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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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GENERAL GOVERNMENT  
DIVISION

JUN 7 1976

Mr. John R. Risher, Jr.  
Corporation Counsel  
District of Columbia Government

Dear Mr. Risher:

During our review of the administration of taxes in the District of Columbia, which are self-assessed by the taxpayer, we examined the available information on the District's prosecution of tax delinquents and discussed this matter with Corporation Counsel and Department of Finance and Revenue officials.

We did not evaluate the handling of any tax prosecution cases. Our principle concern was whether the District's prosecution of tax delinquents and the results obtained appeared to promote voluntary taxpayer compliance with the requirements for filing returns and paying taxes.

The District's tax prosecution program should benefit from a review of the criteria covering the cases to be prosecuted, the penalties provided for violations of the tax laws, and the staff required to handle the program. These matters are discussed below.

CRITERIA FOR PROSECUTION  
SHOULD BE REVIEWED

According to Corporation Counsel and Department of Finance and Revenue officials, the primary reason for prosecuting tax delinquents is to discourage violation of the tax laws. Tax administrators said that if a delinquent taxpayer has the financial capacity to pay the taxes he owes, the administrative procedures available to the Department of Finance and Revenue and the threat of prosecution will, in most cases, enable the Department to make the collection.

In 1970, the Chairman of the Senate District Appropriations Subcommittee urged the District to increase its prosecution of tax delinquents and in the next few years the activity was increased significantly.

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The following schedule was developed from the records that were readily available in the Tax Division of the Superior Court of the District of Columbia. The schedule shows the dispositions of cases prosecuted from February 1972 through December 1975.

<u>Disposition</u>	<u>Number of Charges</u> (note a)	<u>Number of Defendants</u>
Nolle prosequi (prosecution discontinued)	1,018	235
Court tried-guilty	678	178
Court dismissed	<u>40</u>	<u>6</u>
	<u>1,736</u>	(note b)

a

A charge is one count of noncompliance with tax laws. For example, there would be one charge for each year an individual did not comply with the income tax laws. A business could have more charges against it for one year depending on how often it was required to file and pay taxes. Businesses are required to file and pay taxes annually, quarterly, or monthly depending on the amount of tax owed.

b

Many defendants who had cases tried in court had charges on which Corporation Counsel discontinued prosecution (nolle prosequi). Due to this overlap, this column cannot be added to obtain the total number of defendants.

One thousand-forty six of the 1,736 charges above pertained to cases closed in calendar year 1972. Since that time the activity has decreased. In 1975, dispositions were made of 36 charges involving 5 defendants.

Of 1,736 charges of tax law violations disposed of since February 1972, 1,018 or more than 50 percent, were disposed of through nolle prosequi actions--notice by the Corporation Counsel to the Court that the District would proceed no further in its prosecution. A representative of the Taxation Division of Corporation Counsel said that prosecution can be discontinued for various reasons, at the discretion of the prosecutor. He said that usually it is a compromise which is made only when the defendant acknowledges his delinquency and pays the taxes he owes.

The large number of cases where such action has been taken indicates that the criteria for prosecution of tax delinquents should be reviewed. Corporation Counsel should discuss with the Department of Finance and Revenue the establishment of guidelines covering the type cases to be prosecuted. Corporation Counsel and Department of Finance and Revenue personnel informed us that the establishment of such guidelines would be beneficial to the program.

PENALTIES FOR CONVICTION OF TAX LAW  
VIOLATIONS SHOULD BE REVIEWED

Under the existing laws, it is within the court's discretion to fix the penalty for violations of the income tax laws up to a maximum \$5,000 fine and/or imprisonment for not more than one year. Convictions for failure to file and pay sales taxes are subject to a maximum fine of \$300 for each failure. Convictions for wilful violations of the sales tax laws carries a maximum fine of \$5,000 and/or imprisonment for not more than one year.

Superior Court records show that from February 1972 through December 1975, about \$92,600 in fines was imposed for convictions on 678 violations of tax laws involving 178 defendants. The fines averaged about \$140 for each count and \$520 for each defendant. According to officials of the Taxation Division of Corporation Counsel most of the charges brought were for failure to file and pay sales taxes. A Superior Court representative informed us that the fines imposed by the Court were commensurate with the charges brought and the information on record with the Court.

A representative of the Taxation Division of Corporation Counsel told us that stiffer fines are being sought for tax law violations. He said that there may need to be a general increase in the level of fines and that consideration should be given to (1) increasing the maximum fines the court can impose, and (2) establishing by statute specific penalties for repeat convictions. This attorney, who has prosecuted many cases for the District, stated that it is not unusual to see the same people back two or more times.

NEED FOR FULL-TIME  
PROSECUTION STAFF

Over the last few years, the Corporation Counsel staff assigned to prosecuting tax law violations has varied up to a maximum of three attorneys assigned part-time. Although we recognize that Corporation Counsel has to apply its resources to many legal areas, it appears to us that, to be most effective, the tax prosecution program should be permanently staffed. The assignment of full-time staff can enhance the program by providing it with continuity, experience, and expertise.

An important part of any prosecution program is the preparation of a case. Representatives of the Taxation Division of the Corporation Counsel informed us that after tax cases are referred for prosecution, there are often evidenciary gaps which must be closed before the cases are tried and that this requires investigative work of a specialized nature for which staff often has not been available from the Department of Finance and Revenue or the Metropolitan Police Department. We were informed that many times the attorneys have done the investigative work necessary to close gaps in evidence. This, of course, reduces the number of cases the attorneys can handle.

A review should be made by Corporation Counsel in cooperation with the Department of Finance and Revenue, to determine the required staffing of the tax prosecution program. We believe the staff should be a full-time assignment for the attorneys and investigative personnel determined to be needed.

#### CONCLUSIONS AND RECOMMENDATIONS

Prosecution of individuals and businesses who violate the tax laws is necessary to promote compliance with the laws and equitably distribute the tax burden of the District. To be effective, it must be a constant and vigorous effort that is well-publicized.

The Department of Finance and Revenue applied enforcement resources to more than 16,000 delinquent tax accounts during fiscal year 1975. This is an indication of the improvement that is needed in taxpayer compliance. As the District's legal arm, the Corporation Counsel's role of applying the law to those individuals and businesses who take too lightly their tax obligations is vital to improving this situation.

We are recommending that you, in cooperation with the Director of Finance and Revenue, as appropriate:

- establish written guidelines covering the type cases to be prosecuted and the facts needed to seek a conviction for violation of the tax laws,
- review the penalties provided for violation of the tax laws, and
- consider establishing a separate unit in your office whose sole responsibility would be the prosecution of tax cases referred by the Department of Finance and Revenue.

The Office of Corporation Counsel and the Department of Finance and Revenue have begun a review of the tax prosecution program and you advised us that the matters covered by our recommendations are among the areas that are being actively pursued. We would appreciate being informed of actions taken as a result of the review.

Copies of this report are being sent to the Mayor, City Council, Office of Budget and Management Systems, D.C. Auditor, Office of Municipal Audit and Inspection, the Department of Finance and Revenue, and the Chief Judge of the Superior Court.

We appreciated the cooperation given us by representatives of the Office of Corporation Counsel and we would be pleased to meet with you to discuss further any of the matters contained in this letter.

Sincerely yours,

*Frank Medico*  
Frank Medico  
Assistant Director