

OFFICE OF STATE INSPECTOR GENERAL



EXECUTIVE SUMMARY

Review of the Department of Revenue's September 2018
Release of Corporation Lien Certificate Information to a Political Consultant

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**OSIG Review of the Department of Revenue's September 2018
Release of Corporation Lien Certificate Information to a Political
Consultant**

In October 2018, the OSIG initiated an investigation at the request of the Department of Revenue (Revenue), to review Revenue's corporation [tax] lien certificate process. The investigation request was prompted by public controversy (including a lawsuit) surrounding the issuance of a lien certificate to a political consultant working for a candidate in the November 2018 state senatorial elections. The issued lien certificate indicated that the candidate was delinquent in filing his state corporation tax return(s) and had liens totaling \$11,000. The lien certificate was later found to be incorrect, after being used as the basis of political advertisements. The OSIG also reviewed whether any Revenue employee issued the lien certificate with any malicious purpose, or intent to subvert or influence the political process.

The Secretary of Revenue notified the candidates of the mistake through an October 16, 2018 letter. After learning of the incorrect lien certificate, Revenue completed an internal investigation to determine how it was issued. The review also found several ways to improve the process (proposed corrective measures) to reduce the likelihood that a similar event would occur in the future.

The OSIG's investigation found:

- (I.) The lien certificate was processed in accordance with Revenue's standard procedures (at the time); and neither Revenue nor any of its employees violated any Commonwealth law, regulation, directive, or otherwise acted improperly when Revenue issued the corporation lien certificate.
- (II.) Following the incident, Revenue conducted an internal investigation and has since changed procedures relating to the issuance of corporation lien certificates.
- (III.) Neither Revenue nor any of its employees deliberately issued the corporation lien certificate with the intent to influence the election outcome or to side with any candidate or political party.
- (IV.) Prior to issuing the corporation lien certificate, the issuing employee had no personal relationship to, nor personal knowledge of, either political candidate.

BACKGROUND

Section 213 of the Fiscal Code states that Revenue shall issue lien certificates to persons who request them. These are certificates ". . . showing the character and amount of all liens that

may be of record in the department against any corporation, association or person under the provisions of any law of this Commonwealth.”

At the time of the disclosure, Revenue staff characterized a lien certificate as either “clean” or “dirty.” A clean lien certificate does not show that the taxpayer has outstanding tax debt to Revenue. A dirty lien certificate contains a monetary debt amount that the taxpayer owes, which may be an estimated amount if the taxpayer has not filed one or more tax returns. It also identifies the type of tax and tax years for which the debt (or estimated debt) is associated. If Revenue records showed that a taxpayer had not filed one or more particular tax returns – thus preventing Revenue from calculating the tax owed for the period covered by the missing tax return – Revenue would place an estimate of \$1,100 on the certificate (for each tax owed for each non-filed year), resulting in a dirty lien.

The OSIG found that Revenue employees, when processing lien certificate requests, may need to conduct research in multiple Revenue databases, including a Department of State (DOS) database, especially in cases that the requestor provides only a taxpayer’s name (rather than address, tax identification number, etc.). The OSIG found no evidence that Revenue had a defined timeframe in which it must respond to requests. One Revenue employee told the OSIG that Revenue tries to reply within five to seven business days. The issuing employee told the OSIG that, at the time of his or her disclosure, Revenue did not have a policy or written guideline concerning how to process a lien certificate request.

Description of the Request for the Corporation Tax Lien Certificate

In November 2018, Democrat Mark Pinsley was challenging incumbent Republican State Senator Patrick Browne for the Pennsylvania state senate seat from the 16th Senatorial District. Browne has served as the senator from the 16th District since 2005. As of November 5, 2018, Pinsley’s profile on the website LinkedIn showed that Pinsley is (or was) the president of the business entities DermaMed Solutions, LLC (DermaMed) and Adaco Services, LLC (Adaco), both of which are registered to do business in the Commonwealth of Pennsylvania. DOS records show that “DermaMed Solutions, LLC,” previously operated under the corporate name “DermaMed Acq., LLC.”

Before the general election, The Browne Campaign hired Wavelength Communications LLC (Wavelength),¹ which in turn hired Hancock and Prouty, LLC (H&P), a Missouri-based political consulting firm, to conduct opposition research on Pinsley. As part of its research, H&P sent lien certificate requests to Revenue for DermaMed and Adaco on September 13, 2018. Revenue responded on September 17, 2018, by e-mailing a lien certificate to H&P, showing corporation liens against DermaMed totaling \$11,000.00.² Revenue e-mailed a clean lien certificate to H&P on September 27, 2018, showing no tax liens against Adaco.

The political consultant who made the lien certificate request told the OSIG that:

¹ According to the LinkedIn webpage of a Wavelength employee, Wavelength (located in Philadelphia, Pennsylvania), is a full-service agency, specializing in advertising, design, and media, whose consultants bring discipline and experience to one of the only politically-focused media agencies in the area.

² The reported liens were related to various state corporate taxes for tax years 2012 through 2015.

- he or she had no reason to believe there would be any liens on Pinsley's businesses, and was just sending the request as "due diligence" to cover all bases; and
- he or she generally "casts a wide net" and has no expectation of what information will be returned.

The H&P employee said that he or she generally provides any pertinent information to the campaign – including the results of tax searches as part of H&P's research. The H&P employee denied knowing anyone from Revenue, and denied having regular contact with anyone from Revenue.

The issuing employee said after H&P received his or her response regarding DermaMed, H&P e-mailed Revenue back to clarify what the estimates were on the certificate. The issuing employee said that he or she explained by e-mail (to H&P) that there were non-filed periods for DermaMed. Additionally, the issuing employee told H&P that:

- the lien certificate for DermaMed contained [monetary] estimates, based on non-filed corporation tax returns;
- the information on the lien certificate was not docketed with a county Prothonotary's Office; and
- the "assessment date" represented the date that the issuing employee had created the lien certificate.

Revenue's Proposed Corrective Measures

Following its internal review, Revenue proposed corrective measures including: (1.) recording all lien certificate requests into a Revenue computer system and relying on that system's information to create the certificate; (2.) in very limited circumstances, issuing an estimated assessment before issuing the lien certificate; and (3.) retraining its employees.

OSIG RECOMMENDATIONS

The OSIG recommended that Revenue:

- create a sufficient training program to teach its employees how to uniformly assess requests for, and subsequently issue, Corporation Lien Certificates; and
- create and require requestors to use standard, consistent forms for requesting Corporation Lien Certificates (or other lien certificates issued under authority of Section 213 of the Fiscal Code).

COOPERATION FROM THE DEPARTMENT OF REVENUE

During the OSIG's investigation, all Revenue staff were cooperative and accommodating.