



New York State
Department of
Taxation
and Finance

Bureau of Conciliation and Mediation Services

Annual Report
2007 - 2008

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Commissioner

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MISSION

To resolve taxpayer disputes in an informal setting, in a manner which is fair and impartial to both the State and the taxpayer, and in a way which will enhance public confidence in the integrity of the Tax Department.

INTRODUCTION

This report is prepared and submitted pursuant to section 170.3-a(g) of the Tax Law which provides as follows:

“(g) The commissioner of taxation and finance shall collect, compile and prepare for publication statistics and other data with respect to the operations of the bureau of conciliation and mediation services, and to submit annually to the governor, the temporary president of the senate and the speaker of the assembly a report on such operations, including but not limited to, the number of conferences held, the dispositions made and the number of conferences pending.”

The Bureau of Conciliation and Mediation Services (BCMS) was created by Chapter 282 of the Laws of 1986, and became operational on September 1, 1987. This report covers the fiscal year ending March 31, 2008, but also includes data from prior years for the purposes of comparison.

❖ BACKGROUND

The creation of BCMS was part of a significant restructuring of the department’s administrative appeals process. The goals of this effort were to establish a more independent system for resolving tax controversies than had existed previously and to promote increased fairness, efficiency, and accessibility for taxpayers. A key feature of this process is the recognition of taxpayers as customers who are entitled to be treated with courtesy and respect, and to have their disputes handled as expeditiously as possible. We believe that an efficient and impartial system of resolving disagreements is essential to enhance the public’s confidence in the integrity and fairness of the administration of the State’s tax program. Therefore, every effort is made to provide a service for taxpayers which is timely, convenient, and effective.

To achieve these goals, BCMS was established by law (Tax Law section 170.3-a) as an independent bureau within the Tax Department’s Division of Taxation. It differs from other bureaus in that it is not involved in the administration or collection of taxes. Its role is limited to the impartial resolution of taxpayer disputes, and the bureau does not become involved in a matter until a taxpayer who has received a statutory notice seeks assistance by filing a *Request for Conciliation Conference*. In order to enhance the bureau’s independence and impartiality, it reports directly to the Commissioner of Taxation and Finance (20 NYCRR 4000.1(c)), thus eliminating the possibility of any undue influence over its deliberations by any other office or division of the department.

❖ PURPOSE

The role of BCMS is to provide an informal process whereby disputes can be heard. In addition to being informal, the conferences are also intended to provide an impartial forum, and a process which is more timely and less expensive than is available through the formal hearing system. Unlike the previous appeals process, under which access to a pre-hearing conference could be denied, taxpayers have an absolute right to request a conciliation conference. The bureau strives to close or resolve as many of its cases as possible, thereby bringing an end to disagreements, and eliminating the need for further proceedings. Because of the advantages this system offers, it is strongly recommended that taxpayers pursue a conciliation conference in lieu of, or prior to, filing a petition for a formal hearing with the Division of Tax Appeals (20NYCRR 4000.3(a)). In fact, more than 98 percent of all statutory protests are filed initially with BCMS.

❖ PROCESS

The conciliation conference process begins when a taxpayer files a *Request for Conciliation Conference*. Pursuant to the Tax Law (section 170.3-a(a)), essentially any notice which gives rise to the right to a formal hearing may also be the subject of a BCMS conference. There are no limits as to the type of tax at issue, the complexity of the matter presented, or the dollar amount asserted to be due. Statutory notices issued by the department contain detailed information regarding protest rights and specific instructions on how to request a conciliation conference.

Each request is reviewed by BCMS for timeliness and completeness, and the receipt of each is acknowledged so that the taxpayer knows the protest is on file. At this time, each taxpayer is given additional information about the process, and is advised as to the available conference locations. Taxpayers can choose to have their conferences at any office of the department which is most convenient. (Conferences are also available through correspondence or by telephone for taxpayers who prefer such arrangements.) An impartial conciliation conferee from BCMS presides at the conference, which is attended by the taxpayer, the taxpayer's representative (if any), and a department employee who is familiar with the matter. The conferees are empowered to "...hear or receive testimony and evidence deemed necessary or desirable for a just and equitable result." (Tax Law section 170.3-a(c)). The conferences are conducted in an informal setting to encourage the free exchange of information.

During the conference process, the parties are encouraged to openly discuss their disagreements, and to explore possible resolutions. If an agreement cannot be reached following the conference and the receipt of any additional information, the conferee will advise the parties as to his or her proposed resolution. If the taxpayer agrees, a *Consent* is signed and the matter is closed with no further right to appeal. If the taxpayer does not agree, the conferee must, within 30 days after the proceeding is concluded, issue a *Conciliation Order*. This order is binding on both parties, although the taxpayer may still file a petition with the Division of Tax Appeals within 90 days (Tax Law section 170.3-a(e)). The department does not have any similar right to a further review. *Conciliation Orders* are not published, and they have no precedential value (Tax Law section 170.3-a(f)).

CONFERENCE STATISTICS

The following data are intended to provide a view of the bureau's operations during the last fiscal year, as well as the two prior years, and are also useful in measuring the success of the program in meeting its stated objectives.

❖ CASE INVENTORY LEVEL

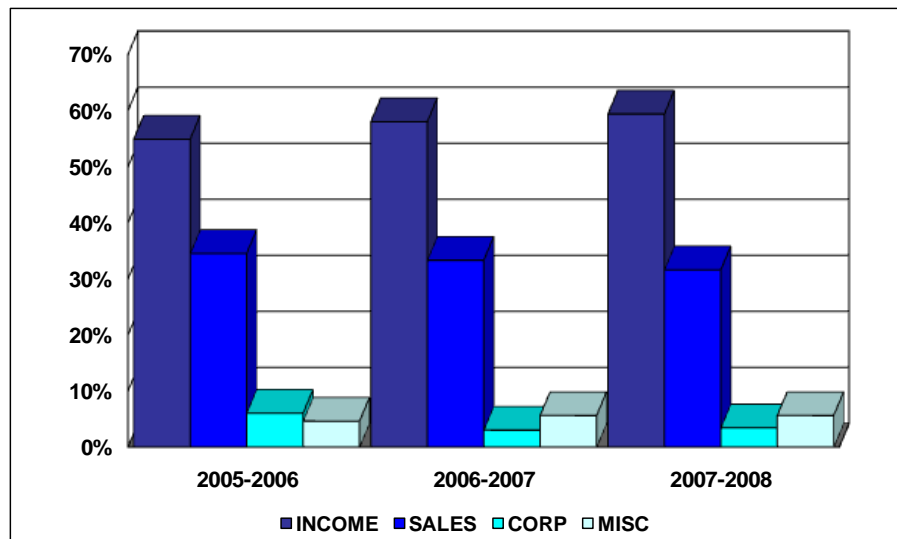
CASE LEVEL	FISCAL YEAR		
	05-06	06-07	07-08
Beginning cases	2,876	1,968	2,227
Requests received	5,065	5,139	4,746
Cases closed	5,973	4,880	4,955
Ending cases	1,968	2,227	2,018

Historically, the number of open cases before BCMS has fluctuated during the course of each year, as well as from one year to the next, as a result of changes in the number of new cases received and the resources available to handle them. Maintaining a manageable inventory level has always been one of our highest priorities as this allows us to provide a timely response to taxpayers requesting conciliation conferences.

As shown above, the number of protests received in each of the last three fiscal years has been relatively stable. As a result, the number of open cases in the Bureau has also been maintained at a reasonable level and has allowed us to address taxpayers' protests in a very timely manner.

❖ CASE INVENTORY BY TAX TYPE

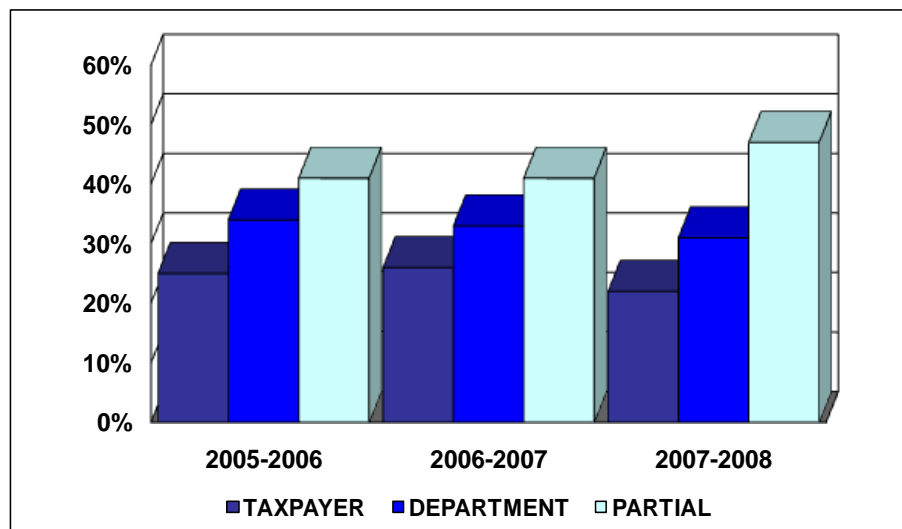
As previously mentioned, conciliation conferences are available to all taxpayers regardless of the specific tax article at issue. The following chart shows the tax type of cases closed by BCMS during the periods indicated as a percentage of the total cases closed.



Last year we once again saw a small increase in the percentage of personal income tax cases, and a small decrease in the sales tax area. Personal income tax continues to represent the largest number of cases in the system, followed by sales tax. Together, these two tax types account for 85% to 90% of our caseload. This result is to be expected, given the large role these programs play in the department's operations. The larger programs simply generate a greater number of cases.

◆ CONFERENCE DECISIONS

Each conference case is closed either by the taxpayer signing a *Consent* or a *Withdrawal of Protest*, or by the issuance of a *Conciliation Order*. The percentage of BCMS decisions for each of the parties is indicated below. A decision for the taxpayer indicates that his or her position has been accepted in full, and the department's notice has been canceled; a decision for the department means that it has been sustained in full; and a partial decision means that an adjustment has been made to the department's original position based upon the information presented by the parties.



These data show that, over the years, the decisions made in BCMS have been fairly well balanced, with the majority of resolutions being partial or adjusted decisions. This substantial percentage of partial decisions is an indication of the bureau's success in bringing about reasonable and acceptable resolutions to disputed matters. Another indication (as described later in this report) is that most conferences are concluded with the taxpayers formally agreeing with the proposals being offered, and waiving any further protest rights.

❖ CONFERENCES CLOSED BY AGREEMENT

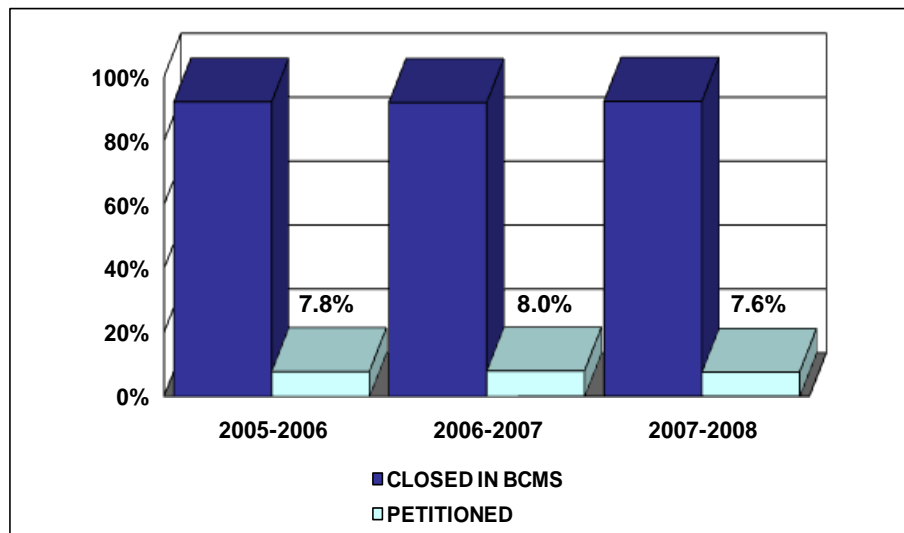
As previously stated, each conference is closed by agreement (the signing of a *Consent* or a *Withdrawal of Protest*) or by the issuance of a *Conciliation Order*. Agreed cases represent final dispositions because all further appeal rights are specifically waived. A high agreement rate is important not only for that reason, but also because it spares both the taxpayer and the department any further litigation costs, and accelerates the collection of the amounts due. BCMS has consistently achieved an agreement rate of 75% or higher in the conference cases closed.

	FISCAL YEAR		
	05-06	06-07	07-08
Conferences closed	3,274	2,700	2,617
Agreed cases	2,468	2,027	1,963
Percentage	75%	75%	75%

❖ PETITIONS TO THE DIVISION OF TAX APPEALS

One of the principal goals of BCMS is to finally close or resolve as large a percentage of cases as possible, thereby eliminating open disputes, speeding the collection of revenue, and reducing the number of petitions for formal hearings before the Division of Tax Appeals. Since its inception, BCMS has consistently managed to close 90% or more of the cases coming before it. These cases are closed in a variety of ways including the conference process, as discussed above, where most cases are resolved by agreement. For the balance of the conference cases where a *Conciliation Order* is issued, and the right to appeal is provided, approximately one-quarter of the orders are petitioned.

In addition to conferences, many cases are closed through administrative means such as resolutions reached by the department prior to conferences, dismissals due to untimely protests, and defaults for failure to pursue the appeals. As shown below, approximately 8% or less of the cases closed in BCMS in the last three fiscal years resulted in petitions being filed with the Division of Tax Appeals. Considering that more than 98% of all statutory protests are filed with BCMS initially, it becomes clear that the bureau has been very successful in finally resolving the overwhelming majority of formal disputes.



❖ AGE OF CLOSED CASES

As an indication of the timeliness with which conference requests are handled, the following chart sets forth the length of time that was required for the completion of cases in each fiscal year. The time measured is from the date the request was received by BCMS until the date the case was finally closed or resolved.

	FISCAL YEAR		
	05-06	06-07	07-08
Within 6 months	48%	58%	53%
Within 12 months	88	92	94
Within 18 months	97	98	99
Within 24 months	99	99	99

These data show that approximately half, or more, of all BCMS cases are fully resolved within six months of the filing of the requests, and that the vast majority are resolved within one year.

Even those cases which remain open for more than a year continue to be actively considered by BCMS. In each of these cases, the taxpayer has been contacted by the bureau and is either working with the department to resolve the dispute, has asked for or agreed to a postponement, or is gathering additional information. All of our cases are monitored regularly to ensure the most efficient handling possible, considering the complexity of the issues, the needs of the parties to compile information, and other factors present in specific instances. As compared with the alternative formal hearing process, the conciliation conference has proven to be considerably more timely in resolving taxpayer disputes.

❖ CONFEREE PRODUCTION

The following chart shows the number of cases closed in each fiscal year as a result of conference activity. (As discussed above, the balance of the cases closed by BCMS each year are through other means, such as failure to appear at a scheduled conference, untimely protest, closed by the department prior to being scheduled, etc.)

	FISCAL YEAR		
	05-06	06-07	07-08
Conferences closed	3,274	2,700	2,617
Number of conferees	15	15	14.5
Closed per conferee	218	180	180

During the last three fiscal years the number of conferees has been at an all time low, and actually decreased slightly last year. Nevertheless, our open case inventory level has remained within an acceptable range, and we have remained very current with the workload.

CONCLUSION

In the administration of any tax system, disputes between taxpayers and the taxing authority will inevitably arise. It is the government's challenge to balance the taxpayers' constitutional and statutory rights to contest its actions with the need to insure compliance with the law, and to maintain an orderly system of revenue flow. BCMS was specifically created to address these needs. Its role is to provide an informal yet final and binding method of handling disagreements which would be widely available and readily utilized by taxpayers. Our experience has shown BCMS to be, by far, the most often used method of formal dispute resolution available. In addition, as supported by the data in this report, and surveys of our customers, BCMS has been very successful in meeting its objectives of providing impartial, timely, and inexpensive appeals to those who have availed themselves of its services, and has been able, in the overwhelming majority of cases, to bring an end to outstanding disagreements in an easily accessible and non-threatening atmosphere.