



DOAA

Georgia Department
of Audits & Accounts

Greg S. Griffin

State Auditor

Interim Audit Management Letter

The Honorable Bruce Thompson, Commissioner
Georgia Department of Labor

We are providing this interim report for your information and use. This investigative portion of our engagement was performed in accordance with OCGA 50-6-28 in response to a matter of concern you brought to our attention.

The procedures we performed primarily consisted of making inquiries and examining selected financial records, including supporting documents and do not constitute an examination or review in accordance with generally accepted auditing or attestation standards. Consequently, we provide no opinion, attestation, or other form of assurance with respect to the information upon which our work was based.

The accompanying report presents our findings and recommendations. A final Management Letter will be provided by the DOAA upon the completion of the annual audit engagement.

We would like to thank you and your staff for the cooperation we received during this investigation. If you become aware of any additional information regarding this matter, please do not hesitate to contact me.

Respectfully,

Greg S. Griffin
State Auditor

August 4, 2023

BACKGROUND

Upon your request, we have investigated a matter of concern you recently expressed to us. You expressed concern over an ambiguous source of monies which was mentioned to you by the (then) Chief Financial Officer as a potential funding source for a modernization project at the Georgia Department of Labor (GDOL). Our understanding is the ambiguous source of funds was mentioned to you subsequent to January 12, 2023, and you were concerned over its origin, actual existence and whether it was a valid funding source for the GDOL modernization project.

SUMMARY CONCLUSION

Regarding the funds in question, our investigation found that the GDOL is in possession of approximately \$105 million. This money represents State Revenue Collections that have been collected, as authorized by State statutes, but have not been remitted to the Office of the State Treasurer as required. These funds began accumulating in fiscal year 2014 and the total amount of unremitted funds has gradually increased each year until present. Failure to remit State Revenue Collections to the State Treasury is a violation of the Georgia Constitution. In addition, based on the failure to remit, our review of recent years financial reports appears to indicate GDOL's financial statements have been misstated, thereby not reflecting the true identity of the unremitted State Revenue Collections.

The remainder of this letter provides additional background information and details regarding the findings of our investigation.

CRITERIA

State Revenue Collections are those funds collected by State agencies that are authorized by revenue measures enacted by the Georgia General Assembly. Upon collection, State agencies are required to remit these collections to the State Treasury.

Constitutional Requirements

Article VII, Section III, Paragraph II of the Georgia Constitution states, "Except as otherwise provided in this Constitution, all revenue collected from taxes, fees, and assessments for state purposes, as authorized by revenue measures enacted by the General Assembly, shall be paid into the general fund of the state treasury." (Emphasis added)

Statutory Requirements to Collect

Based on our research, revenue measures enacted over the past years by the Georgia General Assembly have directed the GDOL to collect three primary sources of revenue for the State of Georgia. As these sources of taxes, fees or assessments have been authorized by Official Code of Georgia (OCGA) statutes, the amounts collected are clearly required to be paid into the general fund of the State Treasury. An overview of the revenues authorized to be collected by GDOL during the period of our investigation are as follows:

Administrative Assessments – OCGA 34-8-182 authorizes the commissioner of GDOL to collect the Administrative Assessment as provided in OCGA 34-8-180. The Administrative Assessment was originally established in 1987 when the General Assembly passed HB11 to provide for a period of five years an administrative assessment on wages of certain employers. The 1987 legislation set the Administrative Assessment at 0.06% on all specified wages and included a repeal date of March 31, 1992. Over the years, the statute has been amended to extend the repeal date on numerous occasions as well as modify the assessment percentage. Effective January 1, 2023, the authorization to collect the Administrative Assessment was repealed.

Penalties and Interest – OCGA 34-8-92 states that “all fines, penalties, and interest collected under the terms of this chapter shall be paid into the state treasury. The General Assembly shall be authorized to **appropriate to the Commissioner** all such funds so raised and deposited into the state treasury, which shall be payable upon requisition of the Commissioner.” (Emphasis added)

Statutory Requirement to Submit Collections Timely

OCGA 45-12-92 provides that State agencies “charged with the duty of collecting taxes, fees, assessments, or other moneys, the collection of which is imposed by law, if required, shall pay all revenues collected by them into the state treasury on a monthly basis on or before the fifteenth day of each month for the immediately preceding month’s collections, according to such rules and regulations as may be prescribed by the Office of Planning and Budget. No allotment of funds shall be made to any budget unit which has failed to comply fully with this Code section.” (Emphasis added)

Attorney General Opinion 77-77

The Department of Audits and Accounts has consistently relied on the legal conclusions of Attorney General Opinion 77-77 when questions arise regarding the retention of

funds collected by State Agencies. This official opinion differentiates those revenues an agency may retain versus those revenues it must remit to the State Treasury. Generally, this opinion states that all funds collected by a State Agency must be remitted to the State Treasury unless it meets one of five categories of exception. The three sources of GDOL revenue do not meet any of the exceptions.

SCOPE OF INVESTIGATION

OCGA 50-6-28 requires the State Auditor to make an investigation when there are facts, records, circumstances, or information that indicates mismanagement or misconduct on the part of any official or any employee of any department. This investigation focused on six primary areas:

1. To identify the source of funds being offered for GDOL modernization project
2. Confirm the existence of the funds
3. Determine if the GDOL was the rightful owner of the funds
4. Determine the completeness of the funds
5. Determine if the funds have been properly reported in its financial statements
6. Provide a final resolution over the legal usage of such funds

This investigation focused primarily on activities occurring from fiscal year 2014 to present, and, to some extent to previous years as it became necessary. The evidence and/or conclusions disclosed in this communication to you may have been limited because certain evidence may have no longer been available at the time of this investigation due to GDOL's records retention policies, or due to certain facts and circumstances not being provided by those who were interviewed.

The testing performed in this investigation does not constitute a full-scope audit performed in accordance with generally accepted auditing standards.

RESULTS OF THE INVESTIGATION

What we found

We found beginning in fiscal year 2014, the GDOL stopped remitting the entirety of the Unemployment Insurance Administrative Assessment funds it collected pursuant to OCGA 34-8-182. From fiscal year 2014 through fiscal year 2023, GDOL collected Administrative Assessment funds in the amount of \$244,871,051.30 but only remitted \$224,041,436.77 to the State Treasury. GDOL currently remains in possession of the unremitted balance of \$20,829,614.53.

We also found beginning in fiscal year 2016, the GDOL began retaining all of the Unemployment Insurance Penalty and Interest funds it collected pursuant to OCGA statutes. From fiscal year

2016 through fiscal year 2023, GDOL collected and retained \$63,139,053.96 in Penalties and collected and retained \$21,201,509.71 in Interest. GDOL currently remains in possession of the unremitted combined balance of Penalties and Interest of \$84,340,563.67.

Based on our understanding of the Georgia Constitution and Attorney General Opinion 77-77, we have determined the GDOL was not entitled to retain these three sources of revenue. As indicated in the table below, GDOL has retained a total of \$105,170,178.20 since fiscal year 2014.

Summary of Unremitted Revenue Collections

	Administrative Assessments	Penalties	Interest	Total
FY 2014	\$2,285,000.00	\$0.00	\$0.00	\$2,285,000.00
FY 2015	\$2,285,000.00	\$0.00	\$0.00	\$2,285,000.00
FY 2016	\$2,285,000.00	\$2,750,368.02	\$2,018,135.02	\$7,053,503.04
FY 2017	\$2,642,350.37	\$3,136,177.66	\$1,819,347.85	\$7,597,875.88
FY2018	\$1,555,500.23	\$3,171,088.04	\$1,876,518.06	\$6,603,106.33
FY 2019	\$2,758,000.00	\$4,206,810.57	\$2,001,875.12	\$8,966,685.69
FY2020	\$2,838,000.00	\$5,645,098.17	\$1,700,171.80	\$10,183,269.97
FY 2021	\$4,180,763.93	\$9,189,000.05	\$1,846,016.10	\$15,215,780.08
FY 2022	\$0	\$16,987,006.05	\$4,498,032.04	\$21,485,038.09
FY 2023	\$0	\$18,053,505.40	\$5,441,413.72	\$23,494,919.12
Total	\$20,829,614.53	\$63,139,053.96	\$21,201,509.71	\$105,170,178.20

Constitutional Violation

Retaining, rather than remitting the revenues collected is a violation of the Article VII, Section III, Paragraph II Georgia Constitution. As stated above, this section of the Georgia Constitution clearly provides, in part, "all revenue collected from taxes, fees, and assessments for state purposes, as authorized by revenue measures enacted by the General Assembly, shall be paid into the general fund of the state treasury." (Emphasis added)

Completeness of the Funds

Based on our testing, we did not find any evidence to suggest the unremitted funds had been expended, misdirected, or misappropriated. The total amount of unremitted funds appears to be intact. Our testing included but was not limited to employee interviews, examination of bank statements and reconciliations, testing of detailed transactions related to the revenue collections and remittances, confirmation of remittances of revenue collections, and examination of budget amendments.

WHERE ARE THE UNREMITTED FUNDS LOCATED?

Our investigation found the unremitted balance of GDOL's revenue collections in the amount of \$105,170,178.20 is currently comingled with other funds in the Federal Unemployment Insurance (UI) Trust Fund. We found that GDOL maintained a UI Trust Fund Tracking Excel spreadsheet to track its Administrative Assessments, Penalty, and Interest in the UI General Ledger. This spreadsheet, which started on March 1, 2020, reportedly at request of the (then) Chief Financial Officer, tracks the daily balance of its UI benefit funds, including the unremitted revenue collections.

We learned prior to March 1, 2020, the balance of the unremitted revenue collections was held in the Federal UI Trust Fund. On August 31, 2020, the (then) Chief Financial Officer directed the unremitted revenue collections balance of \$49,475,652.61 be transferred out of the Federal UI Trust Fund, just before the trust fund became insolvent due to the effects of COVID-19, to prevent the federal government from drawing the funds down to pay benefits. These funds eventually were transferred to the UI Tax Clearing Account for a period of time.

The unremitted revenue collections accumulated in the UI Tax Clearing Account for a period of approximately 679 days until the balance of \$82,126,385.33 was transferred back to the Federal UI Trust Fund on July 11 – July 12, 2022, based reportedly on verbal directives of the (then) CFO.

Timeline

March 1, 2020 - \$43,834,867.74 revenue collections were on deposit in the Federal UI Trust Fund

August 31, 2020 – 49,475,652.61 revenue collections transferred to GDOL Administrative Account

September 3, 2020 - \$49,475,652.61 funds transferred from GDOL Administrative Account to UI Tax Clearing Account

July 11, 2022 - \$45,085,548.56 funds transferred from GDOL UI Tax Clearing Account to the Federal UI Trust Fund

July 12, 2022 - \$37,040,836.77 additional funds transferred from GDOL UI Tax Clearing Account to Federal UI Trust Fund for a total balance of \$82,126,385.33

June 30, 2023 – A balance of \$105,170,178.20 in unremitted revenue collections were on deposit in the Federal UI Trust Fund

CAUSE OF NON-COMPLIANCE

Based on interviews and an examination of GDOL email, we found evidence the (then) CFO was directing a subordinate employee in GDOL's Fund Control section as to how much and when to remit State Revenue Collections to the State Treasury.

Our investigation sought to determine why the entirety of GDOL's State Revenue Collections had not been remitted to the State Treasury. Based on our investigation, the reasons for the retention of some of the collected funds are not fully understood.

The (then) Chief Financial Officer (CFO) was questioned as to why all of the collected funds had not been remitted to the State Treasury. The (then) CFO indicated that GDOL upper management was unhappy about not receiving an appropriation for the entire amount of their administrative assessments, penalties and interest and intentionally held back the funds. The (then) CFO also indicated a (then) in-house GDOL attorney advised that GDOL stop remitting all of the revenue collections. The CFO said the in-house attorney felt as though they had a legal basis to retain the money. The CFO indicated that the former in-house attorney once had a file with his supporting documentation, but that its whereabouts were unknown. This began in FY 2014. The (then) CFO indicated that GDOL only remitted Administrative Assessment money in an amount equal to the Governor's revenue estimate. Anything above that amount GDOL retained. We sought to locate the folder containing the supposed documentation supporting the legal determination, but it could not be located.

The (then) CFO further indicated that once GDOL started holding back the money they "really never talked about the money". It rarely, if ever, came up in any discussions, according to the (then) CFO. The (then) CFO indicated the former GDOL Commissioner was aware of the money, but they never discussed spending the money.

The former GDOL in-house attorney was also interviewed. When questioned about the retention of GDOL's revenue collections, he claimed to not remember much about it since it was several years ago.

EFFECTS OF THE CONSTITUTIONAL VIOLATION

There are potentially numerous negative effects of not complying with the Constitutional requirement to remit State Revenue Collections to the State Treasury. The following are potentially detrimental effects that either did or possibly could occur as a result the non-compliance:

Reputational Risk - The Georgia Constitution establishes the foundation of the State of Georgia's governance framework and fiscal policies. Consistent adherence to the provisions of the Georgia Constitution have been a cornerstone of Georgia's continued financial health and is the primary reason Georgia has been able to receive and maintain

the highest bond ratings awarded by the bond rating community. When government officials choose to circumvent the fiscal policies and procedures that have been legally and intentionally put into place for the good of all Georgians, the State's integrity and reputation are put at risk.

Loss of Interest Earnings – As discussed previously, the unremitted revenue collections accumulated in the UI Tax Clearing Account for a period of approximately 679 days until the balance of \$82,126,385.33 was transferred back to the Federal UI Trust Fund on July 11 – July 12, 2022. During this time, the substantial and growing balance of the unremitted State Revenue Collections earned no interest as it was on deposit in a non-interest-bearing account.

Much of the time, however, the unremitted State Revenue Collections resided in the Federal UI Trust Fund. Funds while on deposit in the Federal UI Trust Fund earn interest on behalf of the State of Georgia which increases funding availability for benefit claims. The unremitted State Revenue Collection balance, however, did not directly increase as a result of any of the interest earnings while in the Federal UI Trust Fund.

Had the unremitted State Revenue Collections funds been transferred to the State Treasury, as required, the funds would have been earning interest, thereby increasing the amount of funds available for appropriation.

Opportunities for fraud, waste, abuse and various forms of corruption – When management makes decisions to override the internal controls, policies and procedures which have been placed into operation, opportunities for fraud, waste, abuse and various forms of corruption tend to increase. In this case, our investigation found none of the retained funds had apparently been expended by GDOL in the 10 years it had been holding back its State Revenue Collections despite management's contention the funds were retained due to their dissatisfaction of not receiving 100% percent of the funds collected appropriated back to them.

Funds not appropriated and utilized more timely - The Administrative Assessments, along with collections from penalties and interest, have been used to fund the administration of GDOL. Historically, GDOL receives a large portion of its remittances of its Administrative Assessments, penalties, and interest collections back through the annual appropriations process. The decision to not remit all of its State Revenue Collections, however, has apparently resulted in smaller appropriations to fund its Administration program. Recent appropriations to the GDOL for its Administration have apparently fallen short of its perceived needs. In February 2023, the Georgia Budget and Policy Institute addressed the most recent budget proposals by stating the following:

"These mostly-flat state spending proposals fall short of state fiscal solutions that can help DOL navigate through ongoing administrative funding shortages,

lingering pandemic unemployment insurance program challenges, staff retention and recruitment needs, as well as a costly, obsolete IT system that leaves the DOL unprepared to adequately protect workers and help stabilize the economy in future downturns.”

INCORRECT FINANCIAL REPORTING OF THE UNREMITTED FUNDS

As part of our investigation, we examined recent statewide financial reports of the State of Georgia to ascertain how the unremitted State Revenue Collection Funds have been reported. The State of Georgia issues two primary statewide financial reports. These reports are described as follows:

Budgetary Compliance Report - The Budgetary Compliance Report (BCR) of the State of Georgia provides information concerning financial compliance with the Amended Appropriations Act. The financial statements included in this report have been prepared in accordance with the statutory or budgetary basis of accounting.

Annual Comprehensive Financial Report – This annual financial report contains the State of Georgia’s basic financial statements, which is presented in accordance generally accepted accounting principles (GAAP). This basis of accounting of the various funds included in the ACFR is prescribed by the Governmental Accounting Standards Board.

Had GDOL correctly reported the unremitted State Revenue Collections, the funds would have been reported in the BCR’s Combined Balance Sheet (Statutory Basis) as a reserved fund balance – State Revenue Collections in the General Fund. These unremitted funds, however, have not been reported in the BCR.

Likewise, in the State of Georgia ACFR, GDOL has been mischaracterizing the unremitted State Revenue Collections funds as monies that are available to pay unemployment benefits. This mischaracterization may have been intentional as the (then) CFO directed a Fund Control staff member to transfer the unremitted State Revenue Collection funds from the Federal UI Trust Fund to the Administrative account on August 31, 2020, reportedly in order they not be spent on benefits as the trust fund neared insolvency. See WHERE ARE THE UNREMITTED FUNDS LOCATED? Section of this communication on page 5. These unremitted funds should have been reported in the Unemployment Insurance proprietary fund type as a portion of Net Position that was restricted for remittance to the State Treasury – State Revenue Collections.

RECOMMENDATIONS

The unremitted State Revenue Collections balance of \$105,170,178.20 should be remitted to the State Treasury. Prior to making the remittance to the State Treasury, GDOL should give its USDOL liaisons prior notification of the withdrawal of the funds from the Federal UI Trust Fund.

The remittance of the State Revenue Collection funds should identify each fiscal year and revenue category to properly document the transfer the of the delinquent funds in addition to the current year collections.

We recommend the GDOL develop strong policies and procedures around the collection and remittances of its future revenue collections. At a minimum we believe monthly remittances to the State Treasury should be made on a basis that complies with OCGA 45-12-92. This statute requires all revenues collected be remitted to the State treasury monthly on or before the fifteenth day of each month for the immediately preceding month's collections. More frequent remittances may be warranted when larger amounts of money have been collected.