Recovery Audits

This Act requires the state controller to contract with one or more private consultants to conduct recovery audits of state agencies for three past fiscal years. It directs the controller to provide to an auditing consultant any confidential information necessary for the conduct of an audit to the extent not prohibited by law or an agreement. It requires the controller to provide copies of all reports received from recovery audit consultants to the governor, the state auditor, and the legislative audit and joint budget committees of the legislature within 7 days of receipt, and to issue a report to the legislature summarizing the contents of all reports received from recovery audit consultants.

The state controller may, subject to review and approval by the legislative audit and joint budget committees of the legislature, exempt a state agency from recovery audits if the state controller determines that subjecting the state agency to a recovery audit is not likely to yield significant net benefits to the state or that the state agency is already subjected to recovery audits under any federal law or regulation or state law, rule, or policy. The state controller must provide the committees with a report detailing any proposed exemptions, and the committees may veto any proposed exemption.

The controller can make rules to establish additional specific criteria for exempting state agencies from recovery audits and retain a portion of any amount recovered due to a recovery audit in order to defray the reasonable and necessary administrative costs in contracting for and providing oversight of the recovery audit, including costs incurred by other state agencies in relation to the recovery audit.

Submitted as:
Colorado
Chapter 402 of 2010
Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Act.] This Act shall be cited as “An Act Concerning Recovery Audits for Government Overpayments of Tax Dollars.”

Section 2. [Recovery Audits; Legislative Declaration; Definitions; Contracting; Reporting.] (A) (1) As used in this Section, unless the context otherwise requires:

(a) “Consultant” means a private contractor that has recovery audit expertise.

(b) “Overpayment” means a payment by a state agency to a vendor or other entity that is made in error or is in excess of the amount to which the recipient is entitled, including, but not limited to:

(i) A payment to a recipient who does not meet applicable eligibility requirements for receiving the payment;

(ii) A duplicate payment;

(iii) A payment resulting from an invoice or pricing error;
(iv) A payment resulting from a failure to apply an applicable discount, rebate, or other allowance;
(v) A payment resulting from a failure to comply with a purchasing agreement; and
(vi) A payment resulting from any other inadvertent error.

(2) “Recovery audit” means a financial management technique used to identify overpayments made by a state agency to vendors and other entities in connection with the payment activities of the state agency.

(3) “State agency” has the same meaning as set forth in [insert citation]. “State agency” does not include a state institution of higher education.

(B) The [legislature] declares that:

(1) Overpayments are a serious problem for state agencies given the magnitude and complexity of state operations;
(2) Overpayments waste tax dollars and detract from the efficiency and effectiveness of state agency operations by diverting resources from their intended uses;
(3) An overpayment occurs when a vendor or other entity receives a payment from a state agency in error or in excess of the legal amount to which the vendor or other entity is entitled.
(4) Recovery audits are a nationally recognized best practice for disbursements management and provide insight for improving operational efficiency and internal controls in the disbursement of tax dollars;
(5) In order to improve the economy and efficiency of state agency operations, it is necessary, appropriate, and in the best interests of the state, to require the [state controller] to contract for recovery audits to recoup overpayments by state agencies of state or federal tax dollars; and
(5) Recovery audits will not cost the state any money because the contractor’s costs are deducted from any dollars recovered, which makes recovery audits self-funding.

(C) On or before [insert date], the [state controller] shall contract with one or more experienced consultants to conduct recovery audits for [insert fiscal years].

(D) A contract with a consultant entered into as required by this section shall:

(1) Provide for reasonable compensation for the recovery audit services provided under the contract, which, notwithstanding any other provision of law, shall include compensation determined by the government application of a specified percentage to the total amount collected by the consultant in the course of the consultant’s recovery audit and related collection activities;
(2) Specify limitations on the scope of the powers that may be exercised by the consultant and procedures to be followed by the consultant in conducting recovery audits to the extent deemed necessary and appropriate by the [state controller] and the consultant to ensure that the due process rights of any person from whom the consultant seeks recovery of an overpayment are adequately protected; and
(3) Require any data or information determined by the state agency being audited to be confidential to be securely transmitted and maintained by the consultant in accordance with the security policies, standards, and guidelines established by the [state chief information security officer] or the [state chief information officer] pursuant to [insert citation].

(E) Notwithstanding any provision of law to the contrary and except to the extent prohibited by federal law or regulations or by an agreement between the state or a state agency and the federal government, the government of another state, or an agency or other government entity of another state, the [state controller] or a state agency being subjected to a recovery audit, and any contractor or vendor that has a contract with such a state agency, shall provide a
consultant acting under a contract required by this section with any confidential information in
the custody of the [state controller], the state agency, or the contractor or vendor that is necessary
for the performance of the recovery audit. A consultant acting under such a contract, or any
employee or agent of the consultant, is subject to all prohibitions against the disclosure of
confidential information obtained from the state or the contractor or vendor in connection with
the contract that apply to the [state controller], the applicable state agency, the contractor or
vendor, or an employee thereof and to all civil or criminal penalties that apply to a violation of
any such prohibition.

(F) The [state controller] shall require recovery audits to be performed on the payments
to vendors and other entities made by all state agencies; except that the [state controller] may,
subject to the review provided for in this section, exempt a state agency from the recovery audits
otherwise required by this section if the [state controller] determines that subjecting the state
agency to a recovery audit is not likely to yield significant net benefits to the state or that the
state agency is already subjected to recovery audits under any federal law or regulation or state
law, rule, or policy. The [state controller] may promulgate rules in accordance with the
provisions of [insert citation] to establish additional specific criteria for exempting state agencies
from recovery audits. Each state agency for which recovery audits are required shall provide the
recovery audit consultant with all information and cooperation desirable or necessary
government for performance of the recovery audits.

(G) The [state controller] may retain a portion of the net amount recovered due to a
recovery audit in order to defray the reasonable and necessary administrative costs, including
reimbursement paid to other state agencies required by this section, incurred by the [state
controller] and the [division of accounts and control] in contracting for and providing oversight
of the recovery audit or any additional costs incurred by any other state agency in relation to the
performance of the recovery audits required by this section. The [state controller] shall reimburse
any state agency that incurs additional costs in relation to the recovery audits for such costs from
the portion of any amounts recovered from recovery audits that the [state controller] retains.

(H) The [state controller] shall provide the [state auditor] and the [legislative audit and
joint budget committees] with a report by [insert date], that details any exemptions from
recovery audits proposed to be allowed by the [state controller]. The [legislative audit and joint
budget committees] may veto any exemption from recovery audits proposed by the [state
controller] by majority votes of the members of each of the [committees] taken before [insert
date].

(I) The [state controller] shall provide copies, including electronic copies, of any reports
received from a consultant performing recovery audits pursuant to this section to the [governor;
the state auditor; and the legislative audit and joint budget committees of the legislature].

(J) The [state controller] shall provide the copies of reports required by this section not
later than the [seventh business day] after the date the [state controller] receives the consultant’s
report.

(K) Not later than [insert date], the [state controller] shall issue a report to the
[legislature] summarizing the contents of all reports received from consultants that performed
recovery audits contracted for pursuant to this section. The report shall also be posted on the web
site of the [state controller].

(L) Nothing in this section shall be construed to limit the authority of a governing board
of a state institution of higher education to contract for a recovery audit for the institution it
governs.

Section 3. [Appropriations.]
(A) There is hereby appropriated, out of any moneys in the [general fund] not otherwise appropriated, to [the department of personnel and administration, and office of the state controller], [insert amount] to [implement this Act].

(B) It is the intent of the [legislature] that the [general fund] appropriations in subsection (A) of this section shall be derived from savings generated from the implementation of the provisions of [insert citation].

Section 4. [Severability.] [Insert severability clause.]

Section 5. [Repealer.] [Insert repealer clause.]

Section 6. [Effective Date.] [Insert effective date.]