Comptroller's Fiscal Update: State Fiscal Year 2016-17 Revenue Trends through the Mid-Year

OFFICE OF THE NEW YORK STATE COMPTROLLER

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I. State Fiscal Year 2016-17 Revenues

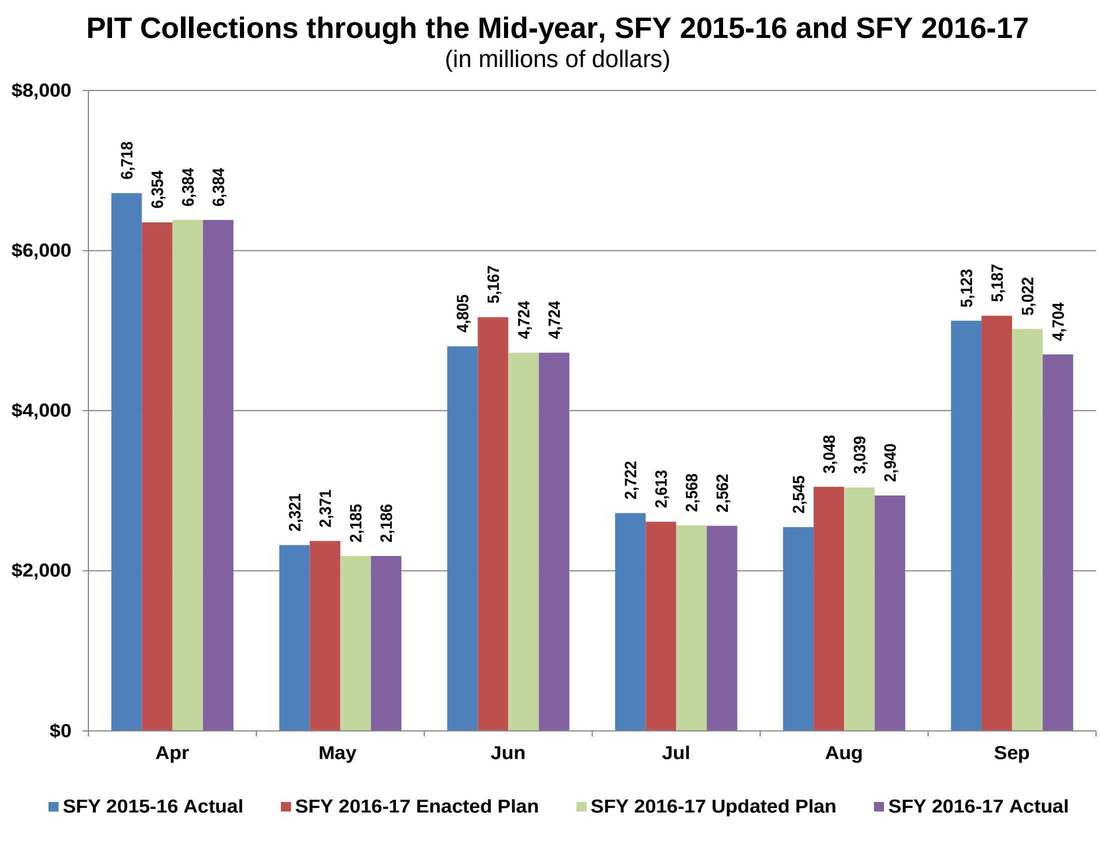
All Funds tax collections totaled $36.9 billion through the first half of State Fiscal Year (SFY) 2016-17, a decline of 3.5 percent, or $1.3 billion, from the first six months of last year. Collections through September 30, 2016 (the mid-year) were $11.3 million higher than the most recent projections in the First Quarterly Update to the SFY 2016-17 Enacted Budget Financial Plan (First Quarterly Update), but $918.7 million lower than the original projections from the Enacted Budget Financial Plan. This was primarily due to weakness in the Personal Income Tax (PIT), the State's largest source of tax revenue. All Funds PIT receipts through the mid-year were $1.2 billion below initial projections and $422.7 million below updated projections.

On a monthly basis, total tax collections through September were below collections in five of the six months of the same time period last year. In addition, these collections were below initial projections for five of the first six months of the current fiscal year.

Personal Income Tax

Through the mid-year of SFY 2016-17, PIT collections totaled just under $23.5 billion, representing a decline of 3 percent or $734.3 million from the same period in SFY 2015-16. PIT collections drove the largest variance from projections in the Division of the Budget's (DOB) Enacted Budget Financial Plan issued in May 2016 and the First Quarterly Update released in August 2016.

Figure 1



Source: Office of the State Comptroller, Division of the Budget

Figure 1 illustrates the weakness in monthly PIT collections through the first six months of the fiscal year when compared to projections from the Enacted Budget Financial Plan, the First Quarterly Update and SFY 2015-16 for the same period.

In the First Quarterly Update, DOB reduced projections for PIT estimated payments by $600 million in the current year and each of the subsequent three years of the Financial Plan period. (Projections for other components of PIT were not changed.) DOB's most recent forecast for PIT collections for SFY 2016-17 reflects anticipated growth of 3.8 percent over the prior fiscal year. To meet current year-end projections, PIT collections will have to increase 11.1 percent, or $2.5 billion, through the end of the year, compared to the same period last year.

Withholding

Through the mid-year, collections for withholding have totaled just over $16 billion, representing an increase of $139.3 million or 0.9 percent. While wages have grown in the first half of the year, the low growth in withholding appears in part due to the timing of collections.[1] Withholding collections in the current year have exceeded the previous year in three of the first six months. While DOB reduced its withholding projection by $169 million in the Enacted Budget Financial Plan (from the Executive Budget projection released in February 2016), its projection did not change in the First Quarterly Update.

DOB's most recent forecast anticipates withholding receipts over the full fiscal year to increase 4.9 percent, or $1.8 billion, over the prior year. To meet that projection, such collections will have to increase 8.1 percent, or $1.7 billion, over the final 6 months of the current fiscal year compared to actual receipts for the same period last year.

Estimated Payments

The year-to-date decline in PIT receipts compared to last year is primarily in estimated payments, part of which was anticipated in the Enacted Budget Financial Plan. By the time the Enacted Budget Financial Plan was released in May 2016, collections for prior year estimated payments (extensions) were largely known, as these collections primarily occur in April. In the Enacted Budget Financial Plan, based on April collections, DOB reduced its projection for extensions by $485 million from estimates included in the Updated Executive Budget Financial Plan released in February 2016.

However, since the Enacted Budget Financial Plan was released, collections for current year estimated payments as well as extension payments have trailed collections from SFY 2015-16 in every month but August. This reflects factors including financial market volatility in the first half of the year which has weakened non-wage income, such as dividends and interest. It also reflects weaker growth in proprietors' income as compared to the first half of 2015. Through September 30, 2016, current year estimated payments are $477.1 million below collections for the same period last year.

In the Enacted Budget Financial Plan, DOB projected that year-end collections of current year estimated payments would increase $484 million, or 4.2 percent, from SFY 2015-16. DOB reduced this projection in the First Quarterly Update by $600 million, resulting in a revised outlook with current year estimated payments declining from SFY 2015-16 by $116 million or

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[1] Among other potential factors, September 2016 included four Wednesdays, compared to five in 2015. Friday is a common payday for many employers and Wednesday, the day those taxes are collected, is typically associated with higher withholding tax collections than other days of the week.

1 percent. To meet current year-end projections, current year estimated payments will have to increase 6.4 percent, or $361 million, through the end of the year, compared to the same period last year.

Consumption and Use Taxes

Consumption and use taxes are the only tax category that has grown from the previous year. Through the mid-year, collections of consumption and use taxes totaled just over $8.2 billion, representing an increase of $130.4 million, or 1.6 percent, from the same period in SFY 2015-16. Year-to-date collections are $95.9 million higher than current projections and $127.9 million over initial projections.

Sales and Use Tax

The largest component of consumption and use taxes is the sales and use tax, making up between 80 and 85 percent of total receipts in this category. Through the mid-year, sales and use tax collections totaled just over $7 billion, representing an increase of $135.7 million or 2 percent from the same period in SFY 2015-16. DOB currently projects that sales and use collections will increase by 3.8 percent, or $507 million, by the end of the fiscal year.

Business Taxes

Through the mid-year, business tax collections totaled nearly $3.4 billion, representing a decline of $364.7 million, or 9.8 percent, from the same period in SFY 2015-16. This is due largely to corporate tax reforms made in 2015, decreased audit collections in the current year, and other tax law changes that may have changed taxpayer behavior and the timing of estimated payments this year. Such collections through the first half of the year have exceeded initial and updated projections, as some decline was anticipated. Year-to-date collections are $285.5 million higher than current projections and $128.5 million over initial projections.

Corporate Franchise Tax

Corporate franchise tax is the largest component of business tax collections, making up 57 percent of the total in SFY 2015-16. Corporate franchise tax collections through the mid-year have declined 15.5 percent, or $327.9 million, from the same period last year. While overall franchise tax collections were anticipated to decline 1 percent, or $44 million, because of the continued impact of corporate tax law changes that went into effect in 2015, any declines were expected to be mitigated by increased receipts from audits. However, through the first six months of the current fiscal year, audit collections have declined from last year for the same period. The timing of corporate tax collections commonly fluctuates.

To reach current year-end projections, corporate franchise tax collections will have to increase nearly 12 percent over the last six months of the fiscal year compared to the same period in SFY 2015-16.

Insurance Tax

Through the first six months of SFY 2016-17, insurance tax collections have increased 8.3 percent, or $53.5 million, from the same period last year. DOB currently projects that insurance tax collections will decline 6.5 percent or $103 million in SFY 2016-17 from last year, primarily because of the first full-year impact of a credit for assessments paid to the Life Insurance Guaranty Corporation.

Other Taxes

Other taxes including the Metropolitan Commuter Transportation Mobility tax (MTA payroll tax) through the mid-year totaled $1.7 billion and were $367.7 million, or 17.4 percent, lower than collections for the same period last year. DOB currently projects that these taxes will total just over $3.5 billion by year-end, representing a decline of 12.2 percent or $490 million.

Estate Tax

The decline in other taxes is almost entirely due to the estate tax. The decline primarily results from an extraordinarily high number of “super large” payments (over $25 million) last year as well as the impact of the continued phase-in of the increased filing threshold. DOB anticipates that the estate tax will generate just over $1 billion by the current year-end, representing a decline of over 32 percent from SFY 2015-16.

Real Estate Transfer Tax

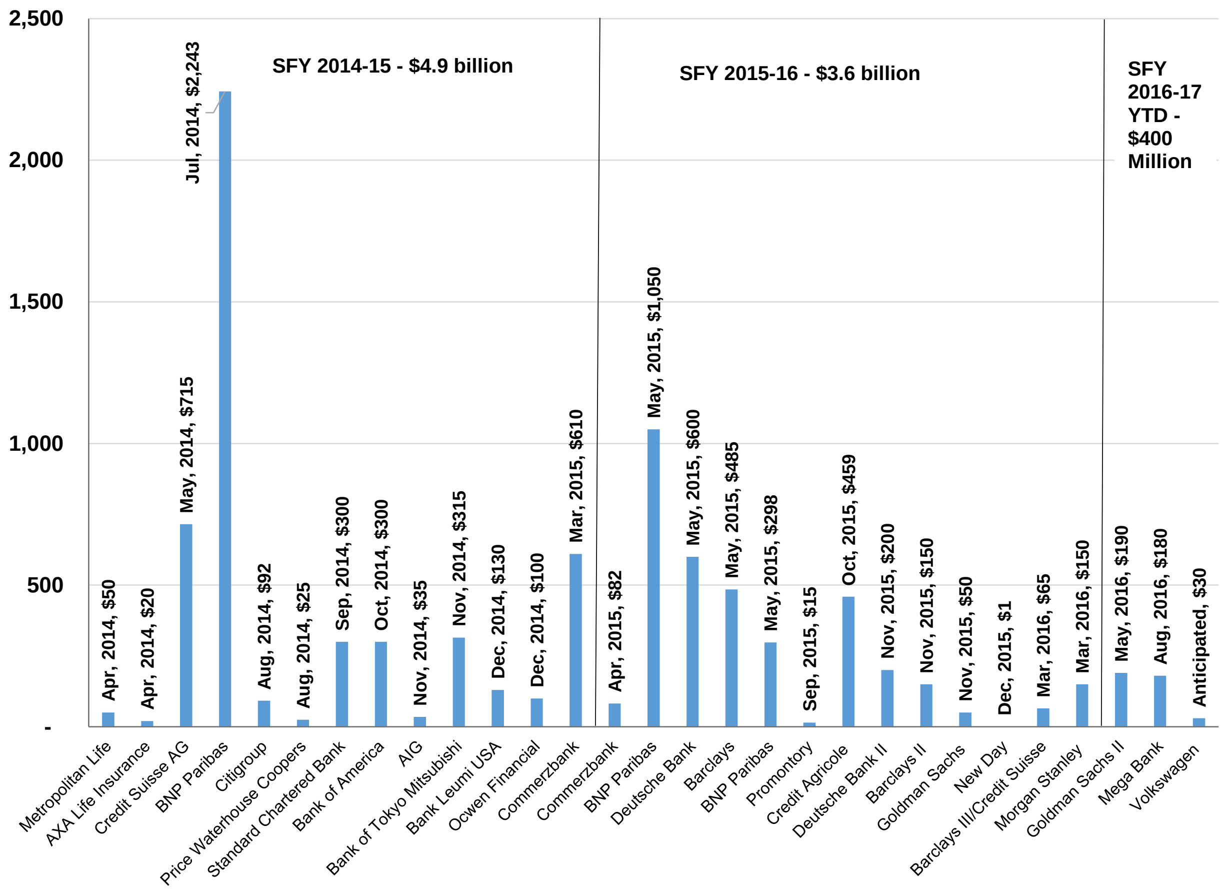
Through the mid-year, the Real Estate Transfer Tax totaled $584.4 million, representing an increase of $1.8 million, or 0.3 percent, from the same period last year. DOB currently projects that the Real Estate Transfer Tax will decline 2.1 percent, or $25 million, by the end of the year.

II. Monetary Settlements

Since the start of SFY 2014-15 through the mid-year of SFY 2016-17, New York State has received or is expected to receive nearly $9 billion in largely non-recurring monetary fines, settlements, forfeitures or restitutions from 22 entities, the majority of which was unrestricted and deposited in the General Fund, where those dollars were commingled with all other unrestricted and undedicated funds. Figure 2 illustrates settlements received, or expected to be received, from April 1, 2014, through the mid-year of SFY 2016-17.

Figure 2

Monetary Settlements from April 1, 2014 through September 30, 2016
(in millions of dollars)



Source: Office of the State Comptroller

For context, in SFY 2014-15, settlement revenues were 5 percent of total receipts collected in State Operating Funds and equaled more than 7 percent of tax collections in such funds. In SFY 2015-16, settlements revenues were 3.7 percent of total State Operating Funds receipts, equating to 4.9 percent of tax collections in such funds. A small number of the entities are responsible for the majority of the settlement revenues. In total, nearly $6.5 billion, or over 70 percent, have come from BNP Paribas ($3.6 billion), Barclays and Credit Suisse ($1.4 billion), Deutsche Bank ($800 million) and Commerzbank ($692 million).

More than half of the settlement dollars, or $4.9 billion, were received in SFY 2014-15, with the largest settlement coming from BNP Paribas ($2.2 billion), the first of three installments associated with a broader settlement, fine and restitution.[2] Other significant settlements came from Credit Suisse AG ($715 million) and Commerzbank of Germany ($610 million). The State received over $3.6 billion in SFY 2015-16, the largest portion of which was a combined total of $1.3 billion from additional payments by BNP Paribas. In SFY 2016-17 through the mid-year, the State received $370 million and anticipates another $30 million from a settlement with Volkswagen.

Plans for Use of Settlement Resources

The planned use of settlement resources received since SFY 2014-15 has evolved, as indicated by Financial Plan and Capital Program and Financing Plan (Capital Plan) documents. The SFY 2014-15 Enacted Budget Financial Plan indicated that $275 million in resources from largely unspecified settlements would be used for General Fund support in that year, followed by $250 million in SFY 2015-16 and $100 million in SFY 2016-17 and SFY 2017-18. The First Quarterly Update of the SFY 2014-15 Financial Plan anticipated that there would be a "sizable cash-basis surplus" in the General Fund at the end of SFY 2014-15 resulting from unbudgeted financial settlements. The Plan also noted that the Executive was developing options for using these resources, "which may include funding one-time capital expenses, bolstering reserves, and reducing debt. DOB expects that a formal plan for use of the windfall, consistent with adherence with the 2 percent spending benchmark, will be proposed no later than the FY 2016 Executive Budget."[3] The original plan to use some settlement dollars for General Fund support was preserved in the Update.

By the time the SFY 2015-16 Budget was enacted, the level of settlement resources received or expected by the State had risen to $7 billion. The SFY 2015-16 Enacted Budget Financial Plan indicated that monetary settlement resources would be used to fund one-time purposes, with a large share expected to be used to fund new capital investments. That year's Enacted Budget included statutory language creating the Dedicated Infrastructure Investment Fund (DIIF), a capital projects fund, with $4.55 billion in appropriations, and language authorizing the transfer of $4.55 billion from the General Fund (where most settlement dollars were deposited) to the DIIF. The DIIF was characterized as a mechanism to allow the settlement dollars to be set aside for intended purposes. The FY 2016 Enacted Budget Financial Plan, released in May 2015, included a planned transfer of $4.55 billion in monetary settlements from the General Fund to the DIIF during SFY 2015-16, although only $856.9 million was actually transferred.

The SFY 2016-17 Enacted Budget included more than $2.8 billion in new DIIF appropriations, bringing total DIIF appropriations to nearly $7.4 billion. The SFY 2016-17 Enacted Budget also included authority to transfer $120 million from the General Fund to the Environmental Protection Fund (EPF). While resources are fungible within the General Fund, DOB has identified settlement funds as the resource to support this planned transfer.

[2] The State collected a total of nearly $3.6 billion from BNP Paribas in SFY 2014-15 and SFY 2015-16. The State received $1.05 billion as the agreed upon State share of a plea agreement with the New York County District Attorney. The final $298 million was considered a forfeiture of assets and was initially deposited in the Chemical Dependence Service Fund.

[3] FY 2015 Financial Plan First Quarterly Update, page 10.

Figure 3 illustrates all appropriations from the DIIF through the SFY 2016-17 Enacted Budget.

Figure 3

Dedicated Infrastructure Investment Fund Appropriations
(in millions of dollars)

Purpose	SFY 2015-16	SFY 2016-17	Two-Year Total
Thruway Stabilization Program (1)	1,285	700	1,985
Upstate Revitalization Initiative (2)	1,500	170	1,670
Broadband Initiative	500		500
Health Care Providers	355		355
MTA Capital Plan (Penn Station Access)	250		250
Municipal Restructuring and Consolidation (3)	150	20	170
Security and Emergency Response	150		150
Long Island Transformative Projects	150		150
Infrastructure Improvements, Transportation, Upstate Transit, Economic Development	115		115
Southern Tier Agriculture & Hudson Valley Farmland Protection	50		50
Community Health Care Revolving Loans	20		20
Roswell Park Cancer Institute	16		16
Behavioral Health Care Grants	10		10
Statewide Multiyear Housing Program		590	590
DOT Capital Plan Contribution		200	200
Other Economic Development or Infrastructure Projects		85	85
Statewide Multiyear Homeless Housing Program		50	50
Empire State Poverty Reduction Initiative		25	25
Javits Convention Center Expansion (Bonded)		1,000	1,000
Total	**4,550**	**2,840**	**7,390**

Source: Division of the Budget and Chapter 55, Laws of 2016
Note: Columns may not add due to rounding

(1) New appropriation language enacted in SFY 2016-17 changed from the previous year by adding debt service and related payments as a purpose but did not include reporting requirements that were included in the allocation enacted in SFY 2015-16.
(2) New appropriation language enacted in SFY 2016-17 changed from the previous year by removing language requiring the allocation to be made pursuant to a competitive process among the Regional Economic Development Councils and limiting awards to projects in regions that did not receive Upstate Revitalization Initiative Best Plan awards in SFY 2015-16 or were eligible to receive funding from the Buffalo Regional Information Cluster.
(3) New appropriation language enacted in SFY 2016-17 changed from the previous year. Language added to SFY 2015-16 reappropriation that extends funding to the Downtown Revitalization Program, including the Healthy Foods/Healthy Community initiative. In addition, funding was extended to “other municipal entities.”

Because the DIIF is a capital projects fund, spending from its appropriations is reported as capital disbursements, even if the funds are used for non-capital expenses. DIIF appropriations, as well as language establishing the Fund, are broadly worded and provide significant flexibility in how the funds can ultimately be used. For example, appropriation language for many of the projects have sufficient flexibility to allow the money to be spent on a wide range of non-capital purposes. The language creating the DIIF also includes provisions that provide authority for the Fund to be used for purposes other than for the appropriated purposes, as follows:

- First, similar to the Rainy Day Reserve Fund, DIIF moneys can be transferred back to the General Fund in the event of an economic downturn, or to cover disallowances and/or settlements related to over-payments of federal Medicare and Medicaid revenues in excess of $100 million from anticipated levels, as determined by the Director of the Budget, and the associated reduction in State-share Medicare and/or Medicaid revenues.

- Second, the statutory language of the DIIF includes a provision that “Nothing contained in this section shall be construed to limit in any way the projects, works, activities or purposes that can be financed from this account, including but not limited to loans of money to public corporations or authorities under terms approved by the director of the budget."

The breadth of authorized purposes, along with the language authorizing the transfer of moneys in the DIIF back to the General Fund in the event of certain circumstances, reflect the authorization to use DIIF monies as an additional undesignated reserve for the State.

Certain settlement resources have also been used, or are expected to be used, for general budget support, including nearly $630 million over three fiscal years. In addition, the SFY 2015-16 Executive Budget reserved $850 million for "financial plan risks" that were later identified as an offset to resolve certain federal disallowances of costs incurred by the Office for People with Developmental Disabilities. Also, $73 million was retained by the Department of Law to support litigation costs, and $5 million was retained in the Chemical Dependence Service Fund. Approximately $1.6 billion, or 17.4 percent, of the $8.9 billion received has been, or is expected to be, used for non-capital expenses through the mid-year of SFY 2016-17. However, given the broadly written appropriations described above, including in many cases language to allow the money to be spent on a wide range of non-capital purposes, this amount could be higher.

Figure 4 illustrates the actual and planned uses of settlement dollars from proceeds received, or expected to be received, since April 2014, as presented by DOB in quarterly Financial Plan updates and other documents. Through the mid-year of 2016-17, DOB had publicly outlined commitments or plans for use of all but $875 million of the received or expected settlement resources.

Figure 4

Actual and Planned Uses of Settlement Funds Received or Expected to be Received SFY 2014-15 through SFY 2016-17

(in millions of dollars)

Total Received/Expected Receipt SFY 2014-15, SFY 2015-16 and SFY 2016-17	**8,940**
Uses	
SFY 2014-15 Budget Support	(275)
SFY 2015-16 Budget Support	(250)
SFY 2016-17 Budget Support	(102)
Chemical Dependence Program	(5)
Department of Law - Litigation Services 2015-16	(10)
Department of Law - Litigation Services 2016-17	(63)
Audit Disallowance - Federal Settlement	(850)
Planned Deposits to Dedicated Infrastructure Investment Fund SFY 2015-16 through SFY 2020-21	(6,390)
Planned Environmental Protection Fund - SFY 2016-17	(120)
Total Uses	**(8,065)**
Remaining (undesignated)	**875**

Source: Division of the Budget

Note: Table does not include planned temporary uses of monetary settlement resources

Originally, the SFY 2016-17 Executive Budget Financial Plan issued in January 2016 identified expected transfers from the General Fund to the DIIF of approximately $6.4 billion, reflecting prior appropriations and the Executive proposal. This included $4.55 billion to be transferred in the final quarter of SFY 2015-16 and approximately $1.8 billion in SFY 2016-17, as well as $120 million to be transferred from the General Fund to the EPF for proposed appropriation from the EPF. These transfers related to appropriations that were identified to be funded with monetary settlement resources.

This plan has been significantly modified. Just $856.9 million was transferred to the DIIF in SFY 2015-16, allowing the General Fund to close with a high balance ($8.9 billion). The SFY 2016-17 Enacted Budget included a statutory provision extending the authorization for transfers from the General Fund to the DIIF for an additional five years. The SFY 2016-17 Enacted Budget Financial Plan and Capital Plan outlined a revised plan for the use of settlement resources.

The revised plan assumes that the transfer of these resources to the DIIF will occur over the Capital Plan period from SFY 2016-17 through SFY 2020-21, rather than more immediately in SFY 2015-16 and SFY 2016-17 as previously planned. As a result, a large portion of these monies are now anticipated to remain in the General Fund or be used for other purposes until they are needed in the DIIF through SFY 2020-21.

This alternative approach provides the State with additional budgetary flexibility, but adds uncertainty for the appropriated uses of the settlement resources. Among other purposes, the Capital Plan makes use of this flexibility to address tightening debt capacity under the statutory cap on State-Supported debt outstanding. For example, DOB plans to transfer $1.3 billion from the General Fund to the State Capital Projects Fund in SFY 2016-17. According to DOB, this is being done in conjunction with a deferral of the issuance of $1.3 billion in bonds that were otherwise scheduled to be issued in SFY 2016-17. DOB now plans to issue these bonds in SFY 2017-18 ($800 million) and SFY 2018-19 ($500 million). Transfers from the General Fund to the State Capital Projects Fund in SFY 2017-18 and SFY 2018-19 are anticipated to be $800 million and $500 million lower, respectively, reflecting the recapture of the $1.3 billion transfer in SFY 2016-17. This will have the effect of increasing near-term debt capacity.

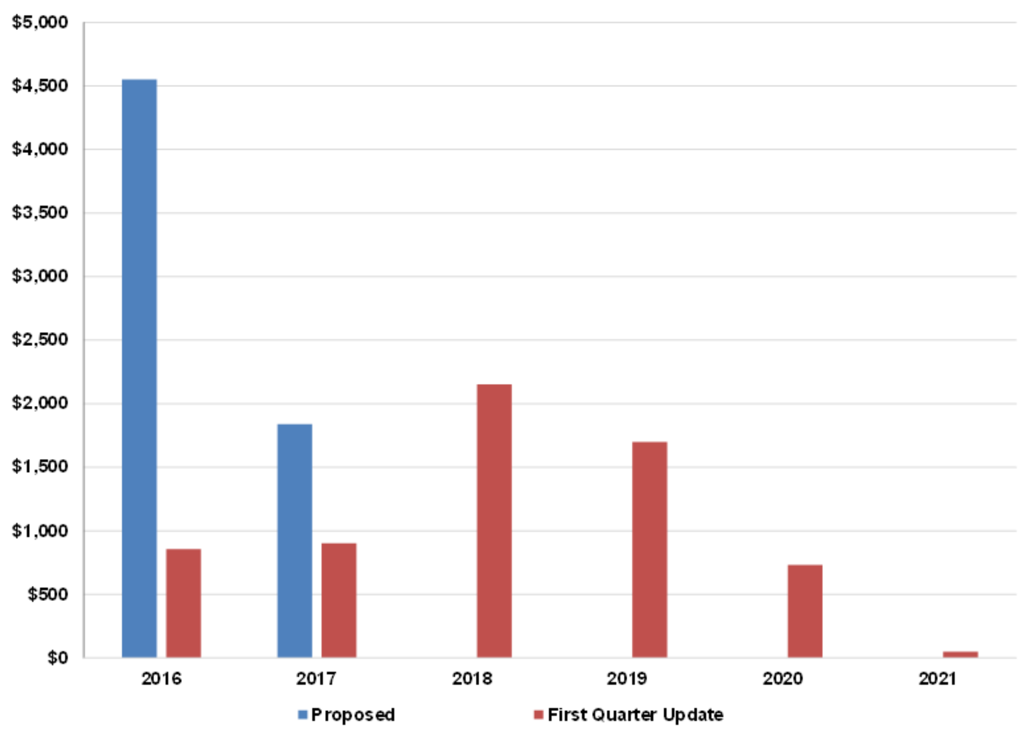
In addition, DOB plans to initially fund the $1 billion Jacob K. Javits Center project in New York City with DIIF funds (transferred from the General Fund), beginning in SFY 2017-18. Annual expenditures are anticipated to occur from DIIF funds through SFY 2020-21 and are expected to be reimbursed with bond proceeds issued in both SFY 2019-20 and SFY 2020-21. As a result, settlement dollars will be temporarily funding the Javits Center project, so that bond issuance can be delayed and additional debt capacity preserved.

Finally, to partially offset additional costs and lower than anticipated tax revenues through the first quarter of SFY 2016-17, the First Quarterly Update includes a delay, until SFY 2017-18, of the transfer of $450 million from the General Fund to DIIF intended for the Thruway Authority for the replacement of the Tappan Zee Bridge project. According to the First Quarterly Update, the Thruway Authority issued bonds and will use those resources for the project in advance of a transfer from the DIIF. The effect is that the General Fund will temporarily retain the $450 million, until SFY 2017-18.

Figure 5 compares the change in timing of anticipated transfers to the DIIF in the SFY 2016-17 Executive Budget Financial Plan and the First Quarterly Update. As previously referenced, the SFY 2016-17 Executive Budget Financial Plan had anticipated transferring 100 percent of monetary settlement resources planned for DIIF projects by the end of SFY 2016-17. The most recent plan for transferring monetary settlement resources to the DIIF included in the First Quarterly Update delays the transfer of the majority of the resources until SFY 2017-18 through SFY 2020-21. The plan included in the First Quarterly Update anticipates that approximately 28 percent of the monies initially planned for transfer to the DIIF through SFY 2016-17 will actually be transferred in that time frame.

Figure 5

Executive Budget and First Quarterly Update Financial Plans
Anticipated Transfers to the Dedicated Infrastructure Investment Fund
(in millions of dollars)



Source: Division of the Budget

Throughout the year, monies in the State's restricted reserves, including Tax Stabilization Reserve, Rainy Day Reserve and Contingency Reserve can be and are used by DOB within the fiscal year and are repaid before the end of the fiscal year. Unrestricted reserves – meaning those resources that are in the General Fund but not specifically deposited into a statutorily created reserve fund – do not have be repaid and can be used throughout the year for cash flow purposes. Settlement funds are unrestricted while in the General Fund.

Based on the First Quarterly Financial Plan Update, a total of $1 billion of the monetary settlement resources is planned for transfer to the DIIF and the EPF during SFY 2016-17 ($901 million to the DIIF and $120 million to the EPF). As of September 30, 2016, just over one-third of these a total resources, or $376 million, had been transferred, including $364 million to the DIIF and $12 million to the EPF, while nearly $6.2 billion in settlement resources remained in the General Fund.

III. Conclusion

All Funds tax collections totaling $36.9 billion through the first half of SFY 2016-17 are down by more than $1.3 billion compared to last year, and have trailed initial projections, primarily due to weakness in PIT receipts. All Funds PIT receipts through the mid-year were $1.2 billion below initial projections and $422.7 million below updated projections.

The State's General Fund balance has recently been relatively high by historical standards, including its mid-year balance of $9.6 billion. The majority of that balance, however, represents settlement resources that the State has committed to various uses. The delay of planned transfers and/or expenditures of settlement resources has effectively lengthened the period during which these resources have served as additional informal budgetary reserves.

If tax revenue continues to fall short of projections, State policymakers may face difficult choices with respect to the use of the settlement resources. If expenditures are made as originally planned, the temporary boost such resources have provided to the General Fund's bottom line will prove illusory. The State's increasingly cloudy revenue picture, with total tax collections thus far in SFY 2016-17 nearly $919 million below Enacted Budget projections, could exacerbate this effect, adding further uncertainty to the State's fiscal picture.

The nearly $9 billion in settlement resources received, or expected to be received, since April 2014 represent an extraordinary opportunity for New York State. As one-time resources, such funds are most appropriately used for capital investments and other one-time purposes. To date, at least one in every six settlement dollars has been or is planned to be used on non-capital purposes. The use of some settlement resources for ongoing General Fund purposes and to bolster the State's bottom line may be obscuring the State's fiscal position, and leaving uncertainty for the commitments already made. Going forward, policymakers should make every effort to ensure that remaining settlement dollars pay for essential capital and other one-time investments.

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