



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL

**Investigation of a Complaint of Abuse of Authority
by Employees of the Department of Taxation and Finance**

May 30, 2006

The Office of the State Inspector General received an allegation from a taxpayer and business owner, alleging that, sometime around the end of June 2004, employees of the New York State Department of Taxation and Finance (DTF), Paul Rossi, Assistant Deputy Director, Office of Tax Enforcement (OTE), Petroleum, Alcohol, Tobacco Bureau (PATB), and an unidentified male appeared at his place of business and informed him that he had not fully reported sales tax. He stated that they threatened to arrest him and close down his business. The taxpayer further alleged that during a subsequent visit by two PATB officers, he was told that if he voluntarily closed his business, placed his equipment in storage and vacated his work site, DTF would not pursue him any further. The taxpayer further alleged that when he offered to provide his business records for DTF's review, he was told that if his business was still open two weeks later, the "Tax Police" will lock him up, shut down his business, and seize all of his assets. The taxpayer alleged that he attempted to speak with Assistant Deputy Director Rossi's supervisor, but did not receive any calls in return.

As a result of these allegations, this Office opened an investigation, conducted numerous interviews, and reviewed all relevant documents.

We first interviewed the taxpayer himself, the owner of an auto repair shop in Brooklyn, and a native of Turkey who became an American citizen in 2001. He explained that since 1996, he had rented space in a gasoline station and that his current lease had approximately two years left to run. He explained that beginning in April 2004, his landlord approached him and offered to buy him out of the remaining two years of his lease. Over the next few months, the complainant and his landlord negotiated over the specific terms of the buyout. The complainant stated that right after the tax officials came to his place of business in June 2004, all negotiations stopped, and the landlord informed the taxpayer that he no longer intended to pay him for the early termination of the lease. The landlord, instead, told the taxpayer that he simply must leave.

At the end of June 2004, at virtually the same time that the taxpayer was told by his landlord to move out, two DTF employees arrived at his place of business. (The two individuals have been identified as Rossi and William Stramezzi, an Excise Tax Auditor

2.) Rossi displayed a police-type badge, while Stramezzi recorded information from the taxpayer's business Certificate of Authority posted on a wall. The taxpayer was told that they would return in two weeks and that he should have all of his sales tax records available at that time. According to the taxpayer, he offered to show them his records right then and there, but Stramezzi refused to look at them and they left. Almost immediately thereafter, a third individual, later identified as Thomas Stanton, Director of the same DTF division and Rossi's supervisor, arrived and asked the taxpayer if the DTF officials had been there. When the taxpayer replied that they had just left, Stanton left the premises.

The taxpayer further stated that on July 7, 2004, Director Stanton and Assistant Deputy Director Rossi returned to his place of business. Stanton, while displaying the taxpayer's 2002 New York State Income Tax Return, stated that he knew that the taxpayer had four children and asked how he could possibly exist on the income reported. Stanton then told the taxpayer that DTF would check his New York State Department of Motor Vehicle inspection records to determine how much work the taxpayer was actually performing.

The taxpayer, in response, asked Stanton how he could resolve any possible problem. Stanton, the taxpayer explained, told him that he should close his business, place his equipment in storage, and vacate the premises. Stanton then stated that if the taxpayer did these things, DTF would no longer bother him. The taxpayer stated that when he later asked Stanton if there were any other way for him to resolve this situation, Stanton responded, "you can't, it's too late."

The taxpayer stated that Stanton then told him that "if we come here a third time on July 21 and you are still here, we will take your equipment, sell your assets, and put you in jail." Stanton then, according to the taxpayer, instructed Rossi to give the taxpayer his business card so that he could contact Rossi to confirm to him that he had, in fact, closed his business and moved out.

The complainant informed this Office that he and his attorney, John Baydar, believed that it was not a coincidence that negotiations with his landlord ended just when the tax employees appeared and tried to force him out without due process. The taxpayer further stated that Stanton told his attorney that his client could be charged with a felony, and that DTF was waiting for him to close his place of business or Stanton would close it down. Finally, the taxpayer informed us that he had, in fact, filed returns and made sales tax payments in person to DTF on July 9 and July 16, 2004.

Baydar, the taxpayer's attorney, told this Office that his client contacted him on July 7, 2004, the day Stanton and Rossi appeared at his place of business. In two separate conversations, Stanton told Baydar that his client could be charged with Grand Larceny and that DTF would put his client out of business. When Baydar asked Stanton how this could be avoided, Stanton, according to the attorney, responded that it was "too late" for that. Baydar stated that Stanton then told him that there were only two options for his client: He could either close his business voluntarily or DTF would close it for him.

Stanton then, according to Baydar, gave his client five days, until July 19, to make a decision.

Baydar further informed us that both he and his client believed that DTF and the landlord were somehow “working together,” and that the negotiations to buy out the remainder of his client’s lease were progressing satisfactorily until they were suddenly ended at virtually the very same time Stanton and Rossi appeared on the scene.

Approximately a week later, on July 23, 2004, a recorded conversation took place between Stanton and Baydar. Baydar told Stanton his client informed him he was told to vacate his place of business by July 21. Stanton replied that “Rossi told him personally . . . two or three weeks ago.” The attorney then told Stanton that his client had already made payments and does not believe that he owes any further taxes. When Baydar began to say to Stanton that “in case he owes any sales tax or it is determined . . .”, Stanton interrupted saying, “Here’s the problem. It’s beyond that now.” Stanton then asked, “You telling me that he’s staying in business?” Baydar responded, “He doesn’t want to close up and leave . . . like I told you last week, this is his livelihood.” Stanton responded, “I’m giving him the opportunity if he closes it down, you know, like I said, we can’t let him stay in business in this situation not filing for two years.” Stanton went on to state, “It’s still open because of the fact that he’s still filing his taxes. If he pulls out now, I’ll put it into a civil arena, civil audit of the guy.” Significantly, when Baydar asked Stanton “and if he doesn’t move out now?” Stanton responded, “It’s going to be criminal.”

Along with the threat of criminal prosecution for his client, Stanton informed Baydar that a recent federal court decision held that if his client did not pay the taxes he was responsible for, his competitors, other gasoline stations in the area, can bring a RICO suit against his client who would be liable to them for treble damages. As Stanton pointed out to the attorney, “a lawyer can make a hell of a lot of money quickly.”

Finally, Baydar summed up by saying, “What you’re telling me now is that if he moves out by the end of the month . . .” Stanton replied “it will be civil, if anything.” Otherwise, as Stanton put it, “we’ll slam him.” When the attorney asked what assurance his client would have that if he moved out DTF won’t “give him a case,” Stanton responded, “Look, we do major . . . Deep Pockets. He doesn’t, that’s why he was given a warning.”

From its interviews with Deputy Director Stanton and Assistant Deputy Director Rossi, this Office learned that OTE, as part of a criminal investigation being conducted jointly with the New York State Attorney General’s Organized Crime Task Force (OCTF), was attempting to find a suitable location in Brooklyn from which to conduct an undercover operation. It was determined that the space being rented by the complainant taxpayer would be a desirable location. Stanton and Rossi explained that the problem became how to get the complainant taxpayer out of the location in order to free it up for the operation.

Stanton and Rossi attempted to arrange for the taxpayer's landlord to buy him out of the approximately two years remaining on his lease, with DTF and OCTF sharing the cost. During the course of the negotiation, it was discussed that any possible tax liabilities on the part of the complainant could be used, as Stanton put it, "to squeeze out" the taxpayer from his place of business.

Explaining again that both OTE and OCTF wanted use of the location occupied by the taxpayer's business for its undercover operation, Stanton repeated that the purpose of DTF's visits to the taxpayer was to "squeeze him out." Stanton told us that he instructed the taxpayer to vacate his place of business as he had "tax issues," to retain a lawyer, and to have his lawyer contact Stanton in order to resolve these "tax issues."

While Stanton denied telling the taxpayer that if he didn't move out he would be arrested, he did, in fact, state to the taxpayer's attorney that the case would be pursued criminally, as revealed in the recorded conversation. In addition, Stanton acknowledged that he accused the attorney of having advised his client to file false tax returns. The attorney responded that he had nothing to do with preparing his client's tax returns.

When Stanton was asked if he were concerned about violating a taxpayer's due process and other rights, he stated that by acting through a taxpayer's attorney, he would be shielded from these kinds of issues.

While Stanton insisted that OTE had the authority to arrest the taxpayer, he acknowledged that no prosecutor would accept the case for prosecution. He stated that the tactic they used with this taxpayer was done all the time and is known as a "squeeze." When asked to cite his authority to inform a taxpayer who may have tax compliance issues that if he does not vacate his place of business he will be criminally charged, but that if he vacates and gives up his business only civil penalties would be imposed, Stanton simply responded that this was the way he operated for 26 years.

In his interview, Rossi stated that on his first visit to the taxpayer, at the end of June, he conveyed "the message" that the taxpayer should get his tax records in order because they were checking on him. The seriousness of his intentions was conveyed by his appearance in a suit, wearing his gun, and displaying a badge for identification. Significantly, at the time of the first appearance at the taxpayer's business, OTE had no knowledge of any outstanding liabilities on the part of the taxpayer. This appearance was simply to determine the identity of the taxpayer and to do reconnaissance for the undercover operation. Rossi stated that when he and Stanton returned, Stanton made it clear to the taxpayer that he had a tax problem and that he must get out. At the time of this visit, Stanton and Rossi would have determined from the taxpayers filing history that he had fallen behind two and three-quarter years in sales tax and one-half year of withholding tax payments. This information was based upon OTE Auditor Stremezzi's review of the DTF tax files. Neither Stanton nor Rossi had any more detailed information. Moreover, the matter had not even been submitted for collection. Rossi stated that the taxpayer was told that if he left the premises, DTF would reduce his penalties. When asked if the taxpayer was told that if he didn't vacate the premises

criminal charges would be brought against him, Rossi responded that he did not recall. During his interview, Rossi admitted that OTE was “overzealous” in pursuing this matter, but offered his observation that the whole matter should have been resolved between DTF Commissioner Andrew Eristoff, DTF Deputy Commissioner Peter Farrell, and DTF Deputy Inspector General Marianne Harris “over lunch.”

Both Stanton and Rossi were asked whether anyone at OCTF was made aware of their efforts to “squeeze” the taxpayer out of his place of business. Stanton stated that he did not recall if Deputy Attorney General Christopher Prather, OCTF’s Director, had ever been informed of DTF’s efforts, either prior to their visit to the taxpayer or after the fact. He also stated that he did not recall if Prather had ever been informed of DTF’s “edict” to the taxpayer to “get out” or face criminal charges. Stanton explained his lapse in memory by pointing out that these were simply not issues of any importance to him. Rossi stated that neither he nor Stanton had informed Prather of their efforts to force the taxpayer out ahead of time, but, he believed, did so some time after the event.

In his interview with Office, Deputy Attorney General Prather explained that his Office was working jointly with OTE on a significant criminal investigation. Stanton, he said, had identified a location in Brooklyn from which, he believed, an undercover operation could be run. The problem, Prather explained, was that it was occupied by an ongoing business. Prather stated that he was aware that the landlord was working with Stanton to have the tenant leave and, if successful, OTE and OCTF would take over the rent payments to the landlord. After assisting in this effort, Prather was informed by Stanton that he would use certain tax liabilities of the tenant as leverage to have him vacate the premises. While Prather did not know the details of either the business owner’s tax situation or the manner in which this would be used to accomplish the goal, Prather stated that he simply assumed that whatever Stanton was doing was within the rules, guidelines and procedures of DTF.

DTF Deputy Commissioner Peter Farrell, Thomas Stanton’s direct supervisor, informed us that the criminal investigation by OTE and OCTF began in March 2004. Farrell stated that while he would normally directly supervise OTE’s investigations, he did not in this case as it was being run jointly with OCTF. He was, however, generally made aware by Stanton and Rossi as to the progress of the case. Farrell informed us that he knew of Stanton’s general plan to either buy out the remaining portion of the tenant’s lease or to “muscle” the tenant out by confronting him with his tax problems. Farrell stated that Stanton’s strategy was to use “the tax angle” to persuade the tenant to leave. He informed us that Stanton told him that the buyout of the remaining portion of the lease was not going to succeed because the taxpayer had bounced rent checks to the landlord, and that Deputy Attorney General Prather was “pushing” to terminate the lease after Prather himself had met with the landlord. Having learned that these claims were not, in fact, true, Farrell questioned whether Stanton had been presenting him with accurate information regarding the investigation.

Farrell was asked by this Office by what authority Stanton could inform a taxpayer that if he refused to close down and vacate his place of business he would be

criminally prosecuted, but that if he moved out, the matter would be disposed of civilly, Farrell responded “none,” stating that Stanton had no authority to attempt to force a tenant to vacate his place of business. In regard to Stanton’s threats that OTE would bring a criminal prosecution against the taxpayer, Farrell acknowledged that the dollar amount of the tax liability in question fell below DTF’s and OTE’s Revenue Crimes Bureau criteria and parameters for criminal prosecution.

Farrell stated that Stanton “went wrong” in allowing the driving force of his efforts to become the removal of the taxpayer from his place of business as opposed to enforcing the tax laws. Farrell summed up the events in question by stating that Stanton overstepped his authority, and informed us that, in the end, he, Farrell, terminated the operation as it had begun to “raise too many issues.”

We interviewed DTF Deputy Inspector General Marianne Harris who stated that on August 9, 2004, she received a rather unusual telephone call from Stanton. After sharing the current nature of his case, Stanton stated that he wanted to subpoena the taxpayer’s records because the taxpayer was not going to abandon his place of business. Stanton then expressed that the taxpayer’s attorney had committed malpractice and “is going to have problems” because he had instructed his client to file false tax returns despite Stanton’s own warning to the attorney not to do so. Stanton then stated to Harris that he “told the attorney not to let him (his client) file those returns,” and informed Harris there were eight such returns and, as a result, eight felony counts.

Harris stated that she then asked Stanton if there was evidence to support these claims. Stanton, according to Harris, replied that it would be simple to develop such evidence. Harris then asked Stanton if this was a criminal case that would, in fact, be pursued. Stanton acknowledged that the matter would not reach DTF’s threshold for criminal prosecution and would only be pursued civilly.

Harris told this Office that she then asked Stanton how the taxpayer’s business could be closed down, even if a tax case were to be filed against him. Stanton, she stated, responded by explaining that after defending himself, paying his attorney, and making payments to DTF, the taxpayer would have no money left to pay his rent and maintain his lease*. Harris responded by warning Stanton that pursuit of a criminal case against a taxpayer for less than genuine purposes might not be in Stanton’s best interest, nor would it necessarily achieve the results he desired.

Harris refused to provide the opinion Stanton was seeking as to the issuance of a subpoena. She pointed out to us that Stanton had never, prior to this incident, asked her for such an opinion as to the issuance of a subpoena, nor has he ever asked since. Stanton, in his interview with us, claimed that Harris had, in fact, authorized the issuance of the subpoena. He acknowledged, however, that asking Harris for her opinion was, given the circumstances of the case, simply “a CYA move.”

* In August 2004, the taxpayer, in fact, went out of business. According to DTF, at the time the taxpayer closed his repair shop, he had a tax liability of \$10,400.

Rossi, in an attempt to corroborate his superior, Stanton, stated to this Office that he had participated in this conversation between Stanton and Harris and that Harris had, in fact, given her “authorization” for Stanton and Rossi to issue the subpoena. He told us that even though authorized by Harris, the subpoena was not issued because the taxpayer subsequently had retained an attorney and had filed a complaint against them.

After being informed that Harris had stated that Rossi had not been a participant in the conversation in question, Stanton admitted to us that Rossi had not, in fact, participated in the conversation. He stated that he did not know why Rossi had “lied” to this Office, and theorized that it might have been “hyperbole” on Rossi’s part.

Finally, this Office interviewed Joseph Gecewicz, Director, Tax Compliance Division, DTF. Gecewicz was asked to set out the protocol followed by DTF in collecting unpaid or overdue taxes. Gecewicz explained that the civil side, for which he was responsible, has a sequence of required steps as part of the collection process. Typically, according to Gecewicz, once an assessment is made against a taxpayer, a bill is sent out, along with notification to the taxpayer of the “taxpayer’s bill of rights.” The taxpayer has 90 days from receipt of the bill to appeal the assessment. This appeal process involves formal appeal rights and, if necessary, the convening of a tax tribunal and an Article 78 hearing. If no appeal is filed within 90 days by the taxpayer, the civil collection unit can move to seize assets of the taxpayer. All such seizures, which can involve filing liens against real or personal property, are initiated through contact with a line supervisor and involve considerable interaction with the taxpayer. There are, according to Gecewicz, multiple steps in the process for a seizure, requiring multiple levels of approvals. During each step of the process when there is contact with the taxpayer, a “case contact” is documented in DTF’s CART system*.

Gecewicz stated that while he was not fully knowledgeable of the specific procedures that OTE might follow with regard to collections, he informed this Office that such collections activity by OTE would be extremely infrequent. After being advised of the facts and circumstances of the instant case, including the fact that the taxpayer had failed to file sales tax returns for approximately two and one half years, Gecewicz responded that if any of his employees had approached a taxpayer in such a manner, he would immediately contact DTF’s Deputy Inspector General and seek to have the employee prosecuted.

The results of this Office’s investigation, revealing the troubling circumstances set out above, have been forwarded to the Department of Taxation and Finance for action it deems appropriate.

* While Gecewicz was not informed of the taxpayer’s specific tax collection history, the matter had not, in fact, even been assigned for field collection until October 18, 2004, more than two months after Stanton’s and Rossi’s communication with the taxpayer and his attorney.

Addendum

On May 30, 2006, the results of the investigation were forwarded to the DTF Commissioner for appropriate action. The DTF OTE Deputy Commissioner Peter Farrell was asked to address this matter. Farrell issued a letter dated May 31, 2006 to Thomas Stanton notifying him that he was suspended effective the beginning of business on June 1, 2006 for 10 business days without pay. Farrell issued another letter dated May 31, 2006 to Paul Rossi notifying him that he was suspended effective the beginning of business on June 1, 2006 for three business days without pay. “This suspension represents the full penalty which will be taken in response to the report of the Inspector General in this matter” was noted on both letters. Stanton and Rossi served their suspensions and have returned full-time to their DTF PATB positions.