

NEW YORK STATE BAR ASSOCIATION TAX SECTION

**REPORT SUGGESTING ADMINISTRATIVE GUIDANCE BE ISSUED ADDRESSING THE PROCEDURES
FOR THE COLLECTION OF TAX LIABILITIES UNDER
NEW YORK STATE TAX LAW SECTION 174-B
AND RELATED PROVISIONS**

June 5, 2013

Representatives of the New York State Bar Association Tax Section periodically meet with representatives of the Department of Taxation and Finance (“Department”). At our last meeting, the Department asked us to look at various aspects of the collections process and make suggestions as to ways to improve that process for taxpayers, practitioners and the Department. We think the collections process is an important part of tax administration and are pleased that you asked for our assistance. This report is our first submission to you in connection with this project¹.

We greatly appreciate the Department’s willingness to engage with us in this collaborative effort to find ways to benefit the State of New York and its taxpayers. We also commend the Department for the numerous, significant changes that have been made to improve the collections rules and procedures over the past several years. Some of these changes were made through legislation supported by the Department and others were made administratively.

In 2010, we submitted a report (the “2010 Report”) addressing various aspects of the collections process and making recommendations for changes in the rules governing the limitations period for collection of New York State tax liabilities.² The Department responded with a legislative proposal containing some of our recommendations; we supported the proposal because we believed it would make significant and needed improvements.³ That proposal was enacted in 2011 as Tax Law Section 174-b, and we commend the Department on its enactment.

In this report we suggest that the Department issue certain regulatory and/or other administrative guidance under Section 174-b and related statutory provisions. We believe the guidance we are suggesting would further the intent and policies that underly Section 174-b, and would also improve the collection process.

I. Summary of Our Recommendations

We recommend that the Department issue administrative guidance as follows:

1. A regulation providing that, in determining the commencement date of the 20 year collections period under Section 174-b(1), if a Notice and Demand has not in fact been filed by a specified number of days after the date of assessment, the Notice and Demand will be deemed to have been filed. This would ensure that the limitations period starts to run shortly after the tax has been assessed.

¹ The principal drafter of this report was Sherry S. Kraus; significant contributions were made by Maria T. Jones and Diana L. Wollman. This report reflects solely the views of the Tax Section of the New York State Bar Association and not those of the New York State Bar Association Executive Committee or the House of Delegates.

² New York State Bar Association Tax Section, *Report on Proposed Changes to New York State Statute of Limitation on Collection of Unpaid Tax Liabilities*, Report No. 1203 (January 29, 2010).

³ New York State Bar Association, *Memorandum in Support* (May 6, 2011), available in Governor’s Bill Jacket 2011 Chapter 432, pp. 14-15.

2. Clarify the differences between subdivision 1 and subdivision 4 of Section 174-b with respect to (a) the starting dates for their respective limitation periods and (b) the types of taxes to which each applies.
3. Explain how subdivision 4 of Section 174-b changed prior law.
4. Clarify how Section 174-b (1) applies in the case of sales tax.
5. Clarify the Reference in 174-b(1) to hearing rights that apply “with respect to the Notice and Demand”.
6. Improve public awareness of current procedures for the filing of sales tax warrants.

II. Background

Section 174-b governs some of the final steps in the tax assessment and collection process. That process generally proceeds as follows in the case of the New York State personal income tax (Article 22) (the “PIT”), corporate franchise tax (Articles 9, 9-a and 27) (the “CFT”) and sales tax (Article 28).

Assessment and Collections Process

1. The taxpayer (the “Taxpayer”) files a tax return and pays the amount of tax shown as due on the return.⁴
2. In the case of the PIT and CFT, if the return is filed on or before the date that it is due, the Department generally has 3 years from that due date to *assess* a deficiency.⁵ This 3 year period may be extended by mutual agreement,⁶ which often occurs if the Department commences an examination.
3. If the Department does examine the return and determines that additional taxes are due, the Department mails to the Taxpayer a “Notice of Deficiency” (in the

⁴ Some of the steps in the process differ if the Taxpayer does not file a return, does not pay the total amount shown as due on the return, if there are mathematical or clerical errors on the return, or if there is a U.S. Federal adjustment that results in additional New York State taxes due. See *e.g.*, Tax Law §§681(d), (e) and 682(a). Those differences are not relevant to the discussion in this report.

⁵ Tax Law §§683(a) and (b), and 1083(a) and (b). A longer period applies under certain circumstances; for example, in the case of a substantial omission of income, the period is 6 years. Tax Law §§693(a) and 1093(a).

⁶ Tax Law §§683(c)(2) and 1083(c)(2).

case of PIT or CFT)⁷ or a “Notice of Determination and Demand” (in the case of sales tax).⁸

4. The Taxpayer now has 90 days to act: the Taxpayer can
 - (a) request an informal hearing before the Bureau of Conciliation and Mediation Services;⁹
 - (b) file a petition for review of the proposed deficiency with the Division of Tax Appeals;¹⁰
 - (c) pay the tax; or
 - (d) do none of the above.
5. If the Taxpayer does “none of the above” before the 91st day after the mailing of the Notice of Deficiency, the tax is considered *assessed* as of that day.¹¹
6. If the Taxpayer files a petition for review with the Division of Tax Appeals, there are several steps to the process.
 - (a) First, the Taxpayer’s appeal is heard by an Administrative Law Judge (an “ALJ”). Either the Taxpayer or the Department may appeal the ALJ’s decision to the Tax Appeals Tribunal.
 - (b) If the Tax Appeals Tribunal issues a decision adverse to the Taxpayer, the Taxpayer has 4 months to appeal that decision to the Third Department Appellate Division in a proceeding under Article 78 of the CPLR.¹²
 - (c) If no Article 78 appeal is taken by the end of the 4 month period, the Tax Appeals Tribunal’s decision is then final and the tax is considered *assessed* at that time.¹³

⁷ Tax Law §§681(a) and 1081(a).

⁸ Tax Law §1138(a)(1).

⁹ Once the Conferee issues a determination, the Taxpayer has 90 days to accept that determination or file a petition for review of the proposed deficiency with the Division of Tax Appeals.

¹⁰ Tax Law §§681(b), 689, 1081(b), and 1138(a).

¹¹ Tax Law §§681(b), 682(a), 1081(b), 1082(a), and 1138(a)(1). If the relevant notice was mailed to the Taxpayer at an address outside of the United States, the Taxpayer has 150 days to act instead of 90, and accordingly assessment does not occur until the 151st day.

¹² Tax Law §2016. The “CPLR” is the Civil Procedure Law and Rules.

(d) If an Article 78 appeal is taken, and the Taxpayer does not pay a deposit or file a bond securing payment of the tax, penalties and interest, the Commissioner may assess, and attempt to collect, those amounts before the judicial review is concluded.¹⁴

For sales taxes, the Taxpayer must make a deposit or provide a bond securing payment in order to take an Article 78 appeal.¹⁵

7. After the tax is assessed, the Department must send the Taxpayer a “Notice and Demand” that notifies the Taxpayer that the tax has been assessed and demands payment.¹⁶ The statute does not state a number of days within which the Notice and Demand must be sent after assessment. Instead, the statute provides that the Department “shall *as soon as practicable* give notice ... stating the amount [which has been assessed but remains unpaid] and demanding payment thereof.” (*Emphasis added.*)
8. The date that the Notice and Demand *is in fact sent* starts another clock:¹⁷

In the case of the PIT and CFT, the Taxpayer has 21 days to pay the tax without the Department taking any action to collect (10 days if the amount due is over a specified limit (*e.g.*, \$100,000 in the case of the PIT)).¹⁸

In the case of sales tax, interest does not start to run on the deficiency until after the 21 day period has passed.¹⁹ The statute is silent as to whether the Department may commence collection action during this period.

9. The way in which the Department formally commences collection is by issuing a tax warrant and filing the warrant with the county clerk’s office.²⁰ The warrant

¹³ Tax Law §§682(a) and 690(e).

¹⁴ Tax Law §§690(c) and 1090(c).

¹⁵ Tax Law §§279-a, 1138(a) (4) and 1444.1.

¹⁶ Tax Law §§692(b), 1092(b) and 173-a(3)(b).

¹⁷ The date the Notice and Demand is sent also starts the clock on the 20 year collection period. See clause (xii) below.

¹⁸ Tax Law §§692(c) and 1092(c).

¹⁹ Tax Law §173-a(3)(b)(2).

²⁰ Tax Law §§692(c), 1092(c) and 1141(b). We note that the Budget Bill enacted in March of this year created some exceptions to this rule whereby collection may commence without the issuance of a warrant. This report does not address those recent modifications to the law.

creates a lien, securing the State's claim, and constitutes a money judgment which gives the State the same rights as a private judgment creditor to collect its claim by enforcing its "money judgment" under Article 52 of the CPLR.²¹

As noted above, in the case of sales tax, the law is silent as to whether the Department must wait until the 21st day after the Notice and Demand is issued to file the warrant.²²

10. In the case of the PIT and CFT, the Department has a period of 6 years to issue and file the warrant. The 6 years runs from the date of assessment.²³

In the case of sales tax, Tax Law §1141(b) is silent as to whether there is any time period within which the State must file the warrant.²⁴

In the case of all three taxes, the Department may also request that the New York State Attorney General commence an action in the name of the State to collect the tax deficiency. In the case of the PIT and CFT, the action must be commenced before the end of this 6 year period.²⁵ In the case of sale tax, the statute does not set any time limit for the commencement of such an action.²⁶

11. If the Department does not issue and file a warrant for the PIT or CFT within the 6 year period, the tax liability is extinguished and no further collection action may take place.²⁷

²¹ Tax Law §§692(c) and (e), and 1092(d) and (e); CPLR §211(b).

²² Because this is not clear from the statutory language, see our recommendation below requesting clarification as to how Section 174-b(1) applies in the case of a sales tax deficiency.

²³ Tax Law §§692(c), 1092(c) and 174-b(4).

²⁴ While the law is silent on these issues, the Department announced in March/April 2010 that it had adopted a policy that it would thereafter file all tax warrants, including sales tax warrants, within a 6 year period consistent with the limitations rules applicable to the filing of warrants for the PIT, CFT and employment taxes. See coverage in: Jack Trachtenberg, *My Role as New York's Taxpayer Rights Advocate*, New York State Society of Certified Public Accountants (August 1, 2010); Jack Trachtenberg *An Update from the New York State Taxpayer Rights Advocate*, Stringer, NYSSCPA (March 2011); Jack Trachtenberg, *NYS Taxpayer Rights Advocate Outlines Services*, Stringer, NYSSCPA (February 2012). As discussed in more detail below, we support this policy.

²⁵ Tax Law §§692(h) and 1092(h).

²⁶ Tax Law §1141(a).

²⁷ Tax Law §174-b(4).

There is no statutory corollary to this for sales tax.

12. If a warrant is issued and filed, the Department has 20 years to collect on the warrant. The 20 years runs from the “first date the warrant could have been filed without regard to whether the warrant is filed” (which, in the case of PIT and CFT, is 21 days after the Notice and Demand was filed). This means that even if the Department does not issue the warrant until the very end of the 6 year period, the delay in filing the warrant will not extend the 20 year period for collection of the tax liability.

If the taxes have not been fully collected when the 20 year period ends, any remaining liability is extinguished. This 20 year rule applies to all taxes, including sales taxes.²⁸

Effect of Tax Law Section 174-b

Prior to the enactment of Section 174-b in 2011, these 6 year and 20 year rules were slightly different:

How Section 174-b changed the 6 year rule. Prior to the enactment of Section 174-b, the Department had the same 6 years to issue the warrant in the case of the PIT and CFT, but if the Department failed to do so, the liability *was not extinguished*. The Department was, however, prohibited from taking any collection action, because under New York State law the Department may take collection action only *after* a warrant has been filed. So, the Taxpayer remained liable and the State retained the accounts receivable on its books, although the Taxpayer was under no legal obligation to pay and the State had no legal right to demand payment. Section 174-b(4) fixed this by adding to the law that if the 6 year period expired without a warrant being issued, the liability was extinguished.²⁹

How Section 174-b changed the 20 year rule. Prior to the enactment of Section 174-b, the statute of limitations on the enforcement of the money judgment created by the warrant was governed by the provisions of Section 211(b) of the CPLR. Under this rule, the State initially had 20 years from the date the warrant was filed to collect.³⁰ However, because this period started to run when the warrant was filed, this period could begin up to 6 years after the assessment date. Even more significantly, under the terms of the CPLR, the 20 year period would start anew each time there was any payment (including an involuntary payment, such as

²⁸ Tax Law §174-a(1).

²⁹ Sections 692 and 1092 provide that a warrant must be issued within the 6 year period, and Section 174-b(4) provides that, if no warrant is issued by the end of the 6 years, the liability is extinguished

³⁰ CPLR §211(b) states that “[a] money judgment is [conclusively] presumed to be paid and satisfied after the expiration of twenty years from the time when the party recovering it was first entitled to enforce it.”

through a levy on a bank account or the seizure of an asset), and each time there was any written acknowledgment of the debt by the debtor.

Section 174-b(1) fixed these problems by providing that the liability was extinguished 20 years after “the first date a warrant could be filed.” Whereas, under the CPLR, the 20 years began from the date the warrant *was actually filed*, under Section 174-b(4) the 20 years begins on the first date the warrant *could have been* filed (which is 21 days after the date of issuance of the Notice and Demand). This change ensured that the 20 year period started to run shortly after the assessment date, whether or not the Department filed a warrant promptly.

The application of these two new rules to sales tax is slightly confusing:

Section 174-b(1) does apply to sale tax, meaning there is a 20 year period for collection;

but, Section 174-b(4) does not apply to sale tax, meaning a sales tax liability does not expire if a warrant is not issued within 6 years.

III. Discussion of Recommendations

1. *Issue a regulation implementing Section 174-b(1) by providing that a Notice and Demand will be deemed to have been issued so as to ensure that the 20 year collections period commences shortly after the tax has been assessed.*

As discussed above, Section 174-b(1) appears to have been designed not only to eliminate the theretofore virtually unlimited collection statute for New York State tax liabilities, but also to ensure that the 20 year collection period starts to run as soon as the Department is legally able to file a warrant. This aligns the incentives with the best practices for maximizing collection because the Department is incentivized to file the warrant without undue delay, thus exercising its powers for collection at a time when recovery from the Taxpayer is likely to be more successful.

Section 174-b works as intended if the Notice and Demand is filed as soon as possible after assessment. The statutory scheme contemplates a narrow band of time between each step in the process. The following example sets out the steps as provided for by the current statute using hypothetical dates.

Example 1

Notice of Deficiency is issued on Jan. 1, 2013;

Assessment occurs on April 1, 2013 (90 days later);³¹

Notice and Demand is issued “as soon as practicable” thereafter, assume this is 30 days later on May 1 2013;³²

³¹ This assumes no appeal of the notice of deficiency is taken.

The first date a warrant may be filed is May 22, 2013;³³

If a tax warrant is not filed by April 1, 2019 (6 years after the assessment date), the tax liability is extinguished;

If the tax warrant was filed during that 6 year period, the last date for collection on the warrant is May 22, 2033 (20 years after the first date a warrant could be filed).

So, we see that the 6 year period starts to run on April 1, 2013, and the 20 year period starts to run 51 days later on May 22, 2033. Thus, the two periods run almost consecutively.

But, the time line of the steps can get shifted off this expected track because there is no precise time limit imposed for the issuance of the Notice and Demand. The phrase “as soon as practicable” in Section 692(b) is not a fixed number of days.

Because of this uncertainty, the time line could easily become something like the following.

Example 2

Notice of Deficiency issued on Jan. 1, 2013;

Assessment occurs 90 days later on April 1, 2013;

Notice and Demand is issued 5 years and 11 months later on March 1, 2019;

The first date a warrant may be filed is 21 days later on March 22, 2019 (which is within the permissible time period for filing the warrant – i.e., 6 years from the assessment date);

The Collections period ends on March 22, 2039 (20 years after the first date a warrant could be filed, but also approximately 26 years after the assessment date).

In these two Examples, everything is identical except that “as soon as practicable” was 30 days in Example 1 (i.e., 1 month) and 5 years and 11 months (i.e., 71 months) in Example 2. The consequence of this difference is that the tax debt remains outstanding for an additional approximately 6 years.

We believe that what occurred in Example 2 is directly contrary to the intent of the legislature in enacting Section 174-b (and of the Department in supporting it) which was to set a distinct time period for a tax liability to remain collectible. Section 174-b provides for a 6 year time limit on filing a warrant and a 20 year time limit on collecting. We believe that Section

³² We chose 30 days because we understand that current Department policy is to do this within 30 days.

³³ This assumes the Taxpayer does not voluntarily pay before this 21st day.

174-b is premised on the understanding that those two periods would run relatively concurrently, not consecutively. In other words, that the total period to collect would be approximately 20 years from the date the liability has been determined to be certain – not somewhere between 20 years from that date and 26 years from that date, with the precise time period being determined based upon when the Department mailed the taxpayer a Notice and Demand.

The event that determines when the 20 years starts to run is the issuance of the Notice and Demand to the taxpayer. Once liability has been determined to be certain, there is no reason for a delay in issuing the Notice and Demand. As discussed in our 2010 Report, the more promptly the taxpayer becomes aware of the tax debt, the more successful collection is likely to be. In addition, as the tax debt gets older and older, the likelihood of collecting or collecting additional amounts declines. Encouraging early notification to the taxpayer and early collection efforts by the Department were significant policy reasons for imposing the 6 year time limit on the filing of a tax warrant and the 20 year time limit on the collection of a tax liability.

If the start date (and end-date) of the 20 year limit for collection of the tax is extended because of a delay in the issuance of the Notice and Demand, then the law is facilitating something that the law is intended to be preventing.³⁴ In order to accomplish the purpose of Section 174-b, a missing piece of the puzzle needs to be added. Specifically, a set number of days should be identified after which, if the Notice and Demand has not actually been filed, it should be deemed to be have been filed for purposes of starting the 20 year collection period. Such a rule would be an appropriate implementation of Section 174-b.

We understand that the Department does have a policy that a Notice and Demand should be issued within 30 days of the assessment. However, this 30-day policy is not publicized, is not binding on the Department's auditors, and is not enforceable by Taxpayers.

We suggest that the Department issue a regulation providing that in determining the commencement date of the 20 year collections period under Section 174-b(1), if a Notice and Demand has not in fact been filed by the "X"th day after the date of assessment, the Notice and Demand shall be deemed to have been filed on that "X"th day.³⁵ This time period ("X" days) could be 30 days (the current Department policy), 60 days (the period currently required for issuance of a Notice and Demand under U.S. Federal tax law)³⁶ or some longer period. We believe, however, that the period should be no longer than 3 months.

2. Clarify the differences between subdivision 1 and subdivision 4 of Section 174-b with respect to (a) the starting dates for their respective limitation periods and (b) the types of taxes to which each applies.

³⁴ As explained above, Section 174-b was intended to ensure that that the 20 year collection period would start promptly after assessment, instead of *some time during* a period lasting up to 6 years.

³⁵ We believe this should be a regulation, rather than a TSB-M, because it would be an interpretation of statutory text, not an example of the application of statutory text.

³⁶ Internal Revenue Code §6303.

(a) Starting dates for the respective statute of limitation. As discussed above, Section 174-b has two separate statute of limitations rules and these two rules have different start dates (the 20 year rule which starts on the first date a warrant could be filed, and the 6 year rule which starts on the date of assessment). These differences are not yet well known or well understood by many practitioners and taxpayers, and we believe that it would be beneficial if the Department could issue administrative guidance pointing out that the two start dates are indeed different.

(b) The types of taxes to which each applies. As discussed above, the 20 year rule in Section 174-b(1) applies to *all* taxes administered by the Commissioner, whereas the 6 year rule in Section 174-b(4) applies only to the PIT and CFT (as well as employment taxes). The 6 year rule does not apply to *sales taxes*. This is a distinction that may not be fully appreciated by practitioners or taxpayers and we think that administrative guidance pointing this out would be very helpful.

3. *Explain how subdivision 4 of Section 174-b changed prior law.*

The other aspect of Section 174-b(4) that is difficult to understand is what precisely it adds to the law that was not already in Sections 692(c) and 1092(c). The answer is that Sections 692(c) and 1092(c) provide that the warrant may not be issued after the 6 year period has passed, and Section 174-b(4) provides that, if the warrant is not issued within that period, the tax liability is extinguished. The subtleties in these statutory provisions are confusing and administrative guidance explaining how these provisions work could improve practitioners' and taxpayers' understanding of these rules and eliminate a source of confusion and tension in their dealings with the Department.

4. *Clarify how Section 174-b(1) applies in the case of sales tax.*

Precisely how Section 174-b(1) applies in the case of a sales tax liability (as opposed to a PIT or CFT deficiency) is not entirely clear.

There are three reasons for this.

The first is that the terminology for the notices provided to taxpayers under Article 28 (sales tax) differs from the terminology under Article 22 (the PIT) and Article 27 (the CFT). Section 174-b(1) refers to the "notice and demand issued for the tax liability." In the context of sales tax, there is a Notice of Determination and Demand issued pursuant to Section 1147(b) (which is the equivalent of a Notice of Deficiency in the context of the PIT and CFT) and subsequently a Notice and Demand issued pursuant to Section 173-a(3). (The reasons for this difference in terminology have to do with the difference in the type of taxes and how those taxes are normally reported and paid.) Presumably, Section 174-b(1) is referring to the Notice and Demand issued pursuant to Section 173-a(3), but this is not entirely clear.

The second is that the rule obligating the Department to issue the sales tax Notice and Demand *at all and before the warrant is issued* is not found in Article 28 (where the bulk of the sales tax rules are found), but instead is within Article 8 (in Section 173-a).³⁷ This rule was

³⁷ Section 173-a(3) is not only in a different article than the other sales tax collection rules, but it also has the rather uninformative title: "Hearing rights upon notice and demand".

enacted in August of 2004. Before that, there was no statutory requirement that the Department issue a Notice and Demand at all in the case of sales tax (although the Department had a practice of doing so).

Third, Section 174-b(1) provides that the 20 year period begins “on the first date a warrant could be filed” and then goes on to state that “the first date a warrant could be filed means the day after the last day specified for payment by the notice and demand”. In the case of a warrant for sales tax issued pursuant to Section 173-a, the statute does not mandate that the Notice and Demand specify a date by which payment is required. Nor does the statute explicitly state that there must be any delay between the assessment and the filing of the warrant (or between the delivery of the Notice and Demand and the filing of the warrant). Therefore, it is not clear what day “the first day a warrant could be issued” means here: it could mean the assessment date, the date the notice and demand is issued, or 21 days after the notice and demand is issued (*i.e.*, the date interest starts to run on the deficiency). In fact, because of its placement in Article 8 (rather than Article 28), practitioners and taxpayers may not even know that Section 173-a exists and may think that the “notice and demand” referred to in Section 174-b(1) means, in the case of sales tax, the Notice of Determination and Demand.

We think these three elements of confusion could be clarified by guidance that explains that the relevant Notice and Demand in the case of sales tax is the one issued under Section 173-a, and that explains when “the first day a warrant could be issued” is in the case of sales tax.

5. *Clarify the reference in Section 174-b(1) to hearing rights that apply “with respect to the Notice and Demand”.*

It is always important for statutes of limitation to have clearly defined starting and ending dates. In the case of subdivision 1 of Section 174-b, the wording of the starting date for the 20 year limitations period for the collection of tax is somewhat ambiguous. The statute provides that the start date is the “first date a warrant could be filed without regard to whether the warrant is filed”. This in turn is defined as

the day after the last day specified for payment by the notice and demand issued for the tax liability where there is no right to a hearing with respect to such notice and demand. The first day a warrant could be filed shall be determined without regard to subsection (c) of section six hundred ninety or subsection (c) of section one thousand ninety of this chapter, unless the commissioner assesses the liability under either such subsection (c). When there is a right to a hearing with respect to a notice and demand for a tax liability, the first date a warrant could be filed means the day that opportunity for a hearing or review has been exhausted.

The confusion arises primarily from the reference to a right to a hearing “with respect to” a notice and demand.³⁸ We are not aware of any instance where there is a right to a hearing with respect to a notice and demand.

We conjecture that the last two quoted sentences are intended to apply only in the limited instances where the Commissioner has exercised his/her right to assess and collect a tax following a Tax Appeals Tribunal decision in favor of the State. In such a case, the Taxpayer has the right to petition for judicial review of the decision under Article 78 of the CPLR. Unless the taxpayer pays a deposit or files a bond securing payment of the tax, penalty and interest, the Commissioner may proceed to assessment and collection before conclusion of the judicial review pursuant to Tax Law Sections 690(c) and 1090(c). Therefore, under those circumstances, at the time the Notice and Demand is issued, the taxpayer would in fact have a right to hearing. But, the right to the hearing would not derive from the issuance of the Notice and Demand, but rather from the adverse Tribunal decision. If this is the correct interpretation, the start date for the 20 year collections statute will occur upon conclusion of the Article 78 review process.

We recommend that the Department issue guidance explaining what this portion of Section 174-b(1) means.

6. Improve public awareness of current procedures for the filing of sales tax warrants.

As discussed above, the statutory provisions governing the sales tax collection process do not specify a time period within which the State must file the warrant. The Department announced, however, in March/April 2010 that it had adopted a policy that it would thereafter file all tax warrants, including sales tax warrants, within a 6 year period from the date of assessment; this being the time limit provided for in the statute for the PIT, CFT and employment taxes.

We commend the Department for adopting this policy. We believe that this policy is reasonable and legally sound, and administratively sensible. This policy establishes a unified procedure for the filing of all tax warrants; it provides an incentive to the Department to proceed with the filing of a sales tax warrant before the liability becomes too stale, thereby maximizing collections and reducing the administrative burdens of carrying old, less cost-effective collection files; and it reduces the harm to taxpayers from long delays in the filing of a sales tax warrant, including loss of records and the potential for building insoluble, overwhelming sales tax liabilities by reason of the accrual of interest and penalties over a long collection period prior to the filing of a tax warrant. In fact, many taxpayers are not aware of the sales tax liability assessed against them until the warrant is filed.

³⁸ The right to appeal a tax liability prior to payment derives from the Department’s issuance of a Notice of Deficiency or a Notice of Determination. If the appeal is not timely made from those notices, the Taxpayer does not get another hearing right upon the subsequent issuance by the Department of a Notice and Demand. Section 173-a overruled prior case law which had found that the Division of Tax Appeals had subject matter jurisdiction under Tax Law §2006(4) to hear cases deriving from Notices and Demand issued for mathematical errors, unreported federal changes, etc.

We recommend that the Department find ways to increase awareness of this policy. Because the Department procedure for the filing of sales tax warrants is not currently available to the public in published form, it may not be widely known by tax professionals and taxpayers. We are also concerned that there may be a lack of understanding of this policy at certain levels of the Department, thereby increasing the likelihood that sales tax warrants could be improperly filed beyond the 6 year period. Accordingly, we believe it would be beneficial if the Department would publicize the policy both in the public sector and, if necessary, within its own ranks.

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Thank you for your consideration of our suggestions and recommendations. We would welcome an opportunity to discuss them with you further and we look forward to continuing to work with you on other aspects of this important and valuable project.