled. Given the workload and productivity concerns identified in this audit, the Tax Commission should not consider staffing increases in collections until they have fully utilized existing staff.

### **Workload Problems Should Have Already Been Addressed**

During the course of this audit, division management has indicated their desire to improve efficiency by participating in our workload analysis. Although they have not completed an independent analysis of workload prior to the audit, they have provided valuable data and even assisted in our analysis during the audit. Furthermore, we should note that, almost without exception, division management and staff have been very cooperative throughout the entire audit process.

However, we believe workload problems should have been addressed earlier. The first implementation of CACSG was in March 1998, more than four years ago. We find no evidence that management was aware of the workload problems among the district collection agents prior to this audit.

**Working Both “Pooled” and Assigned Cases is Problematic.**

Since the implementation of CACSG, the division has utilized a pooling concept to process about 70 percent of the delinquent tax accounts sent to the districts. Many of these pooled cases are routed directly to the districts. When the collections agent works a case from the pool, the computer driven system assigns them the next case in the system according to a priority designation programed into CACSG. Consequently, the agents cannot control which case they will process. Over a period of several months, any one pooled case may be processed by numerous agents.

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**Agents work both assigned cases and cases from a work pool. We believe the pooled environment is less effective than individually assigning cases.**

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The pooled system is dependant upon each agent entering good case history notes into the CACSG management system, so the agent that follows will have a clear understanding of what needs to be done next. However, since some collections agents do not always make good case history entries, the pooled environment can lead to numerous problems. In addition, since so many agents can “touch” (process) a case, it is difficult to clearly determine the productivity or accountability of an agent. Concerns in these areas will be discussed later in this chapter.

The remaining 30 percent of the delinquent tax cases processed by the districts are cases that are assigned to specific agents. Typically, the assigned cases are delinquent tax collection cases for higher dollar amounts. These cases often have more contacts per month and are processed more aggressively than pooled cases. In contrast to pooled cases, assigned cases have one assigned agent managing the case. With an assigned case, the agent has the advantage of knowing exactly where the case is and what needs to be done next. We believe that assigning cases is a more productive system because each agent is more accountable for each case. A discussion of the benefits of assigned cases occurs later in this section.

**CACSG Has Benefitted the Difficult Task of Collections.**

As discussed in our recent report, “A Performance Audit of the UTAX Project” (Report 2003-02), we believe that CACSG is a sound collections system with many features that will greatly benefit the Tax Commission in the years to come. The system does, however, still need further controls and enhancements as discussed in this report. This audit also made the audit team aware of the difficult assignment the Tax Commission and employees have collecting delinquent taxes. The CACSG workload is enormous, with active cases exceeding 70,000, as of December 2002.

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**As pointed out in our recent audit of UTAX, the new collection system (CACSG) has benefitted the division. However, it does need further controls and enhancements.**

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What makes this workload difficult is that many of the taxpayers are hard to find and the tax files often have unreliable addresses and/or contact phone numbers. The agents need the best tools available to locate and notify delinquent taxpayers. We believe, with the CACSG system, the Tax Commission is moving in the right direction.

### **Collections Workload Needs to Be Adjusted**

In spite of CACSG's impact, it is clear to us that workload needs to be adjusted between sections that collect delinquent taxes. We examined case loads processed by the agents in five of the 19 sections (four district collection sections and the bankruptcy section) within the division. First, we discuss workload concerns within the four collections sections (districts). This discussion concludes that workload needs to be adjusted or redistributed between the collections sections within the division.

In Figure 15, we show the average case load per agent within the collections districts over the last 10 months (January 2002 through October 2002).

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**Workload needs to be redistributed between collections sections within the division.**

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**Figure 15. Average CACSG Case Load Per District Agent: October 2002 Back to January 2002.** Agents are managing an average of 106 cases per month and have increased workload from an average of 98 cases in January 2002 to a high of 116 case in September 2002.

Month 2002	CACSG Pooled Cases	CACSG Assigned Cases	Total Cases in Districts	Percent CACSG Cases Pooled	Average Cases Per Agent
October	2,668	1,094	3,762	71%	113
September	2,717	1,142	3,859	70	116
August	2,704	1,081	3,785	71	113
July	2,616	1,139	3,755	70	112
June	2,454	1,053	3,507	70	105
May	2,341	986	3,327	70	100
April	2,401	1,033	3,434	70	103
March	2,198	1,127	3,325	66	100
February	2,324	987	3,311	70	99
January	2,249	1,035	3,284	68	98
<b>Average</b>	<b>2,467</b>	<b>1,068</b>	<b>3,535</b>	<b>70%</b>	<b>106</b>

Figure 15 indicates that for the 10 month period tested, the agents had an average workload of 106 cases per month. The workload averages range between 98 and 116 cases per month. However, during the first month of 2002, the average workload for a collections agent was only 98 cases per month. CACSG documentation is not available to know what the averages were prior to this time.

On a positive note, the number of cases managed has increased during the past ten months of 2002, from an average of 98 to 113 cases managed. This amounts to an increase of 15 cases per collection agent per month, or approximately a 15 percent increase in workload. We believe this increase is due in part to the fact that collections agents were aware that management and the audit team were testing the average workload

**The number of cases managed has recently increased. This may be partly due to agents' awareness of being measured.**

processed by the agents. We believe this 15 percent increase in average monthly workload is but a small indication of the actual increase in workload that can be attained.

### **Caseloads Can Increase Despite Difficulty in Determining Optimum Level**

The application of the CACSG system, coupled with the Tax Commission's collection methodology, makes the Utah system somewhat unique. Therefore, it is difficult to determine the exact case load a collections agent under the Utah system is capable of managing. However, we believe that a collections agent in the current Utah system could manage approximately 200 cases. We base this determination on workload estimates provided by the CACSG consultant and management's own estimate of the average number of cases managed by an agent prior to the implementation of CACSG.

**CACSG Consultant Suggested Caseload Increase.** The consultant that supported the implementation of the CACSG system stated that with the new system implementation, each collections agent should be able to manage more cases. This indicates that less collections agents are needed to do the same monthly workload. This consultant was not sure how many cases an agent could manage because Utah's system utilized both pooled and assigned workload. However, given the fact that the agents are working pooled cases and they spend far less time in the field, but are on the phone making contacts, she believed that agents should manage far more cases than they use to manage.

Using this information we estimate that an agent should be able to manage at least 200 cases per month compared the current average case load of 106 per month. We acknowledge that assigned cases receive more attention and thus reduce the total number of cases an agent can work.

**Historical Analysis Gives Basis to Caseload Level.** A second analysis of case load, based on historical data, corroborates our above estimate. This historical analysis comes from discussions with agents and management regarding the number of cases an agent managed prior to the CACSG implementation. Seasoned officials from both the department and division management stated that agents processed about 200 cases prior to CACSG.

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**Because of recent changes, it is hard to find the optimum caseload level. But, we still believe it should increase.**

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**We estimate an agent should manage at least 200 cases per month versus the current average of 106.**

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It should be noted that prior to CACSG, some cases were counted differently. For example, it is estimated that about 20 to 30 percent of the business cases had multiple business locations or multiple delinquent taxes (for example, delinquent sales taxes and delinquent withholding taxes). Consequently, prior to CACSG, 20 to 30 percent of these business cases were counted as multiple cases. But under CACSG, these multiple cases are consolidated under one business case account. So, all delinquent business tax cases now under the CACSG system are now counted as a single case, where prior to CACSG, some could have been reported as two or more cases.

However, this difference is off-set by the fact that with the implementation of CACSG, the job function of a collections agent was changed significantly, allowing them to manage far more cases. Prior to CACSG, the agent spent a lot of time visiting the delinquent taxpayers at their place of business; whereas now, the agent makes most contacts by telephone and generally does not make actual visits but once or twice a month. This change resulted in a significant increase in the number of cases an agent can manage. We believe this information also confirms our earlier estimate that an agent should be able to manage about 200 cases per month.

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**CACSG consultants advised the division to reduce the number of agents which would revise caseloads, but the advice was not heeded.**

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**Caseload Levels Were Not Revised After CACSG.** Finally, during implementation of CACSG, the AMS (American Management Systems) consultants advised Tax Commission management that they should reduce their number of collections agents. This advice was based upon the ability of the agents to manage more cases because of the use of the pooling concept and the fact that agents did not have to go into the field as often but relied more on telephone contacts. At that time, management was uncertain how CACSG would operate and consequently did not reduce agents or change caseloads.

We can understand managements' position, but based upon these discussions, we would have expected management to closely monitor the collections agents' workload and adjust workload as it became necessary. It is now four years since the CACSG implementation and management should have been aware of the workload concerns identified in this chapter. We agree with the CACSG consultants, that agents should manage more cases, but we are unsure why management did not implement the consultants' advice.

It is clear to us that using the current workload average of 106 cases per agent (with 70 percent of the workload as pooled cases) is insufficient and needs to be increased to a larger number such as 200 cases, or some other number determined by division management. During the audit, management agreed with this analysis and was in the process of making changes to workload and the number of “assigned” cases versus “pooled” cases, as shown in the next section.

### **Division Now Experimenting With “Assigned-only” Cases**

In December 2002, the audit team approached management of the division and explained to them the deficiencies of using a pooled environment for working cases. We were concerned that the concept of pooling gave management no control or accountability over the individual agents or teams and reduced productivity. We suggested that management consider reducing the number of pooled cases and increase assigned cases. (At this same time, we also told management that the measure of quality contacts discussed earlier, was a poor unit of measure and they should consider going back to cases closed or dollars collected in order to increase productivity and performance of the agents, as discussed earlier in the chapter.) In January 2003, management made a change—eliminating, on a test basis, all pooled cases in one of the four districts, District 2. All agents in District 2 now have only assigned cases.

Before the change, District 2 agents were closing a combined average of 69 cases per month. Now, after two months of working on wholly assigned cases, they have averaged closing 151 cases—a 119 percent increase in closed cases. Figure 16 details the positive impact which has already occurred in using wholly assigned cases versus a pooled case environment.

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**The division has now set up a “test district” which will work only assigned cases. This occurred after the audit team approached management.**

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**After only two months of case work, the test district has an increase of 118% more closed cases.**

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**Figure 16. Change to Wholly Assigned Case Environment in District 2 Shows Marked Improvement.** The number of cases being closed increased by 118 percent when agents worked assigned-only cases.

<b>Months</b>	<b>Before: Average Cases Closed (Pooled)</b>	<b>After: Average Cases Closed (Assigned)</b>
July - December 2002	69	
January - February 2003		151
<b>Percentage Increase</b>		<b>119%</b>

To summarize, in this section our analysis shows that the district collections agents need more workload to maintain an efficient operation, which is substantiated by the results of the test district data in Figure 16 above. In the next section, we show a contrast to the low workload in regular collections divisions. Agents processing collections cases which have entered bankruptcy seem to have far more work than they can complete.

### **Bankruptcy Section Appears Understaffed**

While the total number of collection agents assigned to the districts could be reduced, the section which processes the bankruptcy cases may be understaffed. The problem is compounded by the fact that bankruptcies in Utah have increased significantly during the past few years, while the Tax Commission has been forced to reduce its staff. Since 1995, the total number of annual bankruptcy filings has more than tripled. Much of the increase has occurred at a time when the state has experienced revenue shortfalls and while employee reductions are taking place. Consequently, the Tax Commission has not been able to provide sufficient staff to meet the increasing workload. This results in employee dissatisfaction and some bankruptcy cases not being processed as thoroughly as they should be.

**In contrast to the district collections agents' workload, we believe the bankruptcy section appears understaffed.**

It should be noted that division management recognizes this problem and has taken steps to find more efficient processes and procedures in bankruptcy in order to maximize existing staff. Still, the burgeoning growth in bankruptcy filing presents a challenges to match the growth with staffing needs.

### **Utah Bankruptcy Filings Are Rapidly Increasing**

In 1995, the Tax Commission processed 7,262 bankruptcy filings compared with 22,052 in 2002. This is an increase of about 14,800 or 204 percent. Approximately half of this increase took place in the first five years (from 1995 to 2000); but of concern is that the other half of the increase occurred in the last two years (2001 and 2002). Studies have indicated that bankruptcy filings have been increasing nationwide for a number of years and Utah is at the forefront of this trend. In June 2002, Utah was ranked number one with the highest rate of filings in the nation.

According to the American Bankruptcy Institute (ABI), the national average for fiscal year 2002 was one filing per 68.9 households. Utah's average was one filing per 33.6 households, more than twice the national average. The statistics show that from 1995 to 2002, Utah's total bankruptcy filings increased about 29 percent per year. During approximately the same time period, total bankruptcy filings in the U.S. increased by about 10 percent per year. Bankruptcy filings in Utah are increasing at a rate 3 times faster than the national average and it is evident by the significant workload growth experienced by the Tax Commission. This increase in bankruptcy filings is graphically shown in Figure 17.

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**Between 1995 and 2002, bankruptcy filing increased from 7,262 to 14,800—an increase of 204%.**

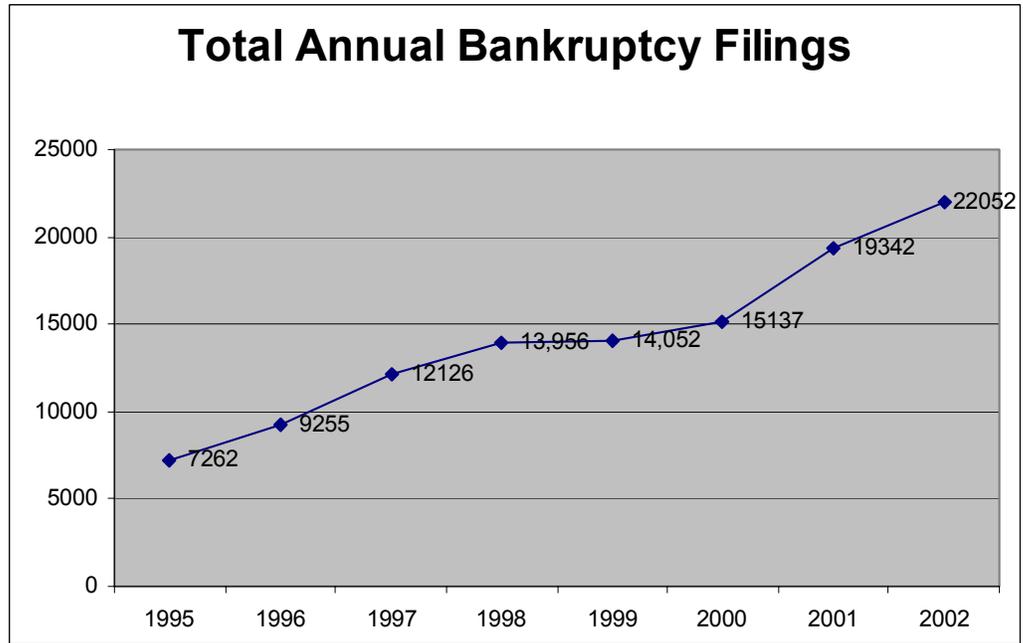
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**As widely reported in the media, Utah has the highest bankruptcy filing rate in the nation.**

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**Figure 17. Utah’s Total Annual Bankruptcy Filings Have Been Increasing.** Since 1995, total bankruptcy filings in Utah have increased 204 percent. About half of this increase came in the last two years.



Source: United States Bankruptcy Court for the District of Utah

**Staffing levels in the bankruptcy section have not kept pace with bankruptcy increases.**

The staffing level for processing bankruptcies in 1995 included 4 technicians, 4 tax compliance agents, and one supervisor. This equates to about 9 FTEs processing 7,262 filings, roughly 807 cases per full-time employee. Over the years, the staffing levels have not increased sufficient to keep up with the workload. As of August 2002, the number of staff available to process the bankruptcy filings was about 10 FTEs, an increase of only 11 percent. This equates to an annual workload of 2,205 cases per full-time employee in order to complete the processing of all filings.

**Increased Bankruptcy Filings Strain Collections Agents**

In our opinion, the Tax Commission may not have sufficient staff to process the number of bankruptcy filings using current processes and procedures. Consequently, within the last couple of years, something had to be sacrificed in order to keep up with the bankruptcy calendar of the courts. The sacrifice has been in the amount and thoroughness of research done on each case. This means that some taxpayers whose cases are

**In our opinion, the division does not have sufficient staff to process the number of bankruptcy filings.**

passing through the bankruptcy process could owe the state money for delinquent taxes but it is never identified.

The bankruptcy court has ordered the Tax Commission to research and code every bankruptcy filing as to whether or not the filer must file, whether the taxpayer has a delinquent state account, and how much is owed. This research and coding must be done prior to a calendar date set by the court for hearing. Calendar dates are issued every week and hearings are typically 45 days from the filing date. It is during this period, prior to the hearing date, when the bankruptcy section does most of their work. It takes a significant amount of time to research and code each filing within the 45 day period.

Once the filing is confirmed, an account may be set up and a collection schedule can be determined. The collection process generally takes between three to six years, during which time the case may be dismissed or discharged. Some bankruptcy cases may be settled more quickly but others are more complicated and take more time.

The bankruptcy process is dynamic and while many accounts are collected and resolved, there is a continual surge of new filings each month to keep a full workload of active cases in the system. Cases may continue to be active in the Tax Commission's system for as long as six years.

We understand management's problem with staffing bankruptcy cases because some of the steepest increase in case workload occurred since the year 2000, during which time the state was also dealing with budget cutbacks. Consequently, in the last two years, the division experienced a 46 percent increase in bankruptcy workload while the state cutbacks allowed no increase in staffing. This created a significant workload problem causing employees to feel frustrated and upset, as shown by our employee satisfaction survey which we briefly reference in the next section.

### **Some Bankruptcy Agents Are Dissatisfied**

In many of the employee satisfaction surveys returned from the bankruptcy section, the employees indicated that they were overworked due to cutbacks in staff and increasing workloads. Some responses

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**It is not surprising that bankruptcy agents reported dissatisfaction on our employee satisfaction survey. (See Chapter VII.)**

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**Management needs to realign staffing to more accurately reflect work demands among collections districts and bankruptcy.**

**Productivity and accountability issues also need to be examined.**

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indicated that bankruptcy cases had been increasing monthly over the past several years and that each employee was doing the work of two people. One survey reported that several bankruptcy staff had left the section and they had not been replaced. All of this has placed a burden on the remaining staff to do more work with less resources.

To summarize this chapter, we believe we have identified workload concerns in five of the 19 sections within the division. Many of the agents in the four district collections sections do not have sufficient workload. In contrast, the agents in the bankruptcy section seem to have more work than they can accomplish given the current processes and procedures, which we mentioned are under review. Hence, management needs to examine workload levels throughout the division and realign staffing to more accurately reflect work demands and staffing needs.

Furthermore, as discussed earlier, the division has significant problems holding employees accountable and maintaining productivity. Although the CACSG system and other changes in work philosophy were made over four years ago, these problems had yet to be identified or adequately corrected. Contributing to the overall productivity problems of the division is what we believe to be a lack of trust and poor communication between employees and management (which is discussed in Chapter VII). We believe these are serious and significant issues which will require involvement by department-level executives in order to be rectified.

## **Legislative Direction May Be Needed on Aggressiveness of Tax Collection**

It could be argued that our audit findings, which comprise Chapters III, IV and V, not only illustrate some ineffectiveness and inefficiencies, but also illustrate a lack of aggressiveness by the Tax Commission in some collections and compliance areas. For example, in past chapters we outlined the Tax Commission's:

- lack of a lien renewal procedure which would allow continued collection on cases meeting levy criteria if the procedure were in place,
- absence of compliance procedures in select areas,
- inequities in collections workload, and
- problems with overall productivity in collections.

Ironically, while our principal audit request was to follow-up on allegations of taxpayer mistreatment by the Tax Commission (allegations which we cleared), we agree that the above list of findings may actually call attention to the Tax Commission's *lack* of aggressiveness with delinquent taxpayers, in some situations.

Certainly, we do not question the Tax Commission's philosophy to be customer friendly, or the Taxpayer Services Division's specific motto to be "fair but firm." However, as of December 2002, there is \$265 million in outstanding potential state revenue in the thousands of active delinquent tax collections accounts. Because of this substantial potential revenue which remains uncollected, it seems an opportune time for the Legislature to determine whether current Tax Commission collections policies and procedures are being pursued aggressively enough.

Based on our limited research, currently it appears that the Tax Commission falls in line with most other states in terms of overall collections aggressiveness. But, some Tax Commission officials have, nonetheless, suggested that they could actually be more aggressive.

We have reviewed documents to determine legislative intent for the Tax Commission's collections function. We found that legislation in the early 1990s clearly gave the taxpayer more standing before the Tax Commission. For example, the Notice of Lien used to be sent by regular U.S. mail, but the Legislature added the requirement that it be sent through certified mail to better ensure taxpayers would receive the notice. But, we have not found any *recent* directives from the Legislature concerning philosophy and policies in tax collection. While some individual legislators may get involved in setting collections policy, they are not speaking for the entire Legislature. So in short, we are uncertain whether the Legislature agrees or disagrees with the current direction the Tax Commission takes with delinquent collections.

An in-depth review of the overall direction of the Tax Commission (the aggressiveness, or lack thereof) in collections exceeded the scope of our audit. But, in light of our findings and because this is a clear policy issue, we believe it would be appropriate to refer the discussion of the Tax Commission's level of aggressiveness—particularly with regards to delinquent tax collections—to the Legislature.

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**We are uncertain whether the Legislature agrees or disagrees with the current direction of Tax Commission collections. We believe a legislative discussion would be both timely and appropriate.**

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## Recommendations

1. We recommend that the Tax Commission’s executive and division-level management work together to develop measures (such as “cases closed” and/or “dollars collected”) of productivity and accountability to be used within the collections sections, which would replace the “quality contact” measure.
2. We recommend that the Legislature and the Tax Commissioners determine whether the measures of productivity and accountability recommended by management are acceptable.
3. We recommend that the Taxpayer Services Division examine the workload among district collections agents. Particularly, the division should:
  - review the case workloads of the district collections agents and consider increasing their managed cases.
  - consider making all cases wholly assigned, rather than working from a pooled environment,
  - consider increasing staff to the bankruptcy section.
4. We recommend that the Tax Commission *not* consider staffing increases in collections until they have fully utilized existing staff as outlined in Recommendation 3.
5. We recommend the Legislature consider reviewing the appropriateness of the Tax Commission’s level of aggressiveness, particularly as it pertains to collection of delinquent tax. We further recommend the Legislature determine whether additional policy direction is needed for the Tax Commission.

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## Chapter VI

# Inadequate Qualifications and Costs of Incentive Awards Are Concerning

During a period of district workload inefficiency and productivity problems, discussed earlier in Chapter V, almost all employees (99 percent) of the Taxpayer Services Division (division) received performance or incentive compensation in the form of cash or administrative leave. This scenario presents two concerns:

- the performance and incentive compensation does not appear to be based on criteria of excelled performance, and
- it comes at a time of severe state budget shortfalls.

In 2002, the Tax Commission either paid-out in cash or gave administrative leave to employees as incentives awards valuing about \$369,564. This total consisted of \$137,001 cash incentive awards paid to employees in calendar year 2002 and \$232,563 in leave hour incentives (about 9,000 hours of administrative leave) given in fiscal year 2002. Likewise, we also found other state agencies giving costly incentives during current times of state budget shortage.

Clearly, we believe that state incentive and performance awards, when administered correctly, are not only appropriate, but are essential for a healthy work environment. We agree that *select* state employees need and deserve work incentives, but such incentives should be significantly reduced in tight budget times and given with extreme care based upon outstanding or superior productivity. However, we believe this is not the case because the Tax Commission, particularly the Taxpayer Services Division, is giving incentive awards to such a large percentage of their employees.

### Incentive and Reward Programs Lack Control

Over the last two years (2001–2002), the Tax Commission as a whole has given almost 75 percent of their employees a cash award. In 2002, the Tax Commission’s Taxpayer Services Division total was even higher,

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**During down budget times, almost all division employees received incentives. But, the incentives were not based on adequate criteria.**

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**Without question, performance awards are appropriate for employees. But, they must be given based on superior performance; they should also be reduced during tight budget times.**

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**The Tax Commission has given almost 75% of employees a cash award in the last two years.**

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with 99 percent of all division employees receiving an incentive for cash and/or administrative leave. These figures suggest that the Tax Commission’s incentive awards more closely resemble an automatic benefit given to most employees. In our opinion, for incentive and reward programs to be effective, they must be selective and must reward exceptional effort. We are particularly concerned with incentive/performance award management in the Taxpayer Services Division. We believe division management needs to review their incentive program, the Star Award Program, and the performance agreement program known as the Win/Win Performance Agreement.

Also, our concern is that the number of cash incentives seems excessive during times when budgets are significantly reduced and employment positions are being eliminated. Further, in an environment where positions have been eliminated and productivity is less than possible, it makes little sense to give the existing employees so many hours of administrative leave as an incentive.

### **Awarding Majority Does Not Promote Excellence**

Incentive awards are supposed to be tied to superior performance, but appear to be given too frequently and are based on weak standards. Despite the concerns with division productivity and performance discussed in the previous chapter, we found that division management is rewarding the majority of their employees with incentive awards, rather than giving them to a more select few. It is our opinion that many of these awards are not based on exemplary work efforts. Hence, these broadly given awards are not being used as a tool to promote excellence.

An experienced human resource director in one of Utah’s larger state agencies stated the following,

If management rewards employees based on exceptional behavior and the behavior is not exceptional, then management is reinforcing behavior that is mediocre.

The data shown in Figure 18 suggests that Tax Commission controls for incentive and performance rewards need to be reviewed because of the high number of employee recipients.

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**If incentive awards are not tied to superior employee performance, then “...management is reinforcing behavior that is mediocre.”**

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**Figure 18. Cash Awards Given to Tax Commission Employees Are Widely Given.** This figure only includes cash awards; it does not include administrative leave that was awarded to the employees in 2001 and 2002.\*

Year	Total Employees	Employees Awarded	Percent Awarded	Total Awards
2001	813	687	84%	\$231,695
2002	798	513	64	137,001
<b>Two-year Average</b>	<b>806</b>	<b>601</b>	<b>75%</b>	<b>\$184,348</b>

Figure 18 presents award and incentive data for the entire Tax Commission. However, because of the existing productivity problems discussed in Chapter V, we more closely scrutinized the Taxpayer Services Division’s programs, as presented in the following sections.

**Division’s Star Award Program Lacks Controls and Firm Criteria**

According to the Tax Commission’s Star Award Program policy, Star Awards can be given to employees who achieve more than their normal job expectations. We believe the division awards Star Awards in cases where individuals are not necessarily exceeding normal expectations. Employees are being awarded for questionable reasons that have little to do with job performance. Of further concern is that there are no apparent controls on how many awards a person can receive in a given year.

Figure 19 shows examples of justifications given for why individuals received the Star Award. We did find that there were some valid examples for earning an award but, for the most part, the reasons that were given seemed to be what any reasonable employee would do as part of his or her normal job.

**The division gives “Star Awards” to reward performance. While some awards appeared valid, many were given to employees who did not appear to achieve more than normal job expectations.**

**Figure 19. Some Star Awards Given to Division Employees for 2001 and 2002 Seem Questionable.** Employees were rewarded with either \$40 or three hours of administrative leave.

One employee was given a Star Award for the simple task of filling the printer with paper.

Individual	Reason the Star Award was Given
A	For filling a printer with paper and monitoring the fax and print-out documents basket.
B	For assisting with the summer party.
C	Exceeding customer expectations by having a poster printed for use in the division.
D	Helping “cover the phones” during the Christmas party.
E	For spending valuable time without complaint, to score and help with the selection of the employee of the year.
F	For faxing a letter for me because I had to go to a meeting.
G	For excellent work in preparing and helping serve lunch for an employee’s retirement party.
H	For submitting the winning name for the “Name the Newsletter Contest.”
I	Being a positive force in Tax Payers Services. This [agent] has added a spirit of community and pleasantry. Also a fun holiday spirit for the division.

Star Awards are approved or denied by supervisors. But, surprisingly, the division director cannot deny an award.

For a person to receive an award, he or she can be nominated by another employee. The employee’s supervisor can then agree with the reason and sign the award, or the supervisor can deny the award. Surprisingly, the director of the division cannot deny the award if the supervisor agrees with the nomination even if the director thinks it is questionable. The director signs all awards.

A potential problem we found with the Star Award program is that it creates an opportunity for people to nominate their superiors, which may lead to favoritism. Also another potential problem is that it also makes it possible for employees to nominate their fellow employees in hopes that the favor would be returned. Such incentives which help to build a positive workplace would be welcomed *if* the division director was able to approve or disprove such nominations. But, since the director doesn’t, there seems to be no check on such potential favoritism.

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**The frequency of giving the Star Award has gone untracked by both the division and human resources at the Tax Commission.**

---

We asked the director why he has not denied some of the more questionable awards. He responded that it was against policy to do so, even though he knows that some of them are being awarded for the wrong reasons, including the reasons we discussed. He feels helpless because he cannot, as a director, deny a Star Award.

Finally, we are concerned that the frequency of Star Award use has gone untracked. When we contacted the division director to find out how many awards were handed out, he said that the Tax Commission's Human Resources personnel track the totals. But when we talked to Human Resources they said the divisions keep track of their own numbers and were unable to get the totals we needed. In short, neither had any idea of how many of these awards were being granted until we compiled the records for our report.

### **Win/Win Contract Does Not Appear To Award Exceptional Performance**

Similar concerns exist in another performance evaluation tool the division uses for its employees called the "Win/Win Contract." Every quarter an employee meets with his/her supervisor and they set goals for the following quarter that they both feel are attainable for the employee and the group. Unfortunately, administrative leave incentives authorized under the Win/Win Contract are:

- not the most appropriate career incentives,
- not related to "exceptional" effort,
- not directly related to work duties and
- could be excessive because the time is poorly tracked.

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**Incentives used as part of the "Win/Win Performance Agreement" also do not appear to be based on awarding only exceptional performance.**

---

First, because the Win/Win is used as a performance appraisal, the more appropriate incentive for this should be a progression along a career ladder or step increases, rather than administrative leave. Employees should be motivated by career increases instead of administrative leave. Performance appraisals should be used for management to help them determine who should get a promotion or a step increase without having to give administrative leave as a reward to the employees.

Second, some division employees told us that the supervisor ends up determining the new goals without the employee's input. The employee is graded on a "Satisfactory/Fail" basis. If the employee receives a

satisfactory rating, the supervisor can award up to eight hours of administrative leave. Our concern is that the term “satisfactory” does not imply exceptional work. In other words, a satisfactory rating does not mean that the employee is doing exceptional work; instead, it means that the employee is merely doing what was asked of him or her. The rating needs to be “exceptional” because that is the criteria of the policy they are using to reward someone with administrative leave.

Third, we found that the Win/Win awards are given for accomplishing goals which are not directly related to productivity and do not award exceptional performance. The criteria used for the Win/Win performance evaluation is based on the policy from the Tax Commission’s Incentive Award Program which states:

Exceptional performance that has a significant effect on the individual’s immediate colleagues or their work effort, or cost savings of some benefit to the division/department.

We question whether the goals set and met are in the category of exceptional performance. Because almost everyone in the division is receiving administrative leave, it tends to make one believe that you do not have to do exceptional work in order to receive an award.

Fourth, management does not track time given under the Win/Win. Consequently, they have no idea how much time is being awarded. The Win/Win performance evaluation is administered every quarter so an employee can receive up to 32 hours of administrative leave per year. It is up to the supervisor to determine how much administrative leave is awarded.

In light of our findings, and the overall incentive/performance evaluation theories being utilized, the Tax Commission should reevaluate their policies and determine if they are promoting desired goals (such as increasing productivity). We question whether, if so many of the employees in the Taxpayer Services Division are receiving incentives and performance awards, if the awards are truly being given for work which goes above-and-beyond expected duties. This leads us to believe that employees may not be as productive as these awards lead management to believe. Again, the incentive rewards should be based on measurable factors that can be tracked and then rewarded if, in fact, the performance is exceptional.

---

**In our opinion, the Tax Commission needs to review their incentive policies to ensure they are promoting desired goals.**

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## Other State Agencies Are Also Giving Many Incentive Awards

**The Tax Commission is not the only state agency giving many state employees incentive awards in bad budget years.**

Of further concern is that the Tax Commission is not alone in giving many state employees incentive awards. A cursory examination of six other state agencies indicates that incentive awards totaling \$915,755 were given in calendar year 2002. It does not appear that the state has an overall policy or statement encouraging the limitation of such awards during the current tight budget cycle. Because of this, we believe the Legislature may find it productive to have all cash and administrative incentive awards reviewed for recent budget years. We further believe that the Department of Human Resource Management should consider advising agencies to significantly limit incentive awards during the current budget crisis, until a state-wide policy can be developed which would govern incentive awards during budget crises.

Figure 20 shows that the Tax Commission is not the only agency giving out cash incentives:

**Figure 20. Average Bonuses Received Per Person in Calendar Years 2001 and 2002 for Seven Agencies.** This does not include administrative leave that was awarded to the employees.

Department	Bonus Averages CY2001	Bonus Averages CY2002
A	\$ 399	\$ 341
B	620	463
C	977	1,152
D	750	1,008
E	500	523
F	233	236
Tax Commission	337	266

Another concerning issue is that, similar to the Tax Commission, many of the agencies seem to give cash incentives to the majority of the employees. Figure 21 gives the significant total dollar amounts of incentives that were given out by the six agencies and the Tax

Commission during lean budget times in 2001 and 2002. It also shows the percentage of employees receiving incentive awards.

Five of the six agencies reviewed are giving over half their employees cash incentives during down fiscal times.

**Figure 21. Percentages of Employees Receiving Cash Awards From Seven Different Agencies and Award Totals.** The percentages were determined by dividing the total number of employees receiving the cash incentive by the total number of employees\* within the agency.

Agency	CY 2001		CY 2002	
	Percent	Total Awarded	Percent	Total Awarded
A	98%	\$ 293,043	99%	\$ 241,551
B	22	247,466	17	145,596
C	100	41,043	100	50,690
D	69	149,347	79	213,855
E	59	75,090	53	68,022
F	64	64,570	59	59,040
Tax Commission	84	231,695	64	137,001
<b>Total Awarded</b>		<b>\$1,102,256</b>		<b>\$ 915,755</b>

\* To determine the total number of employees a date was randomly selected for each year and a count was taken.

Some incentives in other agencies seem excessive but may have adequate justification.

To expand on Figure 21, we show in APPENDIX C, a detailed frequency distribution of the cash incentives for “Agencies A–F” and the Tax Commission. Most incentives shown in this appendix, for the six agencies plus the Tax Commission, were given in amounts under \$500 each. Our data shows that in 2002, there were 1,606 individuals in the seven agencies who received these cash incentives under \$500. However, some incentives from APPENDIX A appear excessive. As we met with representatives from each of the six agencies to review the data, we discovered that there may be adequate justification for some of the larger incentive amounts. While the agencies generally concur with the data we present, the detailed incentive amounts have not been audited. It is likely that much of this data will be reviewed in a larger, state-wide audit of incentive and leave use in state agencies.

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**Employees should be rewarded *if* performance is exceptional. But with so many being rewarded, it is unlikely all awards are so based.**

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To conclude, as stated earlier, we agree that employees should be rewarded, but only *if* their performance is exceptional. However, with such high percentages of the employees receiving cash incentives at the Tax Commission and in the number of agencies we examined, as well as some excessive amounts given, it is hard to believe that all these awards are truly being earned based on substantial criteria. This is of particular concern during troubling budget times for state government.

## **Recommendations**

1. We recommend the Tax Commission review the incentive and performance award programs, particularly within the Taxpayer Services Division. We strongly recommend that the review criteria include:
  - basing the incentives and rewards on exceptional performance of work-related duties,
  - limiting frequency of incentives and rewards,
  - giving the division director approval power, and
  - closely monitoring the fiscal impact of incentives and rewards, particularly during state budget scarcity.
2. We recommend the Department of Human Resource Management review the reasonableness and frequency of recently given employee incentives within state agencies.
3. We recommend the Department of Human Resource Management develop guidelines for appropriate use of cash and administrative leave incentives during lean budget years.
4. We recommend the Legislature consider a full audit of whether state agencies' use of cash and administrative leave incentives during recent lean budget years was appropriate.

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## Chapter VII

# Tension Between Division Staff and Management Needs to Be Resolved

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**Because tension between Taxpayer Services Division's employees and management is negatively affecting productivity, we conducted a survey to determine extent.**

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Long-held tension between many employees in the Taxpayer Services Division and their division management team needs to be resolved. This tension has taken a seeming toll on division productivity and has contributed to a negative work environment. It appears to be based in a major breakdown of communication and trust between division employees and management. In fact, some complaints from employees were severe enough to allege that some delinquent taxpayers were being given preferential treatment by management. While our audit review shows these allegations to be unsubstantiated, other concerns about case management oversight and division procedures were revealed, as has been discussed in the past chapters of this report.

In an attempt to validate these concerns, and at the request of Tax Commission officials, we surveyed division employees regarding their job satisfaction. This survey focused on employees' view of two-way communication and trust, and how they were valued in the eyes of division management. Overall, the results show that a majority of respondents have negative views of division management, with 65 percent of respondents (78 of 120) *disagreeing* that "management helps contribute to a positive work environment."

---

**Correction of the strained relations between division employees and management seems beyond division control.**

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Admittedly, we are unsure of the exact cause of the employee dissatisfaction with management. In fact, determining the source proved to be a very time consuming area of our audit, as we were approached time-after-time by concerned employees. It became apparent that unsettled relations with management were consuming the time and energy of these employees, which undoubtedly was affecting productivity. Therefore, it is reasonable to connect the employees' dissatisfaction with the procedural, workload and accountability problems discussed in earlier chapters. Furthermore, we believe our recommendations from past chapters for division-wide improvements may help the work environment. However, in our opinion, correcting the relations between division employees and management may be beyond division control. It is more than likely that intervening action by department-level executives is needed to bring greater harmony to the division.

Before presenting our analysis of the division survey results, we discuss our review of cases that some Tax Commission employees forwarded to us for review.

## **No Evidence to Substantiate Internal Complaints of Preferential Treatment**

Some confidential sources provided us with cases where they alleged that members of division management were giving preferential treatment to some delinquent taxpayers. These 51 cases were to have contained evidence of their allegations, but our review could not find sufficient evidence to support these claims. Because our 1995 legislative audit found some instances of preferential treatment, we believe this conclusion is a positive finding which shows improvement at the Tax Commission. However, several of the cases exhibited other procedural concerns such as liens not being renewed and levy sources not being pursued. Because these issues were discussed in earlier chapters, we will not detail them herein.

Based on discussions with employees and our case review, the following scenarios generally define “preferential treatment:”

- a taxpayer received an unwarranted waiver of delinquent tax, penalty and/or interest,
- a taxpayer had a case sent to bad debt status prematurely (which essentially “writes-off” the delinquency),
- a taxpayer had a lien (or liens) released prematurely—before delinquent tax was satisfied, or
- a member of division management instructed a collections agent to perform any of the above forms of preferential treatment or, to perhaps, discontinue working a case all-together.

Over the course of several months, we received 51 cases from Tax Commission employees alleging these forms of preferential treatment by division management and even by some executive management. We concluded that none of the cases we reviewed had sufficient evidence to suggest preferential treatment was occurring by division management. Also, it should be noted that as the audit team reviewed case after case for other issues, there were no red flags which would have led us to look into forms of preferential treatment.

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**Some staff alleged that division management was giving preferential treatment to taxpayers.**

**However, our review of 51 cases referred by employees did not substantiate the allegations.**

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**We cleared all cases of the alleged preferential treatment. Still, some cases had evidence of procedural weaknesses discussed in previous chapters.**

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In our review, there were several reasons we believe were valid for concluding that a case could be “cleared” of preferential treatment by our audit team. Several of these reasons include:

- Case had tax delinquencies which were paid.
- Case is currently in appeal before the Tax Commissioners, so collection action is suspended.
- Case is active with liens in place to secure delinquencies. (Note: any case that is in “active” collections status cannot be considered to be a premature bad debt.)
- Case was approved as an “offer in compromise” (OIC) which appeared to be best collection solution. (An “OIC,” is the settlement of a tax liability for less than full payment, when certain criteria is met.)
- Case is still active, being worked by an outside collection agency, is active under a Payment Agreement, or is active under the Garnishment Section.

Even though we cleared cases in our review, it is difficult for the audit review to act as an unequivocal guarantee that no preferential treatment occurs. But, when we could find no evidence in 51 separate cases, even from internal sources, it is reasonable to conclude that preferential treatment is not generally occurring at the Tax Commission. Next, we present the findings of the survey we administered to the Taxpayer Services Division, as a follow-up to division employees’ frequent complaints to us about division management.

### **Survey Responses Show Many Staff Are Dissatisfied with Division Management**

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**There were 122 of 149 (82%) of division staff who responded to our employee satisfaction survey. Results show that negative attitudes toward management are widespread.**

---

Overall, the scaled responses from division employees to statements about division management on the “Confidential Employee Satisfaction Survey” were negative. Also, optional written responses received from 62 of 122 respondents were overwhelmingly negative, with only eight written comments that were either positive or neutral concerning management. The overall response rate to the survey was 82 percent, with 122 respondents out of 149 surveys distributed to all division employees. (A complete copy of the survey cover letter and the survey instrument are contained in APPENDIX A and APPENDIX B.)

---

**Agency officials asked us to gauge the extent of dissatisfaction after several employees approached us with complaints against management.**

---

The survey was administered after the number of employees bringing confidential concerns to the audit team grew and grew. This led to agency officials asking if we had a way to gauge the extent of division dissatisfaction. Hence, we performed a division-wide satisfaction survey to determine the level of trust and communication between employees and management.

Confidential employee satisfaction survey forms were delivered to 149 employees within the Division of Taxpayer Services. Surveys were not delivered to division management, although they were shown a copy of the survey instrument. The survey contained ten statements to which the respondents would mark their level of agreement or disagreement. Six of the ten statements were meant to determine the employees' satisfaction with management, three statements addressed workload and job performance measures and a final statement asked for agreement or disagreement with overall job satisfaction.

### **Survey Responses Were Negative Toward Management**

In our opinion, responses to five of the ten survey statements showing a low percentage of agreement, indicate dissatisfaction with management. In fact, responses to these five statements (numbers 1, 3, 4, 5, and 9) became thematic of the attitudes toward management. In contrast, 72 percent (86 of 119) of the respondents agreed or strongly agreed with Statement 10 which reads: "Overall, I am satisfied with my job." More of the survey results are shown in Figure 22.

---

**Most respondents indicated a level of dissatisfaction with management, but expressed a level of satisfaction with their jobs.**

---

**Figure 22. Responses Concerning Attitudes Toward Management Were Negative.** The majority of respondents who “disagreed” or “strongly disagreed” on statements 1, 3, 4, 5 and 9 **(see reverse text)** show that there are negative attitudes about management.

Survey Statement	Strongly Agree or Agree	Strongly Disagree or Disagree
<b>1. I feel that management values me as an employee.</b>	<b>50%</b>	<b>50%</b>
2. Management trusts my work and behavior.	59	41
<b>3. I trust division management.</b>	<b>37</b>	<b>63</b>
<b>4. I feel management takes my concerns and suggestions seriously.</b>	<b>37</b>	<b>63</b>
<b>5. There is open communication between management and TPS staff.</b>	<b>43</b>	<b>57</b>
6. I am given constructive feedback about my job performance.	58	42
7. I feel my workload could be increased.	24	76
8. The “win/win” criteria used to evaluate me adequately measures my job performance.	51	49
<b>9. Management helps contribute to a positive work environment.</b>	<b>35</b>	<b>65</b>
10. Overall, I am satisfied with my job.	72	28

Seventy of the 122 respondents gave optional written comments. All but 8 of these 70 had negative comments about management.

**Optional Written Comments Also Show Negative Themes**

As was mentioned, the optional written responses were also negative toward division management on an overall basis. Several individuals submitted written remarks filling the space provided, as well as additional pages. There were 70 of the 122 respondents (57 percent) who provided written comments. Of these 70, only eight were positive (or neutral) comments regarding management.

As we compiled the survey results, we put the written comments into dominant categories based on our judgement. From our analysis, three themes consistently appeared in the opinions of division staff.

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**Negative themes from the optional written comments were that: management treated staff poorly, were indifferent about staff concerns and lacked knowledge about collections duties.**

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- First, division management treats employees poorly or inconsistently—therefore, employees do not trust them.
- Second, management does not know enough about collections duties and job needs.
- Third, management does not care (or is indifferent) about concerns of division employees.

As substantiated from written responses, these three opinions have led to a negative work environment where employees have low morale. Again, this conclusion is also supported by the negative responses to statements 1, 3, 4, 5 and 9, shown in Figure 22. Some possible causes of these negative responses are given as our audit opinion in the last remaining section of this report.

## **Survey Results May Be Stemming From Poor Management Practices**

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**It is reasonable to connect employee dissatisfaction with poor management practices such as: weak performance criteria, workload issues, and changed job descriptions.**

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Although we are unsure of the *exact* cause of the employee dissatisfaction with management, it may be reasonable to connect the employee dissatisfaction expressed on the survey to problems with collections procedures, workload, evaluations/incentives and accountability discussed in previous chapters. This includes issues like a lack of screening of expired liens or cases sent to the outside collector, low workload within collections districts, lack of accountability with collections cases because of the change to a pooled work environment and the current incentives and performance agreement formats. Many employees have shared with us their frustrations about these areas, as well as an overall lack of aggressiveness in collections.

As introduced in Chapter V, four years ago, with the implementation of CACSG (the new collections management system), the job description of the district collections agent changed significantly. This change caused great frustration and conflict between management and many employees—a frustration which has remained. One possible source of the conflict is that the division manager was responsible for being the “change-agent” to implement a new era of collections where more collections were done by telephone, rather than having agents out in vehicles making site-to-site visits. This change was unpopular with many who favored the greater independence of working in the field. It seems

that many still harbor a resentment from the change, which is aimed at the division manager.

But whatever the source of the conflict, management decisions and actions since have neither resolved the negative feelings, nor improved the work environment. In short, division management “owns” this severe conflict and must resolve it before it further impacts productivity of the collections operations.

Another issue with a likely correlation to negative attitudes toward management is linked to accountability and performance feedback problems. Statement 8 on the survey reads: “The ‘win/win’ criteria used to evaluate me adequately measures my job performance.” Forty-nine percent of the respondents either disagreed or strongly disagreed with this statement. Feedback we received is that the performance evaluation is not tied to productivity or accountability. We believe this feedback has been validated by our findings of inadequate accountability and workload shown in Chapter V, and our findings of incentives/evaluations not adequately tied to substantial criteria in Chapter VI.

---

**Management and employees are caught in a negative and vicious relationship and communication cycle.**

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Our theory in connection with these chapter findings, as well as the survey findings, is that management and employees are caught in a negative relationship and communication cycle. The cycle is that management is not evaluating staff on acceptable criteria, which causes staff to become frustrated with management. This frustration, in turn, causes management to negatively react to staff frustration in a vicious cycle. Adequate performance criteria and equitably distributed and demanding workload is needed to break this cycle.

Overall, quick management response to our recommendations for remedying collections weaknesses, as shown in previous chapters, may help to improve relationships between employees and management, but may not fully solve the problem. In fact, we met with department and division officials several times to discuss the conflicts and negative work environment within the division. Also, while compiling the results of the survey, which verified the condition, we put the department on notice that the division may not heal without changes in division leadership. Since our meetings, the department and division have shuffled some assignments among the four-member management team; we are unsure if this change will be enough.

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**While management has begun to deal with the relationship problems, long-term healing may only come from department-level intervention.**

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So in the end, we recognize that division management has begun to make course corrections. However, as mentioned, judging by some of the intensely negative comments from those we confidentially interviewed, and from those who submitted negative survey responses, healing may be improbable without department-level intervention.

## **Recommendation**

1. We recommend that Tax Commission department executives take decisive action to remedy the troubled work environment and the negative relations which exist between Taxpayer Services Division employees and management.

**Appendices**

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## Appendix A

### Cover Letter to Confidential Employee Satisfaction Survey

December 2, 2002

Dear Taxpayer Services Division Employee,

Many of you have been aware of the on-going legislative audit and we appreciate your cooperation. As part of the audit, we are now asking for further cooperation by having you complete the enclosed questionnaire. We are hopeful the information you provide can help us more accurately evaluate employee satisfaction within the division, and help draw conclusions that may be reflected in the audit report.

This confidential questionnaire is being independently administered by the Office of the Legislative Auditor General. The questionnaire will be kept confidential and will be destroyed after individual results are aggregated; no one at the Tax Commission will see individual responses. However, in order to more accurately summarize the results, we ask you to identify your division section in the box provided on the questionnaire.

We are placing a secure lock box by the main south entrance at the first floor information counter where you can place your completed questionnaire. This box will be marked "Legislative Audit Questionnaire Responses" and will be under the control of the legislative audit team. You may use the enclosed envelope for added security. Those receiving this questionnaire by mail (Ogden, Provo, Cedar City and St. George offices) may use the self-addressed, stamped envelope to mail it back to our office at the Capitol.

If possible, please complete this questionnaire by **Wednesday, December 11, 2002**.

Your participation in this questionnaire will be a valuable contribution to the audit. If you have questions, I can be reached at 297-3942. I will keep the call confidential. Thank you for your help.

Sincerely,

Darin Underwood  
Audit Supervisor

Encl.

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# Appendix B

## Confidential Employee Satisfaction Survey Taxpayer Services Division, Tax Commission

- 
- Place a check mark by your TPS Section:
- Bankruptcy
  - Collections Call Center
  - Collections District (1 - 4)
  - Customer Service Call Center
  - Customer Service / Problem Resolution
  - Offers in Compromise / Waivers
  - Special Events / Garnishment
  - Other
- 

Circle your level of agreement or disagreement with the following statements which pertain to job satisfaction and senior level management (level above supervisor) of Taxpayer Services:

	<b>Strongly Agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
1. I feel that management values me as an employee.	1	2	3	4
2. Management trusts my work and behavior.	1	2	3	4
3. I trust division management.	1	2	3	4
4. I feel management takes my concerns and suggestions seriously.	1	2	3	4
5. There is open communication between management and TPS staff.	1	2	3	4
6. I am given constructive feedback about my job performance.	1	2	3	4
7. I feel my workload could be increased.	1	2	3	4
8. The “win/win” criteria used to evaluate me adequately measures my job performance.	1	2	3	4
9. Management helps contribute to a positive work environment.	1	2	3	4
10. Overall, I am satisfied with my job.	1	2	3	4

Additional Comments (Optional):

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## Appendix C

### Distribution of Cash Incentives Given in Select State Agencies

This figure corresponds with the discussion regarding performance incentives in Chapter VI. See particularly page 82 of the report.

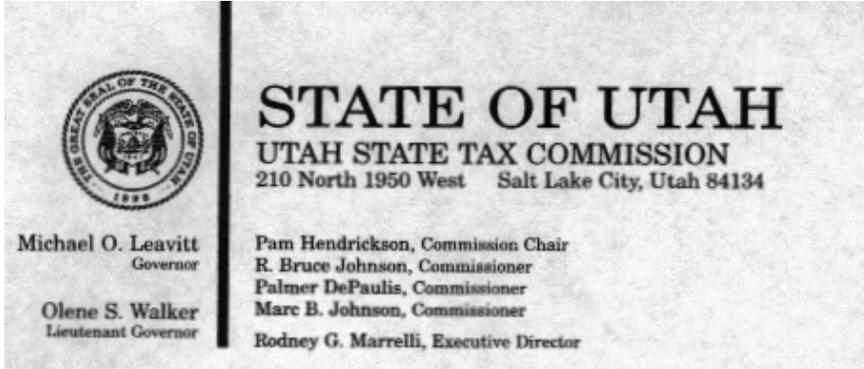
**Frequency Distribution Shows Cash Incentives Given in Select State Agencies.** While the majority of cash incentives awarded in seven different agencies were under \$500, several seem excessive.

Incentive Award	Tax Commission		Agency A		Agency B		Agency C		Agency D		Agency E		Agency F	
	2001	2002	2001	2002	2001	2002	2001	2002	2001	2002	2001	2002	2001	2002
\$1-500	535	421	532	580	218	211	15	3	102	71	105	96	244	224
501-1,000	116	82	175	110	121	85	11	16	53	73	29	19	28	22
1,001-1,500	26	10	27	14	37	12	12	12	28	35	8	4	4	3
1,501-2,000	9	-	5	5	14	4	2	13	11	17	3	3	-	1
2,001-3,000	-	-	1	1	7	-	-	-	5	10	5	8	-	-
3,001-4,000	1	-	-	-	1	-	1	-	1	3	-	-	-	-
4,001-5,000	-	-	-	-	-	-	-	-	-	1	-	-	-	-
5,001-6,000	-	-	-	-	-	-	-	-	-	1	-	-	-	-
6,001-7,000	-	-	-	-	-	-	-	-	-	1	-	-	-	-
7,001-8,000	-	-	-	-	-	-	1	-	-	-	-	-	-	-
<b>Totals</b>	<b>687</b>	<b>513</b>	<b>740</b>	<b>710</b>	<b>398</b>	<b>312</b>	<b>42</b>	<b>44</b>	<b>200</b>	<b>212</b>	<b>150</b>	<b>130</b>	<b>276</b>	<b>250</b>
<b>Percent of Employees Awarded</b>	<b>84%</b>	<b>64%</b>	<b>98%</b>	<b>99%</b>	<b>22%</b>	<b>17%</b>	<b>100%</b>	<b>100%</b>	<b>69%</b>	<b>87%</b>	<b>59%</b>	<b>53%</b>	<b>64%</b>	<b>59%</b>

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**Agency Response**

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June 2, 2003

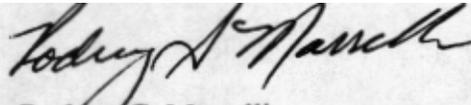
Wayne L. Welsh, CPA  
Legislative Auditor General  
130 State Capitol  
Salt Lake City UT 84114-0151

Re: Performance Audit of Utah State Tax Commission Dear Wayne:

Thank you for allowing us to review the draft Performance Audit of Utah State Tax Commission. We appreciate that this has been a long and complicated review, and we express our thanks to your professional staff.

We have reviewed your recommendations and agree with essentially all of them that relate directly to us. In fact, we have all ready implemented many of the recommendations and are currently working on others. As you are aware, several of the recommendations will require legislation. We look forward to working with the legislature, as they wish, to accomplish these recommendations also. We are committed to improving our collections processes and productivity. Some recommendations are to the Department of Human Resource Management and we await their guidance on those issues.

Sincerely,



Rodney G. Marrelli  
Executive Director

kd

