

# STATE OF NEW YORK

3846

2021-2022 Regular Sessions

## IN ASSEMBLY

January 28, 2021

Introduced by M. of A. NORRIS, ASHBY, DeSTEFANO, MORINELLO -- read once  
and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to establishing  
audits of state agency expenditures to recover overpayments and lost  
discounts

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

Section 1. The state finance law is amended by adding a new article  
7-B to read as follows:

### ARTICLE 7-B

#### RECOVERY OF CERTAIN STATE AGENCY OVERPAYMENTS

##### Section 124. Definitions.

124-a. Contract consultants for recovery audits for certain  
overpayments.

124-b. State agencies subject to mandatory recovery audits.

124-c. Payment to contractors.

124-d. Forwarding reports.

##### § 124. Definitions. As used in this article:

1. Overpayment. "Overpayment" includes a duplicate payment made to a  
vendor for a single invoice and a payment made to a vendor:

(a) when an available discount from the vendor was not applied;

(b) for a late payment penalty that was improperly applied by the  
vendor;

(c) for shipping costs that were computed incorrectly or incorrectly  
included in an invoice;

(d) for state sales tax; or

(e) for a good or service the vendor did not provide.

2. State agency. "State agency" means a department, commission, board,  
office, or other agency, including a university system or an institution  
of higher education that:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD01634-01-1

1 (a) is in the executive branch of state government; and  
2 (b) is created by statute.

3 § 124-a. Contract consultants for recovery audits for certain overpay-  
4 ments. 1. The comptroller shall contract with one or more consultants to  
5 conduct recovery audits of payments made by state agencies to vendors.  
6 The audits must be designated to detect and recover overpayment to the  
7 vendors and to recommend improved state agency accounting operations.

8 2. A contract under this section:

9 (a) may provide for reasonable compensation for services provided  
10 under the contract, including compensation determined by the application  
11 of a specified percentage of the total amount recovered because of the  
12 consultant's audit activities or recommendations as a fee for services;

13 (b) may permit or require the consultant to pursue a judicial action  
14 in a court inside or outside this state to recover an overpaid amount;  
15 and

16 (c) to allow time for the performance of existing state payment audit-  
17 ing procedures, may not allow a recovery audit of a payment during the  
18 one hundred eighty day period after the date the payment was made.

19 3. The comptroller or a state agency whose payments are being audited  
20 may provide a person acting under a contract authorized by this section  
21 with any confidential information in the custody of the comptroller or  
22 state agency that is necessary for the performance of the audit or the  
23 recovery of an overpayment, to the extent the comptroller and state  
24 agency are not prohibited from sharing the information under an agree-  
25 ment with another state or the federal government. A person acting under  
26 a contract authorized by this section, and each employee or agent of the  
27 person, is subject to all prohibitions against the disclosure of confi-  
28 dential information obtained from the state in connection with the  
29 contract that apply to the comptroller or applicable state agency or an  
30 employee of the comptroller or applicable state agency. A person acting  
31 under a contract authorized by this section or an employee or agent of  
32 the person who discloses confidential information in violation of a  
33 prohibition made applicable to the person under this subdivision is  
34 subject to the same sanctions and penalties that would apply to the  
35 comptroller or applicable state agency or an employee of the comptroller  
36 or applicable state agency for that disclosure.

37 § 124-b. State agencies subject to mandatory recovery audits. 1. The  
38 comptroller shall require that recovery audits be performed on the  
39 payments to vendors made by each state agency that has total expendi-  
40 tures during a state fiscal biennium in an amount that exceeds one  
41 hundred million dollars. Each state agency shall provide the recovery  
42 audit consultant with all information necessary for the audit.

43 2. The comptroller may exempt from the mandatory recovery audit proc-  
44 ess a state agency that has a low proportion of its expenditures made to  
45 vendors, according to criteria the comptroller adopts by rule after  
46 consideration of the likely costs and benefits of performing recovery  
47 audits for agencies that make relatively few or small payments to  
48 vendors.

49 § 124-c. Payment to contractors. 1. A state agency shall pay, from  
50 recovered money appropriated for that purpose, the recovery audit  
51 consultant responsible for obtaining for the agency a reimbursement from  
52 a vendor.

53 2. A state agency shall expend or return to the federal government any  
54 federal money that is recovered through a recovery audit conducted under  
55 section one hundred twenty-four-a of this article. The state agency

1 shall expend or return the federal money in accordance with the rules of  
2 the federal program through which the agency received the federal money.

3 § 124-d. Forwarding reports. 1. The comptroller shall provide copies,  
4 including electronic form copies, of any reports received from a  
5 consultant contracting pursuant to section one hundred twenty-four-a of  
6 this article to:

7 (a) the governor;

8 (b) the speaker of the assembly and the temporary president of the  
9 senate; and

10 (c) the minority leaders of the senate and the assembly.

11 2. The comptroller shall provide the copies required by subdivision  
12 one of this section not later than the seventh day after the date the  
13 comptroller receives the consultant's report.

14 3. Not later than August first of each odd numbered year, the comp-  
15 troller shall issue a report to the legislature summarizing the contents  
16 of all reports received under this article during the state fiscal bien-  
17 niun ending March thirty-first of the previous year.

18 § 2. The comptroller shall adopt rules to administer the provisions of  
19 article 7-B of the state finance law as added by section one of this act  
20 not later than August 1, 2021.

21 § 3. This act shall take effect immediately.