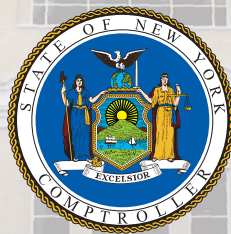




NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

2007 AND 2008 ANNUAL MARKETING ORDERS STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN FUND BALANCES

Report 2009-S-7



Thomas P. DiNapoli

**NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS
2007 AND 2008 ANNUAL MARKETING ORDERS
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN FUND BALANCES**

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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

**New York State Department of Agriculture and Markets
2007 and 2008 Annual Marketing Order Statements
Comptroller's Report**

We have examined the Department of Agriculture and Markets (Department) Statements of Revenue, Expenses, and Changes in Fund Balance (Statements) for the Apple Marketing Order and Sour Cherry Marketing Order for the two fiscal years ended June 30, 2008; for the Apple Research and Development Program for the two years ended June 30, 2007 and March 31, 2008; and for Cabbage Research and Development Program and Onion Research and Development Program for the two fiscal years ended March 31, 2008. The Statements are the responsibility of Department management. Our responsibility is to attest to the fair presentation of the data reported on the Statements based on our examination.

Our examination was conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, our examination included testing of selected transactions and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our attestation opinion.

In our opinion, the Department's Statements present fairly, in all material respects, the revenues, expenses, and changes in fund balance for the Apple Marketing Order and Sour Cherry Marketing Order for the two fiscal years ended June 30, 2008; for the Apple Research and Development Program for the two years ended June 30, 2007 and March 31, 2008; and for the Cabbage Research and Development Program and Onion Research and Development Program for the two fiscal years ended March 31, 2008, in accordance with the modified accrual basis of accounting.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating

organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits.

In accordance with Government Auditing Standards for Attestation Engagements, we have also issued a report on the Department's internal controls over its financial reporting operations and Department compliance with Program-related laws and regulations. The report is an integral part of an attestation engagement and should be considered in assessing the results of our examination.

Office of the State Comptroller

Date: May 26, 2010

**NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS
APPLE MARKETING ORDER
COMPARATIVE STATEMENTS OF REVENUES, EXPENSES AND
CHANGES IN FUND BALANCES
FOR THE FISCAL YEARS ENDED JUNE 30, 2008 AND 2007**

| | <u>Fiscal Year Ended June 30</u> | |
|--------------------------------------|----------------------------------|-------------------|
| | <u>2008</u> | <u>2007</u> |
| Revenues: (Note 4) | | |
| Assessments (Note 2) | \$2,131,810 | \$2,120,308 |
| Interest | 24,131 | 16,204 |
| Finance Charges | 23,971 | 3,092 |
| Late Payment and Returned Check Fees | <u>150</u> | <u>60</u> |
| Total Revenues | <u>2,180,062</u> | <u>2,139,664</u> |
| Expenses: | | |
| Contracted (Note 6) | <u>1,650,000</u> | <u>1,526,587</u> |
| Bad Debt (Note 9) | <u>50,000</u> | <u>41,000</u> |
| Administration (Note 7) | | |
| Salaries | 40,048 | 58,828 |
| Fringe (Note 10) | 5,497 | 43,722 |
| Indirect | 449 | 2,650 |
| Travel | 1,864 | 1,394 |
| Administrative Cost Assessment | 448 | 110 |
| Accounting Fees | 0 | 18,150 |
| Supplies | 546 | 175 |
| Other | <u>427</u> | <u>203</u> |
| Total Administration | <u>49,279</u> | <u>125,232</u> |
| Total Expenses | <u>1,749,279</u> | <u>1,692,819</u> |
| Net Income (Loss) | 430,783 | 446,845 |
| Beginning Fund Balance | 874,809 | 419,920 |
| Prior Period Adjustment (Note 8) | <u>(4,784)</u> | <u>8,044</u> |
| Ending Fund Balance (Deficit) | <u>\$ 1,300,808</u> | <u>\$ 874,809</u> |

The accompanying notes are an integral part of the Statements.

**NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS
APPLE RESEARCH AND DEVELOPMENT PROGRAM
COMPARATIVE STATEMENTS OF REVENUES, EXPENSES AND
CHANGES IN FUND BALANCES
FOR THE NINE MONTHS ENDED MARCH 31, 2008 AND
THE YEAR ENDED JUNE 30, 2007 (Note 12)**

| | <u>Fiscal Year Ended [Note 12]</u> | |
|----------------------------------|------------------------------------|-------------------------------|
| | <u>March 31</u> <u>2008</u> | <u>June 30</u> <u>2007</u> |
| Revenues: (Note 4) | | |
| Assessments (Note 2) | \$187,679 | \$215,583 |
| Interest | 4,936 | 5,156 |
| Finance Charges | 941 | 151 |
| Late Payment Fees | <u>330</u> | <u>50</u> |
| Total Revenues | <u>193,886</u> | <u>220,940</u> |
| Expenses: | | |
| Contracted (Note 6) | <u>102,885</u> | <u>150,122</u> |
| Bad Debt (Note 9) | <u>0</u> | <u>1</u> |
| Publications | <u>7,200</u> | <u>7,200</u> |
| Administration (Note 7) | | |
| Travel | 2,791 | 1,401 |
| Other | 1,962 | 110 |
| Salaries | 1,800 | 695 |
| Fringe | 845 | 932 |
| Supplies | 108 | 0 |
| Indirect | <u>61</u> | <u>43</u> |
| Total Administration | <u>7,567</u> | <u>3,181</u> |
| Total Expenses | <u>117,652</u> | <u>160,504</u> |
| Net Income (Loss) | 76,234 | 60,436 |
| Beginning Fund Balance | 99,956 | 38,857 |
| Prior Period Adjustment (Note 8) | <u>0</u> | <u>663</u> |
| Ending Fund Balance (Deficit) | <u>\$176,190</u> | <u>\$ 99,956</u> |

The accompanying notes are an integral part of the Statements.

**NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS
SOUR CHERRY MARKETING ORDER
COMPARATIVE STATEMENTS OF REVENUES, EXPENSES AND
CHANGES IN FUND BALANCES
FOR THE FISCAL YEARS ENDED JUNE 30, 2008 AND 2007**

| | <u>Fiscal Year Ended June 30</u> | |
|----------------------------------|----------------------------------|------------------|
| | <u>2008</u> | <u>2007</u> |
| Revenues: (Note 4) | | |
| Assessments (Note 2) | \$12,718 | \$10,873 |
| Interest | <u>542</u> | <u>712</u> |
| Total Revenues | <u>13,260</u> | <u>11,585</u> |
| Expenses: | | |
| Contracted (Note 6) | 8,376 | 8,138 |
| Administration (Note 7) | <u>104</u> | <u>141</u> |
| Total Expenses | <u>8,480</u> | <u>8,279</u> |
| Net Income (Loss) | 4,780 | 3,306 |
| Beginning Fund Balance | 10,552 | 7,190 |
| Prior Period Adjustment (Note 8) | <u>0</u> | <u>56</u> |
| Ending Fund Balance (Deficit) | <u>\$15,332</u> | <u>\$ 10,552</u> |

The accompanying notes are an integral part of the Statements.

**NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS
CABBAGE RESEARCH AND DEVELOPMENT PROGRAM
COMPARATIVE STATEMENTS OF REVENUES, EXPENSES AND
CHANGES IN FUND BALANCES
FOR THE FISCAL YEARS ENDED MARCH 31, 2008 AND 2007**

| | <u>Fiscal Year Ended March 31</u> | |
|-------------------------------|-----------------------------------|------------------|
| | <u>2008</u> | <u>2007</u> |
| Revenues: (Note 4) | | |
| Assessments (Note 2) | \$ 38,290 | \$ 30,975 |
| Interest | 1,091 | 362 |
| Finance Charges | 235 | 0 |
| Late Payment Fees | <u>110</u> | <u>0</u> |
| Total Revenues | <u>39,726</u> | <u>31,337</u> |
| Expenses: | | |
| Contracted (Note 6) | 21,586 | 19,255 |
| Bad Debt (Note 9) | 260 | 7,008 |
| Administration (Note 7) | <u>566</u> | <u>1,244</u> |
| Total Expenses | <u>22,412</u> | <u>27,507</u> |
| Net Income (Loss) | 17,314 | 3,830 |
| Beginning Fund Balance | <u>16,767</u> | <u>12,937</u> |
| Ending Fund Balance (Deficit) | <u>\$ 34,081</u> | <u>\$ 16,767</u> |

The accompanying notes are an integral part of the Statements.

**NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS
ONION RESEARCH AND DEVELOPMENT PROGRAM
COMPARATIVE STATEMENTS OF REVENUES, EXPENSES AND
CHANGES IN FUND BALANCES
FOR THE FISCAL YEARS ENDED MARCH 31, 2008 AND 2007**

| | <u>Fiscal Year Ended March 31</u> | |
|-------------------------------|-----------------------------------|-----------------|
| | <u>2008</u> | <u>2007</u> |
| Revenue: (Note 4) | | |
| Assessments (Note 2) | \$31,864 | \$39,056 |
| Interest | 3,054 | 1,892 |
| Finance Charges | 23 | 0 |
| Late Payment Fees | <u>80</u> | <u>0</u> |
| Total Revenue | <u>35,021</u> | <u>40,948</u> |
| Expenses: | | |
| Contracted (Note 6) | 36,044 | 20,000 |
| Bad Debt (Note 9) | 2,847 | 1,947 |
| Administration (Note 7) | <u>591</u> | <u>950</u> |
| Total Expenses | <u>39,482</u> | <u>22,897</u> |
| Net Income (Loss) | (4,461) | 18,051 |
| Beginning Fund Balance | <u>69,028</u> | <u>50,977</u> |
| Ending Fund Balance (Deficit) | <u>\$64,567</u> | <u>\$69,028</u> |

The accompanying notes are an integral part of the Statements.

Notes to the Consolidated Statements

1. Background

The Department's mission is to foster a competitive food and agriculture industry in New York to benefit both producers and consumers. The Department's Division of Agricultural Protection and Development Services (Division) focuses on farm protection, food and agricultural industry development, and the maintenance of an adequate farm labor supply. The Division administers numerous economic development and marketing programs, including marketing orders.

Marketing orders were established by the Legislature to assist the industry in achieving a variety of objectives, differing by individual marketing order, including product promotion, advertising, and research. These marketing orders include: the Apple Marketing Order, the Apple Research and Development Program, the Sour Cherry Marketing Order, the Onion Research and Development Program, and the Cabbage Research and Development Program.

The Division is responsible for overseeing and supervising the daily operation of the marketing orders. These duties include preparing marketing order budgets, disbursing marketing order funds, collecting assessments, and representing the Commissioner at industry meetings and conferences.

2. Assessment Rates

Title I, Chapter IV, Parts 201 to 205 of New York's Codes, Rules and Regulations stipulate that the Commissioner of Agriculture and Markets shall estimate budgets necessary for the administration and enforcement of the marketing orders; and announce the rates of assessment on growers to ensure that adequate funds are available to defray budgeted expenses. Assessment rates in place during the audit period were as follows:

Apple Marketing Order: Shall not exceed \$.08 per hundred pounds of apples sold for processing; \$.16 per bushel for apples sold for fresh market use; and \$.08 per bushel for apples sold directly to consumers. The assessment rates are currently set at the maximum rate allowable.

Apple Research and Development Program: Shall not exceed \$.02 per hundred pounds or \$.008 per bushel for apples sold for processing, or fresh market use. Rates are currently set at the maximum rate allowable.

Sour Cherry Marketing Order: Shall not exceed \$10.00 per ton for sour cherries processed and is currently assessed at \$2.50 per ton.

Cabbage Research and Development Program: Shall not exceed \$4.00 per planted acre and is currently assessed at \$3.00.

Onion Research and Development Program: Shall not exceed \$4.00 per acre of

planted onions in production. Rate is currently set at the maximum allowable.

3. Basis of Accounting

The Department's Statements were prepared on the modified accrual basis of accounting. As such, revenue is recognized when measurable and available, and expenses are recognized when incurred, rather than when paid.

The revenue, expenses, and adjustments used to compile the Department's Statements are based on the financial records maintained by the Department, and are in agreement with those maintained by the Office of the State Comptroller.

4. Assessment Revenue

The Department budgets its assessment revenue based on production data self-reported by market order participants (growers, sales agents, and/or processors). Reported production data used to calculate assessments due is verified periodically through audits performed by Department personnel.

5. Legislative Appropriations

In addition to the assessed revenues remitted by growers, the Department receives an annual appropriation from the Legislature to assist in the promotion of the State's agricultural products. The Department does not include these additional revenues or corresponding expenses in the Department's Statements as they pass directly through the Department and on to the Apple Growers and the Onion research and development Program. If the appropriation is not fully expended within a given year, the balance is re-appropriated to the following year. The Legislative appropriations received and expended for the Apple Marketing Order during the audit period totaled \$1,300,000. The appropriations received and expended during the audit period for the Onion Research and Development Program totaled \$200,000.

6. Contracted Expenses

The Agriculture and Markets Law, Article 25, Sections 292 to 295, and New York's Codes, Rules and Regulations Title I, Chapter IV, Parts 200 to 205, authorize the Commissioner of Agriculture and Markets (Commissioner) to contract with any person or persons to advertise, promote, publicize, market and/or conduct product research and informational services. For the Apple Marketing Order, the Commissioner contracts with the New York Apple Association Inc., a New York State-based non-profit corporation that was formed to assist apple growers in promoting demand for, and sale of, apples and apple products through advertising and other promotional work. For the Sour Cherry Marketing Order, the Commissioner contracts with the New York Cherry Growers Association, a New York State-based non-profit corporation formed to assist cherry growers in promoting the demand for, and sale of, cherries and cherry products through advertising and other promotional work. In addition, the Commissioner contracts with the Cornell University College of Agricultural and Life Sciences to provide

research services for the Apple Research and Development Program, the Cabbage Research and Development Program and the Onion Research and Development Program.

7. Administrative Expenses

Title I, Chapter IV, Parts 201 to 205 of New York's Codes, Rules, and Regulations stipulate that the total amount of the Department's budgeted costs to administer marketing orders shall not exceed 5 percent of the total Program budget. Administrative expenses include the personal service, travel, fringe benefit, and other indirect costs associated with administering the Marketing Order Program. As a result of our examination, we determined that the Department's Marketing Order-related reported administrative expenses at times exceed the 5 percent statutory limit (see Exhibits A and B). As such, the Department is not complying with governing regulations. (See Comptroller's Comments).

8. Prior Period Adjustment

Marketing Order revenue and expense transactions relating to prior periods - but occurring in the reporting period - are included here to accurately report the year-end Fund balance.

9. Bad Debt Expenditure

For the reporting period, the Apple Marketing Order, the Cabbage Research and Development Program, and the Onion Research and Development Program, each had outstanding accounts receivable (e.g., from growers) for four or more years. As such, Department officials determined that their ability to collect these outstanding assessments was in doubt. The bad debt expense reported on the respective Statements was established to recognize this determination.

10. Fringe and Indirect Expenses

Program-related fringe benefits and indirect expenses include health and employment-related expenses such as health insurance and pension contributions. The Department's Statements are to report these Marketing Order-related expenses up to the regulatory limit cited in footnote 8.

11. Change of Fiscal Year

During the reporting period, Department officials changed the annual reporting period for the Apple Research and Development Program from a July to June fiscal year to an April to March fiscal year. The change was made to coincide with the governing contract period and the State's fiscal year.



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

**Comptroller's Report on Internal Controls Over Financial Reporting and Compliance
with Governing Laws, Rules and Regulations**

New York State Department of Agriculture and Markets

We have examined the accompanying Statements of Revenue, Expenses, and Changes in Fund Balance for Apple Marketing Order and Sour Cherry Marketing Order for the two fiscal years ended June 30, 2008; the Apple Research and Development Program for the two years ended June 30, 2007 and March 31, 2008; and the Cabbage Research and Development Program and the Onion Research and Development Program for the two fiscal years ended March 31, 2008. We conducted our examination in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in Government Auditing Standards, issued by the Comptroller General of the United States.

Internal Controls Over Financial Reporting

In planning and performing our attestation engagement, we considered the Department's internal controls over its financial reporting operations in order to determine our procedure steps to attest to the Consolidated Schedules and not to attest to the effectiveness of the internal controls over financial reporting. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal controls over the financial report that, in our judgment, could adversely affect the Department's ability to record, process, summarize, and report financial data consistent with the assertion of management in the financial schedule. As a result of our examination, we did not identify matters involving internal controls over financial reporting and its operation that we consider to be reportable conditions.

Compliance with Governing Laws, Rules and Regulations

As part of obtaining reasonable assurance about whether the Department's Consolidated Schedules are free of material misstatement, we assessed Department Compliance with certain provisions of law, regulations, and contracts for which noncompliance could have a direct and material effect on the determination of financial schedule amounts. Our examination results disclosed one instance of noncompliance that are required to be reported under Government Auditing Standards. We reported this instance in the Comments Section of this report..

Office of the State Comptroller
Date: May 26, 2010

State Comptroller's Comments and Recommendation

Marketing Order Administrative Expenses

As noted in footnote 8 to the Department's Statements, New York Codes Rules and Regulations (NYCRR) establish a cap on marketing order administrative expenses at five percent of Program costs. The cap was established to limit the amount of assessment revenues remitted by growers that would not be spent directly on product promotion. As evidenced in Exhibits A and B of this report, Department officials have exceeded that cap in two instances during the reporting period.

Upon further inquiry, we were told that Department officials view the cap as applying over the long term and not for any specific reporting period. For example, administrative expenses may total two percent one year, and total six percent the next year with a biennial average of four percent.

Since the NYCRR does not allow for such flexibility, Department officials are not complying with the law. As a result, the intent of the law to devote a specific percentage of assessment revenues to direct product promotion is not always achieved.

We also determined that the Department does not maintain records detailing the actual amount of time Department staff devotes to administering the marketing orders. Based on the assertions of Department officials, the amounts reported on the Department's Statements do not include all such costs.

Recommendation 1. Comply with NYCRR by limiting annual marketing order administrative expenses to five percent of Program costs for all future reporting periods.