

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Administration of the Department of Transportation's "Urban Account Payments to Franchised Private Bus Operators"

FM04-070A

March 19, 2004



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, § 93, of the New York City Charter, my office has conducted an audit on the administration of the Department of Transportation's "Urban Account Payments to Franchise Private Bus Operators," a fiduciary account.

The results of our audit, which are presented in this report, have been discussed with officials of the Department of Transportation and the Office of Management and Budget, and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that City agencies have adequate controls over fiduciary accounts and that moneys in these accounts are used in accordance with applicable rules and regulations.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my audit bureau at 212-669-3747 or e-mail us at audit@Comptroller.nyc.gov.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.
WCT/gr

Report: **FM04-070A**
Filed: **March 19, 2004**

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*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the Administration of the
Department of Transportation's "Urban Account
Payments to Franchised Private Bus Operators"**

FM04-070A

AUDIT REPORT IN BRIEF

This audit determined whether the Department of Transportation (DOT) accurately records the revenues and expenses of the fiduciary account—the Urban Account Payments to Franchise Bus Operators; and whether DOT ensures that account funds are administered in accordance with the fiduciary account agreement and Comptroller's Directive 27.

Fiduciary accounts are used to record financial resources held and administered in trust by the City of New York, the principal and income of which benefit individuals, private organizations, or other non-City government entities. The Urban Account Payments to Franchised Private Bus Operators fiduciary account was established to receive deposits of the City's share of real property transfer and mortgage recording tax receipts, which are used for the support of franchised private bus operators. The City Department of Finance (DOF) is responsible for collecting and calculating the amount deposited in the fiduciary account. DOT is responsible for maintaining and controlling the account. As of December 31, 2003, the account had a balance of \$18,063,487.

Audit Findings and Conclusions

With the exception of one minor discrepancy noted, revenues and expenses were accurately recorded and funds were used in accordance with the fiduciary agreement. However, under the provisions of Comptroller's Directive 27, revenue such as the City's share of real property transfer and mortgage recording tax receipts that is intended to support a City program should be deposited directly into the City's General Fund. Therefore, the fiduciary account should be closed and the balance should be transferred to the General Fund.

In addition, we found that neither DOT nor the Office of Management and Budget (OMB) reconciles the fiduciary account. Consequently, there is no assurance that all funds are properly credited to the fiduciary account.

Audit Recommendations

To address these issues, we recommend that DOT, in conjunction with OMB:

- Close the fiduciary account and transfer the \$18,063,487 balance to the City's General Fund.
- Perform monthly reconciliations to ensure that real property transfer and mortgage recording tax receipts are properly recorded.
- Ensure that the \$26,629 in additional mortgage recording tax receipts identified in this report are deposited into the General Fund and properly recorded on FMS.
- Instruct the Department of Finance to deposit the City's share of real property transfer and mortgage recording tax receipts directly into the General Fund.

INTRODUCTION

Background

Fiduciary accounts are used to record financial resources held and administered in trust by the City of New York, the principal and income of which benefit individuals, private organizations, or other non-City government entities. The strictly custodial nature of these assets prohibits the use of fiduciary funds in the direct support of any of the City's own programs.¹ All expenditures from fiduciary accounts must comply with applicable federal, State, and City rules and regulations.

The New York City Comptroller's Office, in conjunction with the City's Office of Management and Budget (OMB), establishes fiduciary accounts at the request of various organizations, including City agencies and public benefit corporations. According to Comptroller's Directive 27, "Resources of Fiduciary Accounts are generally under the custodianship of the New York City Office of the Comptroller. The accounts are maintained and controlled by the City agency that requests their establishment." Directive 27 also states, "The City agency will then be responsible for recording all cash receipts and disbursements in FMS [Financial Management System] as well as ensuring that all activity in the account is in compliance with the purpose for which it was created."

In December 1985, at the request of the Mayor's Office, a fiduciary account—the Urban Account Payments to Franchised Private Bus Operators—was established to receive deposits of the City's share of real property transfer and mortgage recording tax receipts, which are to be

¹ City fiduciary accounts were formerly known as "trust and agency" accounts.

used for the support of franchise private bus operators.² Initially, the then-Bureau of Franchises was responsible for maintaining and controlling this account. In 1990, these responsibilities were transferred from the Bureau of Franchises to the Department of Transportation.

The City Department of Finance is responsible for collecting real property transfer and mortgage recording tax receipts and calculating the appropriate amounts for deposit into the fiduciary account. In Fiscal Years 2002 and 2003, a total of \$13.9 million was deposited into the fiduciary account. As of December 31, 2003, the account had a balance of \$18,063,487.

In 1974, the City, through the Bureau of Franchises, began administering funds for privately owned bus companies to provide bus service to areas of the City that were not adequately served by the Transit Authority. In 2003, the City paid \$207 million to private bus companies; approximately \$187 million was paid from State grants and City tax levy funds, and the remaining \$20 million was paid from the fiduciary account.

Objectives

Our audit objectives were to determine whether DOT:

- accurately records the revenue and expenses of the fiduciary account; and
- ensures that account funds are administered in accordance with the fiduciary account agreement and Comptroller's Directive 27.

Scope and Methodology

The audit covered the period July 1, 2002, to June 30, 2003 (Fiscal Year 2003). In addition, to verify the accuracy of the July 1, 2002 account balance, we reconciled transactions as far back as July 1, 2000. We also reviewed various documents from the Office of the Mayor and the Department of Transportation pertaining to the fiduciary account.

To gain an understanding of the controls over the collecting, depositing, and disbursing of fiduciary account funds, we interviewed DOF, DOT, and OMB officials. We documented our understanding of the internal controls through written narratives. We also evaluated the adequacy of the internal controls to establish the type and extent of testing needed to determine whether the fiduciary account revenue and expenses were accurately recorded and whether funds were used in accordance with the fiduciary account agreement.

Based on DOF records, we determined whether all revenues were accurately recorded to the fiduciary account during the audit period. In that regard, we recalculated the portion of

² According to the Administrative Code of the City of New York, §11-2104, and the McKinney's Consolidated Laws of New York, §253-a, four percent of the City's share of real property transfer and mortgage recording tax receipts is to be used to finance the operations of private bus companies franchised by the City of New York.

mortgage recording and real property transfer taxes deposited into the fiduciary account. In addition, we: reviewed DOF revenue reports; checked the accuracy of amounts recorded on journal entry documents; and traced those amounts to deposits recorded on the City's Financial Management System (FMS).

To determine whether the amounts disbursed from the fiduciary account were recorded accurately, we traced the amounts disbursed from the fiduciary account to journal entry documents and FMS records. To determine whether the funds in the fiduciary account were used in accordance with the fiduciary agreement, we examined the specific FMS accounts used by OMB to transfer funds to franchised private bus companies.

Finally, we reviewed the provisions in Comptroller's Directive 27 to determine whether its appropriate to deposit funds received by the City to subsidize franchised private bus companies into a fiduciary account. We also reviewed the fiduciary agreement to determine whether DOT and OMB properly administered account funds.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

Discussion of Audit Results

The matters covered in this report were discussed with DOT and OMB officials during and at the conclusion of this audit. A preliminary draft report was sent to DOT and OMB officials and discussed at an exit conference held on February 6, 2004. On February 13, 2004, we submitted a draft report to officials of both agencies with a request for comments. We received a response from OMB on March 2, 2004. OMB, which responded on behalf of itself and DOT, stated that the audit recommendations have been implemented.

The full text of their response is included as an addendum to this report.

FINDINGS

With the exception of one minor discrepancy noted below, revenues and expenses were accurately recorded and funds were used in accordance with the fiduciary agreement. However, under the provisions of Comptroller's Directive 27, revenue such as the City's share of real property transfer and mortgage recording tax receipts should be deposited directly into the City's General Fund. Therefore, the fiduciary account should be closed and the balance should be transferred to the General Fund.

Finally, we found that neither DOT nor OMB reconciles the fiduciary account. Consequently, there is no assurance that all funds are being properly credited to the fiduciary account.

These issues are discussed in the following sections of this report.

Fiduciary Account Should Be Closed

Based on the provisions of Comptroller's Directive 27 (effective April 4, 2003) revenue such as the City's share of real property transfer and mortgage recording tax receipts, which are intended to support a City program, should not be deposited in a fiduciary account. Comptroller's Directive 27 states:

“Any public or private grants or donations given to the City of New York for the purpose of supporting the City's own programs will not qualify as either a private purpose trust or agency fund. Such bequests are considered public-purpose resources under GASB no.34 and must be recorded in the general fund.”

In a letter to the Commissioner of DOT and the Director of OMB dated November 5, 2003, we recommended closing the fiduciary account and transferring the \$17,066,568 balance to the City's General Fund. (See Attachment I.) As of December 31, 2003, the account balance increased to \$18,063,487.

Fiduciary Account Not Reconciled

According to Comptroller's Directive 27, City agencies are responsible for maintaining and controlling their fiduciary accounts. We found that neither DOT nor OMB reconcile DOF revenue reports (which list amounts to be deposited into the fiduciary account) with the information recorded on FMS. Consequently, there is no assurance that all funds are being properly credited to the fiduciary account. In fact, our reconciliation of the fiduciary account for the period July 1, 2000 to June 30, 2003, identified \$26,629 in mortgage recording tax receipts that were never credited to the fiduciary account. (See Attachment II.)

RECOMMENDATIONS

DOT, in conjunction with OMB, should:

1. Close the fiduciary account and transfer the \$18,063,487 balance to the City's General Fund.

OMB Response: "We have permanently discontinued the 'Urban Account' in the Trust and Agency Fund. On January 12th, we requested that the Bureau of Accountancy transfer the balance of the 'Urban Account' trust fund to the general fund."

2. Perform monthly reconciliations to ensure that real property transfer and mortgage recording tax receipts are properly recorded.

OMB Response: "We will reconcile the account on a quarterly basis to ensure accurate transfers between the real property transfer account and mortgage recording account in the trust fund to the new general fund categorical grant."

3. Ensure that the \$26,629 in additional mortgage recording tax receipts identified in this report are deposited into the General Fund and properly recorded on FMS.

OMB Response: "On August 5, 2003, during the 2003 post-closing review of accounts, the Department of Finance transferred the \$22,114.24 from the mortgage recording tax trust fund to the 'Urban Transit Account'. On January 14, 2004, \$3,514.77 in mortgage recording tax was transferred to the new categorical grant in the general fund."

4. Instruct the Department of Finance to deposit the City's share of real property transfer and mortgage recording tax receipts directly into the General Fund.

OMB Response: "We contacted the Department of Finance (DOF) to advise them to discontinue use of the 'Urban Account' and to record the revenue in the new categorical grant in the general fund for administering future payments to the franchise private bus operators."



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Greg Brooks
DEPUTY COMPTROLLER
POLICY, AUDITS, ACCOUNTANCY & CONTRACTS

WILLIAM C. THOMPSON, JR.
COMPTROLLER

November 5, 2003

The Honorable Iris Weinshall
Commissioner
Department of Transportation
40 Worth Street
New York, NY 10013

Mark Page, Director
Office of Management and Budget
75 Park Place, 7th Floor
New York, NY 10007

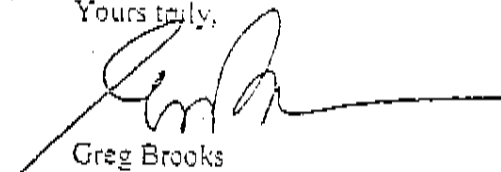
Dear Commissioner Weinshall and Director Page:

On July 10, 2003, our office began an audit of the "Urban Account Payments to Franchised Private Bus Operators" fiduciary account. This account was opened in 1985 by the then Bureau of Franchises to deposit the City's share of real property transfer and mortgage recording tax receipts, which are to be used for the support of franchise private bus operators. Subsequent to the Charter revision of 1992, this account was transferred to the Department of Transportation.

A matter has come to our attention that we are reporting to you now rather than waiting for the completion of the audit process. Specifically, my auditors noted that although over \$34 million was transferred from this account to the City's General Fund over the past two fiscal years \$17,066,568 has yet to be transferred. Under the provisions of Comptroller's Directive 27 (effective April 4, 2003) revenue such as the City's share of real property transfer and mortgage recording tax receipts should be deposited directly in the City's General Fund. Accordingly, this account should be closed and the balance transferred to the General Fund.

Please advise me of the specific actions you plan to take with regard to this matter. Should additional matters arise during the course of this audit that I think warrant your attention, I will advise you accordingly.

Yours truly,



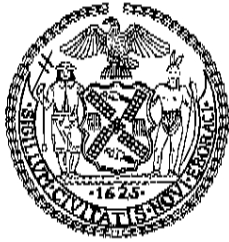
Greg Brooks

cc: Thomas Mathews, Auditor General, Department of Transportation
Anthony DeLorenzo, Deputy Assistant Director, OMB
Susan Kupferman, Director, Mayor's Office of Operations

RECONCILIATION OF REVENUE
For Fiscal Years 2001 to 2003

	FY 2001		FY 2002		FY 2003	
	NOT RECORDED		NOT RECORDED		NOT RECORDED	
	Mortgage Recording Tax	Real Property Transfer Tax	Mortgage Recording Tax	Real Property Transfer Tax	Mortgage Recording Tax	Real Property Transfer Tax
July						
August						
September						
October						
November						
December						
January					4,036.19	
February	3,514.77				5,346.56	
March					3,772.81	
April					3,491.20	
May					1,986.34	
June					4,481.37	
Total	\$ 3,514.77	\$ -	\$ -	\$ -	\$ 23,114.47	\$ -

Total Not Recorded: \$ 26,629.24



The City of New York
Office of Management and Budget
75 Park Place, New York, NY 10007-2146

March 2, 2004

Michael Morgese, Assistant Director
Office of the Comptroller
Municipal Building
1 Centre Street
New York, NY 10007

Dear Assistant Director Morgese:

Thank you for providing the Office of Management and Budget and the Department of Transportation with a copy of the draft report on "Urban Account Payments to Franchised Private Bus Operators" FM04-070A. Our office in conjunction with the Department of Transportation has followed your suggestions and implemented the recommendations contained in the report as follows:

- I. We have permanently discontinued the "Urban Account" in the Trust and Agency Fund. On January 12th, we requested that the Bureau of Accountancy transfer the balance of the "Urban Account" trust fund to the general fund.
- II. We will reconcile the account on a quarterly basis to ensure accurate transfers between the real property transfer account and mortgage recording account in the trust fund to the new general fund categorical grant.
- III. On August 5, 2003, during the 2003 post-closing review of accounts, the Department of Finance transferred the \$22,114.24 from the mortgage recording tax trust fund to the "Urban Transit Account". On January 14, 2004, \$3,514.77 in mortgage mortgage recording tax was transferred to the new categorical grant in the general fund.

Please note that all moneys were paid timely to the City by the Richmond County Clerk. The collections was deposited in a City bank account and recorded in a trust fund administered by DOF. Prior to distribution, the City earned interest on these balances. There was no financial impact to the delayed closing adjustments.

- IV. We contacted the Department of Finance (DOF) to advise them to discontinue use of the "Urban Account" and to record the revenue in the new categorical grant in the general fund for administering future payments to the franchise private bus operators.

In conclusion, I found that based on our review there is only \$3,514.77 that was not posted by the Comptroller and not reconciled by OMB, DOT, or DOF in 2003.

Yours truly,



Anthony DeLorenzo
Deputy Assistant Director

C: Robert Balducci