F I N A N C E
NEW ● YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

DEPARTMENT OF FINANCE

AUDIT DIVISION

STATEMENT OF AUDIT PROCEDURE

CONTROL OF STATUTE OF LIMITATION IN AUDIT CASES

I.   SCOPE

This Statement of Audit Procedure provides guidelines and procedures for the control of the statute of limitations ("SOL") in all audit cases.   The procedural requirements in this memorandum are waived for the Metro Unit because it conducts Sales Tax and Personal Income Tax Audits pursuant to an agreement with New York State, and the State statute control system is adequate.

II.   BACKGROUND

A. The primary responsibility for protecting the SOL lies with the auditor and his or her immediate supervisor. They must also protect the SOL for returns filed for tax years ending after the last year included in the audit.

B. Supervisors, Managers and Directors are responsible for ensuring that the SOL is protected and that all controls are instituted and maintained.

C. SOL protection is one of the most important responsibilities for all personnel engaged in audits.

D. To control the SOL for auditing an original return, the auditor must:

- Determine the SOL date by comparing the in-date of the return with the signature date recorded on the face of the return and selecting the earlier of the two dates. When a return is filed prior to the due date, the due date will control for SOL purposes.

- Verify that the in-date is the date the return was postmarked and recorded in FAIRTAX. The physical return must be acquired as soon as possible to verify the accuracy of all dates recorded. The in-date in FAIRTAX may be used to estimate the SOL date when there is no access to the physical return.

- Verify that all returns filed by this taxpayer for periods following the period covered in the assigned case are accounted for.

- Verify that all Federal and New York State changes (NYC3360s and amended returns) are accounted for.

E. The filing date of the original return (or the due date if the return is filed prior to the due date) determines the statute expiration date. An amended return does not alter or extend the original statute expiration date. When a Form NYC-3360 or a Form NYC-115 is received, the statutory period within which any changes may be audited is two years from the date of filing of the 3360 or 115.

F. To control the SOL for a return that has been extended by a Consent Extending the Period of Limitation for Assessment ("waiver"), the auditor must verify:

- That the SOL was open at the time the waiver was submitted for validation.

- That the waiver was executed by a duly authorized person.

- That all appropriate periods were included on the waiver.

III. **PROCEDURE-SOL CONTROL PROCESS**

A. When a case is assigned, the auditor must check the Track SOL indicator on the Tax Return tab in the Tax Return window for each return for which the auditor is required to protect the statute

B. The auditor enters the required fields on the SOL and Waiver tab in the Tax Return window for each return in the case.

C. After completing the entries for each return, the auditor notifies the supervisor by selecting "Request Review" on the Action Item dropdown and entering "Review and Approve SOL" in the comment field. This entry informs the supervisor that the SOL information for the case is accurate and ready for approval, and any extension of the SOL is ready for validation. When the auditor advises the supervisor that a case is ready for SOL approval he or she should submit a file with the necessary original documentation.

D. Based upon their review of the original documentation, the auditor's supervisor then verifies that the information entered is correct. If the supervisor finds errors, he or she must meet with the auditor to discuss the appropriate remedy.

E. If a waiver is used, once the waiver is countersigned by the manager, the supervisor records his or her approval by selecting the "Supervisor Approve" button on the Tax Return SOL & Waiver tab. This

entry generates an automatic event denoting approval if the Case SOL date changes.

F. If it is later determined that the supervisory approval was done in error, only the System Administrator can reverse that approval. The System Administrator should be notified through e-mail by the supervisor's manager or the Field Manager's Director.

G. Any ambiguity in the SOL expiration date must be referred to the manger for resolution.

H. When an audit is assigned to a Field Manager, that Field Manager is primarily responsible for protecting against the expiration of the SOL. The Field Manager is the considered the auditor for the case and the Director is considered the supervisor.

I. When an audit is transferred to another auditor, the new auditor is responsible for examining and verifying the accuracy of all information in the SOL and waiver tab in the tax return window.

J. The auditor must request that all subsequent tax returns for a taxpayer be added to the case as soon as those returns become available in PASS, and must follow these procedures for the additional returns.

K. The auditor will receive notification in PASS of all cases with SOL expiration dates of 180 days, 150 days, 120 dates, 90 days, 60 days and 30 days.

IV. PROCEDURE - EXTENSIONS

While audits should generally be completed within the SOL period initially provided by law for filed returns, when additional time is required the auditor must secure from the taxpayer or its representative a timely waiver at least four months (120 days) before the SOL would otherwise expire. Taxpayers should be asked to extend the statute for one year. The auditor may not accept an extension for less than six months without the approval of the supervisor.

A. The auditor requests a waiver by preparing a Consent Extending Period of Limitation for Assessment form and its corresponding cover letter from the PASS templates and sending these two documents to the taxpayer or its representative.

B. The returned waiver must be time stamped by the Department of Finance.

C. The auditor records receipt of the waiver in the Receive Incoming Correspondence window in PASS.

D. The auditor must review the returned waiver to verify that it is properly executed.

E. The auditor retains the paper waiver in the audit file and enters the updated SOL information into the SOL and Waiver tab of the Tax Returns

window in PASS.

F. The waiver is executed in triplicate by the taxpayer (or its representative) and countersigned by the manager. One waiver is returned to the taxpayer or representative, one is placed in the audit file and one is placed in the master SOL file.

G. The auditor must submit the new waiver to the supervisor for review, along with:

- The most recent prior waiver
- The current power of attorney (if any)
- A Statute of Limitation schedule
- A copy of the first page of the tax return for any newly protected tax periods
- A copy of the first page of the tax return of the first subsequent tax period

H. After the supervisor's review is completed, this package is submitted to the manger for review and counter signature.

I. The manager then returns the waiver package to the supervisor, who enters the required information in the master waiver log book that is maintained by tax type.

The supervisor opens the return window for each updated statute and verifies the waiver validation date. At that time, the supervisor "approves" the new statute date, and that approval creates an "approved return SOL" event in the event log.

At this time, the supervisor should also verify that all subsequent returns have been added to the PASS case and have been approved.

J. The supervisor brings the log book to the manager so that the manager may verify and initial the log entry.

K. The supervisor then makes a copy of the waiver package and brings the log to the Director or Assistant Director to verify the correctness of both the log entry and proper compliance with this SAP.

PROCEDURE-SOL CONTROL PROCESS-SUPERVISOR

The supervisor will receive notification in PASS of all cases with statute expiration dates of 90 days, 60 days and 30 days to ensure that the auditor is managing the SOL in each of his or her cases as required by this SAP and has recorded the contacts with the Taxpayer in the Record Public Contact Window of the PASS application.

PROCEDURE - WHEN TO REQUEST WAIVERS TO EXTEND THE SOL

Waivers should be requested at least four months (120 days) before the SOL is to expire. Any case submitted to QMSG for which the SOL is within 90 days of expiration will be classified and handled as a "Red Folder" case. As a general rule, Taxpayers should be asked to sign waivers for a period of one year.

PROCEDURE - RED FOLDER CASES

Cases closed with less than 90 days remaining on SOL

The auditor is responsible for inserting any case with less than 90 days remaining on the SOL in a red folder and for notifying his or her supervisor that a Red Folder case is being submitted to QMSG. Red folders are to be used exclusively to denote that fewer than 90 days remain until the expiration of the SOL. QMSG is instructed to give its highest priority to Red Folder cases.

When a Red Folder case is submitted to QMSG it must be accompanied by a memo to the Director of QMSG from the Director or Assistant Director stating the reasons why the case could not have been closed at an earlier date.

Cases closed with less than 45 days remaining on SOL

When a case is closed with less than 45 days to the SOL date, it must also be accompanied by a memo from the Director or Assistant Director to the Assistant Commissioner of Audit that explains why the case could not have been closed at an earlier date. This explanation must be attached to the front of the case comments. This memo must be approved by the Assistant Commissioner before the case is given to QMSG.

PROCEDURE-SOL CONTROL PROCESS-QMSG

QMSG will maintain adequate statute controls for all returns under its control. The reviewer to whom a case is assigned is responsible for verifying the SOL date. When a case is rejected and returned by QMSG to the auditor/supervisor, that auditor or supervisor will again become responsible for maintaining adequate statute controls for all returns in the case.

PROCEDURE – NOTICE OF DETERMINATION – RED FOLDER CASES

All Red Folder cases will receive immediate attention from QMSG. For All Red Folder cases, the Unit Manager of QMSG is responsible for making certain that the Notice of Determination is timely mailed. QMSG is responsible for verifying that the Post Office receipt is postmarked within the statute date.