

MEMORANDUM OF UNDERSTANDING
BETWEEN THE NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE AND THE NEW YORK STATE
OFFICE OF THE STATE INSPECTOR GENERAL

This Memorandum of Understanding (hereinafter the MOU) made this 23rd day of May, 2012, is between the NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE (DTF) and the NEW YORK STATE OFFICE OF THE STATE INSPECTOR GENERAL (NYSIG).

1. INTRODUCTION:

This MOU between DTF and NYSIG sets forth the agreement of DTF to provide certain State tax return information to NYSIG when such information is necessary for NYSIG to perform its essential functions consistent with tax secrecy provisions of the Tax Law.

2. AUTHORITY:

Pursuant to section 53(1) of the Executive Law, the New York State Inspector General shall have the duty and responsibility to receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in any covered agency. In order to fully perform such duty and responsibility, the State Inspector General has the power, pursuant to section 54(4) of the Executive Law, notwithstanding any law to the contrary, to examine and copy or remove documents or records of any kind prepared, maintained or held by any covered agency, including DTF.

To allow NYSIG to fully perform its duties and responsibilities under the Executive Law, the DTF Commissioner shall, pursuant to section 170(4) of the Tax Law, and solely for the purposes specified in this MOU, appoint certain employees of NYSIG as deputy commissioners of DTF who shall be authorized to receive state tax return information as though they were employees of DTF *ab initio*.

3. PURPOSE:

This MOU is intended to provide guidelines for the physical and electronic examination of state tax return information between DTF and NYSIG when that information is relevant and material to an ongoing NYSIG investigation. By this MOU, DTF and NYSIG agree that state tax return information may not be provided to NYSIG absent compliance with the terms and agreements set forth herein.

4. DEFINITION OF STATE TAX RETURN INFORMATION:

State tax return information means:

(a) A taxpayer's identity (including but not limited to name, SSN, or EIN), the nature, source or amount of the taxpayer's income payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liabilities, tax withheld, deficiencies, tax payments, or any information contained, on a taxpayer's return or derived from an audit of such return, whether in hard copy or electronic format, whether the taxpayer's return was, is, or will be examined or subject to other investigations or processing, or any other data, received by, recorded by, prepared by or furnished to, or collected by DTF with respect to a return or with respect to the determination of a liability (or amount thereof) of any person, under the Tax Law, for any tax, penalty, interest, fine forfeiture, or other imposition or offense, and

(b) any part of any written determination issued by DTF concerning a particular taxpayer, or any background or audit file document relating to such written determination which is not otherwise open to public inspection under the law, and

(c) such term shall include the filing history or status of a particular taxpayer, however

(d) such term does not include data in a form which cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer, and does not include any federal tax information.

5. DUTIES AND RESPONSIBILITIES OF DTF:

The Commissioner of DTF shall designate Deputy Tax Commissioner status to certain NYSIG employees for so long as they hold the titles set forth below. The appointment of an authorized employee as deputy commissioner terminates immediately upon a change in that individual's employment status. DTF agrees that the designation of NYSIG employees as Deputy Tax Commissioners hereunder is solely for the purpose set forth in this MOU, i.e., to allow for the sharing of state tax return information with NYSIG under appropriate circumstances, and that designated NYSIG employees will in no other respect be deemed or treated as DTF employees.

Authorized employees will be the individuals listed on the attached Appendix, which NYSIG will have the duty to amend regularly as the employment status of those listed changes and/or new employees requiring access to state tax return information need to be added for specific investigations by Agreement and with the consent of the Commissioner of the DTF.

6. DUTIES AND RESPONSIBILITIES OF NYSIG:

As Deputy Tax Commissioners, designated employees of NYSIG agree to be subject to the secrecy provisions of the Tax Law. Pursuant to section 1825 of the Tax Law, any person who willfully violates the secrecy provisions of the Tax Law is guilty of a misdemeanor. Additionally, any officer or employee of the state who is convicted of a willful violation of the secrecy provisions of the Tax Law shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

When a NYSIG investigation necessitates the review of state tax return information by NYSIG as agreed to by the Commissioner of the DTF, the Director of Internal Affairs for the DTF or his/her designee will release this information to NYSIG. The information requested and/or the purpose of the request by NYSIG and/or the fact NYSIG is requesting information from the Director of Internal Affairs for the DTF or his/her designee, will not be disclosed to any other person including employees within the DTF except that the DTF Director of Internal Affairs may disclose the sum and substance of the request to the DTF Chief Risk Officer, Executive Deputy Commissioner and the Commissioner of the DTF.

NYSIG may access and use tax return information for the limited purpose of investigating conduct of DTF employees or investigating crime(s) potentially committed by employees of any covered agency relating to a violation of their official duties, where confidential DTF records were accessed and/or utilized in the commission of said crime(s). If, in the judgment of NYSIG, an investigation by NYSIG in which state tax return information was used warrants criminal prosecution, NYSIG will refer the case to the appropriate prosecutorial agent and will give notice of the referral to DTF.

In the event a NYSIG investigation commenced hereunder results in the issuance of a public report or other media statement or release, state tax return information may only be disclosed consistent with the tax secrecy provisions of the Tax Law.

Authorized NYSIG employees must participate in the DTF Annual Security Awareness, Access and Disclosure training program.

7. DISCLOSURE, SAFEGUARDS, AND RECORD KEEPING REQUIREMENTS:

In order to comply with the secrecy provisions of the Tax Law, authorized NYSIG employees will maintain state tax return information separately, secure state tax return information in accordance with the guidelines adhered to by DTF, and safeguard that information from redisclosure and from use for any other purposes except those specified in this MOU. When state tax return information is no longer

needed by NYSIG for its investigation, NYSIG will either return it to DTF Director of Internal Affairs or his/her designee or destroy it.

DTF and NYSIG will agree upon mutually acceptable procedures for accessing state tax return information online. Online access will be in read-only format. NYSIG and DTF will develop protocols relative to state tax return information, including identifying procedures for accessing, storing, returning and/or destroying tax information to ensure confidentiality and comply with the secrecy provisions of the Tax Law.

8. LIABILITY:

Each party to this agreement shall be liable for the acts and omissions of its own employees. The parties agree that, in the event there is a breach of the security of a system used to provide or hold the information identified in this MOU and personal information has been or is reasonably believed to have been acquired by a person without valid authorization, the parties will comply with the internet security provisions contained in Article II of the State Technology Law.

9. EFFECTIVE DATE:

This MOU will become effective on the date of the last signature written below and will remain in force until terminated by either DTF or NYSIG.

10. AMENDMENT OF MOU:

This MOU may only be amended upon the mutual consent of DTF and NYSIG. The terms of the amendment must be approved in writing by both parties.

11. TERMINATION OF MOU:

If DTF or NYSIG wishes to terminate this MOU, a written notice must be mailed to, or otherwise delivered to, the other party. The MOU will terminate 30 calendar days after the receipt of such notice. DTF may immediately terminate disclosures to NYSIG under this MOU if DTF determines that NYSIG is not properly safeguarding state tax return information.

12. SIGNATURES:

DEPARTMENT OF TAXATION AND FINANCE



Thomas Matteix
Commissioner
NYS Department of Taxation and Finance

May 23, 2012

NEW YORK STATE INSPECTOR GENERAL



Catherine Leahy Scott
Acting State Inspector General

May 23, 2012

APPOINTMENT

WHEREAS, pursuant to the Executive Law, the New York State Inspector General is charged with the responsibility to promote integrity and efficiency in the government of New York, and

WHEREAS, the New York State Inspector General and the Department of Taxation and Finance have entered into a Memorandum of Understanding, dated May 23, 2012 (MOU), to allow the New York State Inspector General to fulfill its legal responsibilities,

NOW THEREFORE, I, THOMAS MATTOX, Commissioner of the Department of Taxation and Finance, pursuant to subdivision 4 of section 170 of the Tax Law, hereby

APPOINT

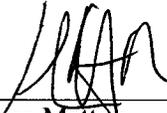
Acting Inspector General Catherine Leahy Scott
Chief Counsel Leonard Cohen
Deputy Inspector General for Legal Albany/Buffalo Michael C. Clarke
Special Deputy Inspector General for Legal NYC Philip Foglia
Special Counsel Felisa Hochheiser
Investigative Counsel Kenneth Michaels
Chief Investigator Robert Werner
Senior Investigator Frank Risler
Senior Forensic Accountant Val Douglas
Investigative Auditor Dennis Graves

as deputy commissioners of the Department of Taxation and Finance, authorized to receive return information.

This Appointment shall permit subject to the MOU the authorized employees to inspect state tax returns and state tax return information to allow the Inspector General to fulfill its legal responsibilities. They shall have no other powers or duties in the Department of Taxation and Finance, nor shall they be considered employees of the Department of Taxation and Finance for any purposes other than those specified in this Appointment and consistent with the terms and conditions of the MOU dated May 23, 2012.

This Appointment shall permit subject to the MOU the employees of the Department of Taxation and Finance to disclose tax information to the authorized employees of the New York State Inspector General and consistent with the MOU dated May 23, 2012.

This Appointment shall take effect when a duplicate is filed with the Department of State, in accordance with section 8 of the Public Officers Law.



Thomas Mattox
Commissioner
Department of Taxation & Finance