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A Joint Audit Report on the Department of Finance's Inclusion of Cell Antenna Revenue in the Assessment of Real Property Taxes

FM11-132A

June 27, 2012



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To the Residents of the City of New York:

We conducted a joint audit of the Department of Finance's (DOF) inclusion of cell antenna revenue in the assessment of real property taxes. We audit City operations such as this as a means of increasing accountability and ensuring that City resources are used effectively, efficiently, and in the best interest of the public.

The audit found that DOF did not use all the readily available resources to identify additional property owners who were required to report cell site income on their 2008 or 2009 Real Property Income and Expense (RPIE) statements. Had DOF used the additional resources, we estimate that DOF could have ascribed additional cell site income totaling \$66,720,000 and, applying DOF's methodology, the potential tax impact of this additional income may have been \$24.3 million in additional City revenue.

The audit makes four recommendations to DOF, including that it conduct matches of its records of property owners who reported cell site income and the New York City Department of Buildings Cell Antenna Record to identify property owners who have cell antennas/equipment and did not report cell site income on the RPIE.

The results of the audit have been discussed with DOF officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please email the New York City Comptroller's Bureau of Audit at audit@Comptroller.nyc.gov.

Sincerely,

Office of the City Comptroller
Bureau of Audit

Office of the State Comptroller
Division of State Government Accountability

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AUDIT REPORT IN BRIEF

The Department of Finance (DOF) is responsible for collecting revenues efficiently and encouraging compliance with New York City's tax and other revenue laws. One of the ways DOF does this is by valuing real property in the City. DOF is charged with valuing almost one million properties. The market or property value assessed by DOF is a factor in the calculation of property taxes. The real property tax is the City's largest single revenue source.

Owners of income-producing real property are required to file an annual Real Property Income and Expense (RPIE) statement with DOF. According to Title 11, Chapter 2, §11-208.1 of the New York City Administrative Code, "Where real property is income-producing property, the owner shall be required to submit annually to the department not later than the first day of September a statement of all income derived from and all expenses attributable to the operation of such property."

The objectives of this audit were to determine if all owners report cell site income on the RPIE statement, if additional property tax would be due from unreported cell site income, and if penalties are assessed for not reporting cell antenna income.

Audit Findings and Conclusions

DOF records indicate that owners of 1,219 properties reported receiving \$62,951,827 in cell site income on their RPIE for 2008, and owners of 1,498 properties reported receiving \$81,566,993 in cell site income on their RPIE statements for 2009. In addition, DOF assessors, through physical observations, identified an additional 90 properties where cell site income should have been reported on the 2009 RPIE form. DOF ascribed \$3,028,079 in cell site income to these 90 properties and estimated the potential tax impact to be \$1,166,650.¹ However, we noted weaknesses in DOF's practices that, if corrected, would identify more property owners who should report cell site income, which would then be included in the property tax bill calculations. Furthermore, DOF did not assess any penalties against the 90 property owners who failed to report cell site income on the RPIE. Property owners who fail to report cell site income should be penalized. The potential tax impact would be to increase real estate tax collections and City revenue.

DOF did not use all the readily available resources to identify additional property owners who were required to report cell site income on their 2008 or 2009 RPIE statements. Using lists of properties with cell antenna equipment maintained by the Department of Buildings (DOB) and DOF, our audit found an additional 569 properties for 2008 and 1,539 properties for 2009 with cell antenna equipment for which owners failed to report cell site income. Had DOF used the above records, DOF could have ascribed additional cell site income totaling \$66,720,000 and, applying DOF's methodology, the potential tax impact of this additional income may have been \$24.3 million.

DOF assessors ascribe cell site income, based on their physical observations, to those properties that failed to report cell site income. Although DOF assessors ascribed \$3,028,079 in cell site income for 90 properties that did not report cell site income on RPIE2009, DOF did not assess a penalty against the owners of the 90 properties for failure to report the cell site income. Based on the penalty schedule used during 2009 for non-filers, DOF could have assessed-- at a minimum-- a \$200 penalty against each of the property owners. This penalty, although small to the individual property owner, would signal that there are consequences when the RPIE statement is not completed accurately. Applying the \$200 penalty to the additional 2,108 properties we identified could ensure future compliance with RPIE filing requirements and would bring in \$421,600 to the City. For the 2010 RPIE, the penalty assessed for non-filing was increased to .075 percent of the assessed value of the property.

¹ Ascribe refers to assessors assigning a dollar value for a revenue source not reported on the RPIE.

Audit Recommendations

To address these issues, DOF should:

- Conduct matches of its records of property owners who reported cell site income and the New York City Department of Buildings Cell Antenna Record, found on the DOB website, to identify property owners who have cell antennas/equipment and did not report cell site income on the RPIE.
- Conduct matches of its records of property owners who reported cell site income and the Real Estate of Utility Corporation list that DOF compiles to identify property owners who have cell antennas/equipment and did not report cell site income on the RPIE.
- Ascribe cell site income when it identifies and verifies additional properties that are cell sites and were not reported by property owners.
- Consult with its Legal Department to determine if penalties can be assessed against property owners who fail to include cell site income on the RPIE. The penalty should be calculated based on the income the assessor ascribes.

Agency Response

In its response, DOF stated, “Your report focused on cell site valuation in calendar years 2010 and 2009. In calendar year 2011, the Department of Finance (DOF) prioritized the accurate valuation of cell sites as part of creating the Fiscal Year 2013 Assessment Roll. Therefore much of the Audit Report is outdated....The Quality Assurance Group analyzed a list of Real Estate Utility Companies (REUC) telecommunications equipment and matched it against RPIE filing data and Tax Commission Income and Expense filings (TCIE).”

We disagree with DOF’s statement that our audit report is outdated. Our report identified additional parcels not identified by DOF’s methodology by using other data matching not employed by DOF. Further, we believe that DOF’s 2011 initiative is long overdue. DOF claims that it first started using the utility company data for its initiative around the time we initiated our audit—even though utility companies have been providing DOF with cell site location information since 2006.

The delayed implementation of this initiative has resulted in millions in lost revenue to the City. Had DOF begun its initiative in 2006, the City would now be able to collect much of the additional taxes due because the five-year phase-in period (20 percent a year) would have elapsed.

DOF further stated, “The 2011 cell site initiative resulted in an estimated \$28,000,000 added in income. DOF estimates that this would produce at most an additional \$2 million in FY

13 or \$10,500,000 in tax revenue, phased in over 5 years. Most cell sites are classified as Tax Class 4 or 2 properties. State law provides that market value increases in these Tax Classes be phased in over 5 years at 20% a year. The actual tax depends on future events including updated tax rates, court challenges and Tax Commission reductions and remissions.”

DOF also disagreed with our estimate of potential tax revenue of \$24.3 million. DOF estimates that its initiative would at most produce an additional \$2 million in FY13 or \$10.5 million in tax revenue phased in over five years.

DOF’s position is inaccurate. In an email we received subsequent to DOF’s response, DOF stated its \$10.5 million estimate is based on 843 properties. Our estimate of \$24.3 million is based on 1,711 properties. Considering that we identified an additional 868 properties, more than double the number of properties identified by DOF, our estimate of \$24.3 million is in line with DOF’s own estimate.

Nevertheless, regardless of the exact figure, the important point is that while DOF has begun to pursue cell tower income, it must additionally consider the importance of using DOB records to further identify properties with unreported cell income.

Finally, despite the above disagreements, DOF agreed or partially agreed with the four audit recommendations.

INTRODUCTION

Background

The Department of Finance (DOF) is responsible for collecting revenues efficiently and encouraging compliance with the City's tax and other revenue laws. One of the ways DOF does this is by valuing real property in the City. The Department is charged with valuing almost one million properties. The market or property value assessed by DOF is a factor in the calculation of property taxes. The real property tax is the City's largest single revenue source.

Pursuant to Title 11, Chapter 2, § 11-208.1 of the Administrative Code of the City of New York, where real property is income-producing, the owner of such property is required to electronically file an annual Real Property Income and Expense (RPIE) statement no later than the first day of September with the DOF. DOF uses information from the RPIE to estimate the market value of property for tax calculation purposes. The RPIE statement provides DOF with income and expense information attributed to the operation of the property during the calendar year. For example, the RPIE2008 statement filing would show income and expenses for calendar year 2008 and the RPIE2008 statement should be filed by September 1, 2009. The annual filing of RPIEs is necessary to improve the accuracy of assessments of income-producing properties, reduce the number of administrative and judicial review proceedings challenging tentative assessed valuations, and substantially reduce tax refunds to be paid by the City of New York.

Owners of income-producing properties may be exempt from the RPIE filing requirement provided the property meets certain criteria as shown in section D – RPIE EXEMPTIONS of the RPIE worksheet. For example, if the final actual assessed value of an income-producing property is \$40,000 or less, the property owner would be exempt from RPIE filing. However, the owners who are exempt from RPIE filing are required to notify DOF and indicate the reason for the exemption on the RPIE. DOF maintains records of properties that are exempt from RPIE filing.

Cellular carriers pay property owners cell antenna lease rates for allowing the carrier to mount cell antennas or other equipment on their property. A cell site is a property or location that has a cell antenna, cell tower, or any other equipment that is used to assist in the transmission of signals for cellular phone calls and a cellular carrier is paying the property owner a leasing fee for allowing this equipment to be used and placed on the property. Owners may have this cellular equipment, e.g. cell antennas, on their property from multiple cellular carriers.

Property owners are required to report this cell site income on the RPIE if they are not exempt from RPIE filing.

Objective

The objectives of this audit are:

- To determine if all owners accurately report cell antenna income on the RPIE statement;
- To determine if additional property tax would be due from unreported cell antenna income; and
- To determine if penalties are assessed for not reporting cell antenna income.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter and the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit covered Section M – Income from Real Estate - line item 10g, cell tower or antenna income in RPIE2008 and RPIE2009 statement filings for tax years 2008 and 2009. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with DOF officials during and at the conclusion of this audit. This preliminary draft report was sent to DOF officials and was discussed at an exit conference held on May 11, 2012. On May 14, 2012, we submitted a draft report to DOF officials with a request for comments. We received a written response from DOF officials on May 29, 2012.

In its response, DOF stated, “Your report focused on cell site valuation in calendar years 2010 and 2009. In calendar year 2011, the Department of Finance (DOF) prioritized the accurate valuation of cell sites as part of creating the Fiscal Year 2013 Assessment Roll. Therefore much of the Audit Report is outdated....The Quality Assurance Group analyzed a list of Real Estate Utility Companies (REUC) telecommunications equipment and matched it against RPIE filing data and Tax Commission Income and Expense filings (TCIE).”

We disagree with DOF's statement that our audit report is outdated. Our report identified additional parcels not identified by DOF's methodology by using other data matching not employed by DOF. Further, we believe that DOF's 2011 initiative is long overdue. DOF claims that it first started using the utility company data for its initiative around the time we initiated our

audit—even though utility companies have been providing DOF with cell site location information since 2006.

The delayed implementation of this initiative has resulted in millions in lost revenue to the City. Had DOF begun its initiative in 2006, the City would now be able to collect much of the additional taxes due because the five-year phase-in period (20 percent a year) would have elapsed.

DOF further stated, “The 2011 cell site initiative resulted in an estimated \$28,000,000 added in income. DOF estimates that this would produce at most an additional \$2 million in FY 13 or \$10,500,000 in tax revenue, phased in over 5 years. Most cell sites are classified as Tax Class 4 or 2 properties. State law provides that market value increases in these Tax Classes be phased in over 5 years at 20% a year. The actual tax depends on future events including updated tax rates, court challenges and Tax Commission reductions and remissions.”

DOF also disagreed with our estimate of potential tax revenue of \$24.3 million. DOF estimates that its initiative would at most produce an additional \$2 million in FY13 or \$10.5 million in tax revenue phased in over five years.

DOF’s position is inaccurate. In an email we received subsequent to DOF’s response, DOF stated its \$10.5 million estimate is based on 843 properties. Our estimate of \$24.3 million is based on 1,711 properties. Considering that we identified an additional 868 properties, more than double the number of properties identified by DOF, our estimate of \$24.3 million is in line with DOF’s own estimate.

Nevertheless, regardless of the exact figure, the important point is that while DOF has begun to pursue cell tower income, it must additionally consider the importance of using DOB records to further identify properties with unreported cell income.

Finally, despite the above disagreements, DOF agreed or partially agreed with the four audit recommendations. The full text of the response from DOF is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOF records indicate that owners of 1,219 properties reported receiving \$62,951,827 in cell site income on their RPIE for 2008, and owners of 1,498 properties reported receiving \$81,566,993 in cell site income on their RPIE statements for 2009. In addition, DOF assessors, through physical observations, identified an additional 90 properties where cell site income should have been reported on the 2009 RPIE form. DOF ascribed \$3,028,079 in cell site income to these 90 properties and estimated the potential tax impact to be \$1,166,650. However, we noted weaknesses in DOF's practices that, if corrected, would identify more property owners who should report cell site income, which would then be included in the property tax bill calculations. Furthermore, DOF did not assess a penalty against the owners of 90 properties for failure to report the cell site income. Property owners who fail to report cell site income should be penalized. The potential tax impact would be to increase real estate tax collections and City revenue.

DOF did not use all the readily available resources to identify additional property owners who were required to report cell site income on their 2008 or 2009 RPIE statements. Using lists of properties with cell antenna equipment maintained by DOB and DOF, our audit found an additional 569 properties for 2008 and 1,539 properties for 2009 with cell antenna equipment for which owners failed to report cell site income. Had DOF used the above records, we estimate that DOF could have ascribed additional cell site income totaling \$66,720,000 and, applying DOF's methodology, the potential tax impact of this additional income may have been \$24.3 million in additional City revenue.

DOF assessors ascribe cell site income, based on their physical observations, to those properties that failed to report cell site income. Although DOF assessors ascribed \$3,028,079 in cell site income for 90 properties that did not report cell site income on RPIE2009, DOF did not assess a penalty against the owners of the 90 properties for failure to report the cell site income. Based on the penalty schedule used during 2009 for non-filers, DOF could have assessed-- at a minimum-- a \$200 penalty against each of the property owners. This penalty, although small to the individual property owner, would signal that there are consequences when the RPIE statement is not completed accurately. Applying the \$200 penalty to the additional 2,108 properties could ensure future compliance with RPIE filing requirements and would bring in \$421,600 to the City. For the 2010 RPIE, the penalty assessed for non-filing was increased to .075 percent of the assessed value of the property.

These findings are discussed in detail in the following sections of this report.

Owners of Over 2,000 Properties Did Not Report Cell Site Income on the RPIE

Our review of property lists with cell site equipment maintained by DOB and DOF identified 569 properties in 2008 and 1,539 properties in 2009 where the property owners failed to report the cell site income to DOF on the RPIE and DOF was not aware of it. See Table I for a breakdown by borough of the number of properties that did not report cell site income.

Table I
Number of Properties Whose Owners Did Not Report Cell Site Income by Borough for Calendar Year 2008 and Calendar Year 2009

Borough	Calendar Year 2008	Calendar Year 2009
Manhattan	140	454
Bronx	96	267
Brooklyn	191	411
Queens	124	365
Staten Island	18	42
Grand Total	569	1539

During audit fieldwork, we asked that DOF investigate 239 of the 1,539 properties to determine whether these properties should have had cell site income ascribed on the RPIE and whether DOF will ascribe cell site income in the future. DOF’s response was:

“From looking at the general information on these properties, including the Dept. of Buildings permit information, we believe it is likely that most of these should have cell income on RPIE 2009. For the current assessment year (FY 12/13), 173 of the 239 have one or more of the following to date:

- Filed income
- Income/physical information added electronically into Vision”

DOF assessors are responsible for valuing properties in their assigned areas. This valuation includes making sure the property is assigned the correct building and tax classes and that the physical characteristics of the building are accurate. One such aspect of the physical characteristics of a building would include cell antennas. If DOF assessors see cell antenna equipment during the course of their fieldwork, they would ascribe cell antenna income to that property if it were not reported on the RPIE. However, not all cell antenna equipment is in a visible location such as a rooftop. DOF assessors did not use the DOB or the DOF records available to determine the location of cell sites and whether cell site income was reported to DOF on the RPIE.

We identified these additional properties by reviewing the NYC Department of Buildings Cell Antenna record and Job Antenna Report to identify properties that had recorded cell antenna jobs as completed. We also reviewed the Real Estate of Utility Corporation (REUC) list, a listing compiled by DOF based on information submitted by telecommunication companies for 2009. This listing identifies cell sites and the number of cell carriers that have cell antennas or other related equipment installed on each property. DOF officials told us that they receive information on all cell sites in the City directly from the utility companies on an annual basis. DOF officials acknowledged that, although they had this resource, i.e. REUC lists, available to them in 2008 and 2009, the assessors did not use them because they did not include all of the cell carriers.

DOF Could Have Ascribed Millions of Dollars in Cell Site Income

DOF could have ascribed millions of dollars in cell site income if the assessors were aware of the properties that did not report cell site income on the RPIE. We estimate that \$16,200,000 in cell site income was not reported on RPIE2008 by the owners of the 569 properties we identified. We further estimate that \$50,520,000 in cell site income was not reported on RPIE2009 by the owners of the 1,539 (729+810) properties we identified. Table II is a breakdown of the estimated dollar amount of unreported cell site income by borough.

Table II
Estimated Dollar Amount of Unreported Cell Site Income by Borough for Calendar Year 2008 and Calendar Year 2009

Borough	Calendar Year 2008	Calendar Year 2009
Manhattan	\$5,904,000	\$21,576,000
Bronx	\$2,304,000	\$6,984,000
Brooklyn	\$4,584,000	\$10,680,000
Queens	\$2,976,000	\$10,176,000
Staten Island	\$432,000	\$1,104,000
Grand Total	\$16,200,000	\$50,520,000

We estimated the amount of cell site income that was not reported to DOF by the property owners we identified using the same methodology that DOF assessors use to ascribe cell site income. DOF guidelines use a set amount to ascribe income depending on the location of the property.

According to DOF, properties north of 125th Street in Manhattan and the outer boroughs receive approximately \$2,000 per month per cell carrier for leasing building space, and properties south of 125th Street in Manhattan receive approximately \$4,000 per month from each cell carrier. We used the REUC list, which indicates the number of cell carriers per property, and multiplied the applicable amount by the number of cell carriers per identified property.

Potential Tax Effect Over \$20 Million

Following DOF's methodology, we estimate that the potential tax effect of \$16,200,000 in unreported cell site income in 2008 would result in \$5,956,104 additional tax dollars for these properties. We estimate that the potential tax effect of \$50,520,000 in unreported cell site income in 2009 would result in \$18,355,409 additional tax dollars for these properties. Table III is a breakdown by borough of the potential tax effect of the unreported cell site income.

Table III
Potential Tax Effect of Unreported Cell Site Income by Borough for Calendar Year 2008
and Calendar Year 2009

Borough	Calendar Year 2008	Calendar Year 2009
Manhattan	\$2,142,286	\$7,663,787
Bronx	\$869,745	\$2,647,523
Brooklyn	\$1,725,147	\$4,016,330
Queens	\$1,069,790	\$3,654,074
Staten Island	\$149,136	\$373,695
Grand Total	\$5,956,104	\$18,355,409

When property owners fail to include cell site income on the RPIE and DOF assessors become aware of this, a predetermined amount is ascribed to the overall income of the property. This, in turn, increases the property value and assessed value of the property. Property tax rates are multiplied by the assessed value to calculate the property taxes for the next year. In order to estimate the tax impact of the unreported cell site income, we calculated the potential tax effect using a formula that DOF applied to the 90 properties that it identified and ascribed cell site income to.² Our results are an estimation, and we acknowledge as DOF officials did in calculating their estimation of the potential tax effect that all factors are not included in the calculation, such as transitional value, Fair Market Value caps on certain tax class 2 properties, and any partial exemptions.

Penalties

DOF did not assess penalties against property owners who failed to include cell antenna income on their 2009 RPIE. According to DOF officials, this failure was not egregious enough to warrant a penalty. We disagree and feel that, just as in other types of tax returns when income is unreported, not only should the taxpayer be required to pay the additional tax but a penalty should also be imposed.

DOF assessors ascribe cell site income, based on their physical observations, to those properties that failed to report cell site income. Although DOF assessors ascribed \$3,028,079 in cell site income for 90 properties that did not report cell site income on RPIE2009, DOF did not assess a penalty against the owners of the 90 properties for failure to report the cell site income. Based on the penalty schedule used during 2009 for non-filers, DOF could have assessed-- at a minimum-- a \$200 penalty against each of the property owners. This penalty, although small to the individual property owner, would signal that there are consequences when the RPIE statement is not completed accurately. Applying the \$200 penalty to the additional 2,108

² In order to calculate the potential tax effect of unreported cell income, DOF divided the ascribed cell income by a capitalization rate to get the Fair Market Value (FMV). DOF then multiplied the FMV by a level of assessment to get the Assessed Value. Finally, DOF used a property tax rate, which is based on tax class, and multiplied it by the assessed value to get the potential tax effect of the ascribed income.

properties we identified could ensure future compliance with RPIE filing requirements and would bring in \$421,600 to the City.

Interest would not be applied because the RPIE statements are used to estimate future real estate tax bills. The penalty imposed against property owners who fail to report cell antenna income (cell site income) on the RPIEs should follow the same procedure that DOF has for non-filers. However, the penalty imposed should be applied only to the income that is underreported on the RPIE, not the entire assessed value. For example, if a property owner failed to include \$48,000 in cell site income in 2009, the penalty would be \$200, the penalty assessed for non-filing of an RPIE form for a property with an assessed value of \$48,000. For 2010 RPIE, the penalty imposed was changed from a set fee to .075 percent of the assessed value of the property. The penalty for not including cell antenna income on the 2010 RPIE should have been .075 percent of the cell antenna income not reported.

RECOMMENDATIONS

The Department of Finance should:

1. Conduct matches of its records of property owners who reported cell site income and the New York City Department of Buildings Cell Antenna Record, found on the DOB website, to identify property owners who have cell antennas/equipment and did not report cell antenna income on the RPIE.

DOF's Response: “*DOF partially agrees.* DOF initially reviewed DOB permit data and met with DOB staff in June, 2011 as part of the cell site initiative. The DOB data is from 2005. We found that this data was not usable without clean-up, field inspections and other research. In 2011 we decided to focus on the REUC list provided by telecommunications companies, as this was the strongest data list. We plan to revisit the DOB list in 2012.”

Auditor Comment: In its response, DOF correctly recognizes that the DOB data is from 2005 and unusable without some “clean-up.” However, DOF fails to recognize that DOB’s information is extremely useful in identifying properties with cell tower equipment. Using DOB’s Cell Antenna Record, our auditors identified 569 property owners who did not report cell site income on the RPIE in 2008 and 729 property owners who did not report cell site income on the RPIE in 2009. Clearly, utilizing another source to identify non-reporting cell site income property owners was beneficial. With six months left in 2012, DOF needs to coordinate with DOB officials to sort information that can be useful in identifying non-reporting cell site income property owners.

2. Conduct matches of its records of property owners who reported cell site income and the REUC list that it compiles to identify property owners who have cell antennas/equipment and did not report cell antenna income on the RPIE.

DOF's Response: “*DOF agrees and implemented this in 2011.*”

3. Ascribe cell site income when it identifies and verifies additional properties that are cell sites and were not reported by property owners.

DOF's Response: “*DOF agrees and implemented this in 2011.*”

4. Consult with its Legal Department to determine if penalties can be assessed against property owners who fail to include cell antenna income on the RPIE. The penalty should be calculated based on the income the assessor ascribes.

DOF's Response: “*DOF partially agrees, as penalties on unreported cell site income would be useful.*”

The RPIE law permits DOF to impose a penalty when an owner fails to file. When an owner files, but omits a revenue item such as cell income, a legal review is needed to determine whether this action can be subject to penalty under law. DOF legal staff is working with the Law Department to determine under what circumstances a penalty could be applied for failure to report accurately one portion of the filing by an owner....”

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter and the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit covered Section M – Income from Real Estate - line item 10g, cell tower or antenna income in RPIE statement filings for calendar year 2008 and calendar year 2009. Section M – Income from Real Estate - line item 10g is where property owners are required to indicate the amount of income received for allowing a cell tower or cell antenna to be placed anywhere on their property. Thus, the property is considered to be a cell site.

To gain an understanding of the policies and procedures that DOF has in place to ensure that property owners report cell antenna or tower income, which we will refer to as cell site income, on the RPIE statements, we conducted interviews with DOF officials and staff.

We reviewed Title 11, Chapter 2 § 11-208.1 of the Administrative Code of the City of New York and subdivisions §33-01 to §33-07 regarding filing of income and expense statements. In addition, we reviewed the RPIE Income and Expense Worksheet and Instructions, which provides information regarding how to complete the RPIE, who is required to file, and who may be exempt from RPIE filing. We used these documents as criteria to satisfy our objectives.

We obtained a file from DOF, "Cell Site Income 08-09," and reviewed it to determine the number of property owners, as per unique Borough, Block, and Lot (BBL), that reported cell site income to DOF on RPIE2008 and RPIE2009 and the amount that was reported. We found that 1,219 property owners reported receiving a total of \$62,951,827 in cell site income on RPIE2008 and that 1,498 property owners reported receiving a total of \$81,566,993 in cell site income on RPIE2009.

We attempted to independently develop a list of properties from the DOB that may have cell antennas or related telecommunications equipment to determine which property owners may have been required to report cell site income to DOF on RPIE2008, due September 1, 2009, and RPIE2009, due September 1, 2010. We reviewed and analyzed two files from the NYC Department of Buildings, "DOB Cell Antenna Record Starting from 7/5/2005," which contained 5,330 job entries as of the date of our review and "Job Antenna Report March 1, 2005 through July 5, 2005," which contained 150 job entries. (Note: DOB did not have data available regarding the issuance of permits for cell antenna prior to calendar year 2005.) These files indicate when work permits were issued for installation of cell antenna in buildings or structures under DOB's jurisdiction. Each job is assigned a job number. These files also indicate the current status of the job, either PERMIT- ENTIRE which means that a permit has been issued for the work to be done, or SIGNED OFF, which means that the job was completed. We determined the number of

Borough, Block, and Lots (BBLs) that had a job status of SIGNED OFF on or before December 31, 2008, and on or before December 31, 2009. There were 1,260 unique BBLs that had a job status of SIGNED OFF on or before December 31, 2008, and 1,776 unique BBLs that had a job status of SIGNED OFF on or before December 31, 2009.

For our calendar year 2008 review, we compared our list of 1,260 unique BBLs that we compiled from DOB's records to DOF's list of 1,219 BBLs that cell site income was reported for on RPIE2008 to determine whether the owners of all the properties on the DOB list reported cell site income to DOF. We found that owners of 977 of the 1,260 properties on DOB's list did not report cell site income to DOF on RPIE 2008.

For our calendar year 2009 review, we compared our list of 1,776 unique BBLs that we compiled from DOB's records to DOF's list of 1,498 BBLs that cell site income was reported for on RPIE2009 to determine whether the owners of all the properties on DOB's list reported cell site income to DOF. We found that owners of 1,304 of the 1,776 properties on DOB's list did not report cell site income to DOF on RPIE 2009.

To determine whether any of the owners cited above (977 in 2008 and 1,304 in 2009) were entitled to a RPIE filing exemption, we reviewed the RPIE WORKSHEET guide and found that, if a property meets certain criteria, the property may be exempt from the RPIE filing requirement. Property owners who have reason to believe that their properties are exempt from RPIE filing should indicate on the RPIE the reason why they are not required to file. We also took the tax class and building class of each property into consideration. According to DOF officials, RPIE statement filings are not required for Tax Class 1 and Tax Class 2-capped, i.e. 2A, 2B, and 2C properties. We also obtained files from DOF that show which BBLs were on the list of those that DOF granted an exemption, exception, or were tax exempt and therefore did not require an RPIE. We also used DOF's New York City Automated Register Information System (ACRIS) to determine the assessed value of each property because, according to RPIE guidelines, if the final actual assessed value of the property is \$40,000 or less, the property owner is exempt from the RPIE filing requirement for that property. We eliminated BBLs if it appeared that the property owner had a valid reason for not submitting an RPIE. We believe that the owners of the remaining properties, 569 in 2008 and 729 in 2009, were required to file an RPIE and failed to report cell site income.

In addition, for our review of calendar year 2009, we obtained a file from DOF entitled "Cell Master" that contains a list of 4,038 BBLs identified as cell sites based on information submitted to DOF by telecommunication companies concerning RPIE2009. DOF compiled this file, which is an inventory of cell sites, and refers to it as the Real Estate of Utility Corporation (REUC) list. We reviewed this file and removed duplicate BBLs, leaving a total of 3,034 unique BBLs on the REUC list. We then removed 590 BBLs from the REUC list that we already identified from our previous comparison (DOB versus DOF records) as those properties that we have reason to believe had cell antennas and the property owners did not report cell site income received to DOF on the RPIE. We were left with 2,444 unique BBLs on the REUC list. Then we compared the REUC list to DOF's "Cell Site Income 08-09" file, focusing on calendar year 2009, to determine the number of unique BBLs on the REUC list that were not on DOF's Cell Site Income 08-09 file. We did not do a comparison of DOF's records for calendar year 2008 because we were not told which properties were on the REUC list as of the close of calendar year 2008. We identified, from our

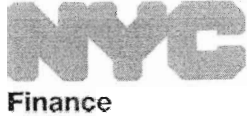
match of the REUC file to DOF's file, an additional 810 properties in 2009 that were cell sites and the property owners did not report cell site income to DOF on RPIE2009. Therefore, our total population consists of 569 sites for 2008 and 1539 for 2009.

We estimated the amount of cell site income that was not reported to DOF by the property owners we identified using the same methodology that DOF assessors use to ascribe cell site income. DOF guidelines use a set amount to ascribe income depending on the location of the property.

According to DOF, properties north of 125th Street in Manhattan and the outer boroughs receive approximately \$2,000 per month per cell carrier for leasing building space, and properties south of 125th Street in Manhattan receive approximately \$4,000 per month from each cell carrier. We used the REUC list, which indicates the number of cell carriers per property, and multiplied the applicable amount by the number of cell carriers per identified property.

In order to estimate the tax impact of the unreported cell site income, we calculated the potential tax effect using a formula that DOF applied to the 90 properties that it identified and ascribed cell site income to. In order to calculate the potential tax effect of unreported cell income, DOF divided the ascribed cell income by a capitalization rate to get the Fair Market Value (FMV). DOF then multiplied the FMV by a level of assessment to get the Assessed Value. Finally, DOF used a property tax rate, which is based on tax class, and multiplied it by the assessed value to get the potential tax effect of the ascribed income.

Regarding penalties, we met with DOF officials to determine if a penalty is imposed against a property owner for not reporting cell antenna income on the RPIE. According to DOF officials, a penalty would be imposed only if the RPIE was so inaccurate or incomplete that it would be considered the same as a non-filer.



David M. Frankel
Commissioner

May 29, 2012

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Re: Audit Report on the Department of Finance's Inclusion of Cell
Antenna Revenue in the Assessment of Real Property Taxes FM11-132A

Dear Deputy Comptroller Kim:

This letter serves as our response to your draft report, dated May 14,
regarding the valuation of cell sites.

Introduction

Your report focused on cell site valuation in calendar years 2010 and 2009. In calendar year 2011, the Department of Finance (DOF) prioritized the accurate valuation of cell sites as part of creating the Fiscal Year 2013 Assessment Roll. Therefore much of the Audit Report is outdated.

In 2011, the Department recognized that there were owners who were not reporting cell site income as required on the Real Property Income and Expense (RPIE) form. Our Property Division initiated a specific targeted approach to the valuation of cell sites. The Quality Assurance Group analyzed a list of Real Estate Utility Companies (REUC) telecommunications equipment and matched it against RPIE filing data and Tax Commission Income and Expense filings (TCIE). Approximately 1,500 individual parcels (not fully exempt) were identified with cellular equipment where no income was reported.

In cases where a property owner omitted cell site income on its RPIE/TCIE, Property added an appropriate amount automatically. Using actual filing data from a list of approximately 2,200 cell income filers from 2006-2010, Property's Assessment Review group developed income guidelines by neighborhood for cell sites. Programmers wrote SQL scripts to apply an imputed income as indicated by the guidelines to parcels. The imputed income went into the line item for cell site income in Property's mass appraisal system. Approximately 1,000 parcels were valued using this income.¹

¹ There were technical or data issues with approximately 500 parcels, or there were subsequent filings by taxpayers that included cell income. DOF is currently working to resolve any issues before the next roll.

The 2011 cell site initiative resulted in an estimated \$28,000,000 added in income. DOF estimates that this would produce at most an additional \$2 million in FY 13 or \$10,500,000 in tax revenue, phased in over 5 years. Most cell sites are classified as Tax Class 4 or 2 properties. State law provides that market value increases in these Tax Classes be phased in over 5 years at 20% a year. The actual tax depends on future events including updated tax rates, court challenges and Tax Commission reductions and remissions.

Because of the success of the cell site initiative, DOF advised OMB in 2011 that it would generate additional property tax from cell sites. OMB approved a revenue PEG as part of the FY 13 November Plan based on additional property tax from cell site owners of \$1,809M in FY 13 and \$5,426M when the new revenue is fully phased in.

Comments on the Report

Audit Recommendation 1:

Conduct matches of its records of property owners who reported cell site income and the New York City Department of Buildings Cell Antenna Record, found on the DOB website, to identify property owners who have cell antennas/equipment and did not report cell antenna income on the RPIE.

DOF partially agrees. DOF initially reviewed DOB permit data and met with DOB staff in June, 2011 as part of the cell site initiative. The DOB data is from 2005. We found that this data was not usable without clean-up, field inspections and other research. In 2011 we decided to focus on the REUC list provided by telecommunications companies, as this was the strongest data list. We plan to revisit the DOB list in 2012.

We disagree with the Comptroller's estimate of potentially missed tax revenue of \$24.3 million for the combined two years covered in the audit, FY2010 and 2011. OMB determined that the potential one year additional tax revenue was \$1,809 million and DOF estimated the maximum potential single year tax revenue was \$2 million. The Comptroller's estimate ignores factors that reduce that tax revenue impact, which were mentioned by DOF at various audit meetings and in email responses. These include: 5-year phase-in of most tax increases (transitional assessed value), caps applied on Class 2 properties, and court and Tax Commission reductions/remissions.

In addition, the DOB data is not a list of cell sites; the permit is for installation, not actual use. Our understanding is that the telecommunications is quickly changing, including needing fewer cell towers for the same transmissions (for example, 4G). We would want to use more recent permit information than 2005.

Audit Recommendation 2:

Conduct matches of its records of property owners who reported cell site income and the REUC list that it compiles to identify property owners who have cell antennas/equipment and did not report cell antenna income on the RPIE.

DOF agrees and implemented this in 2011, as described above.

Audit Recommendation 3:

Ascribe cell site income when it identifies and verifies additional properties that are cell sites and were not reported by property owners.

DOF agrees and implemented this in 2011, as described above.

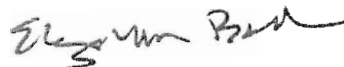
Audit Recommendation 4:

Consult with its Legal Department to determine if penalties can be assessed against property owners who fail to include cell antenna income on the RPIE. The penalty should be calculated based on the income the assessor ascribes.

DOF partially agrees, as penalties on unreported cell site income would be useful.

The RPIE law permits DOF to impose a penalty when an owner fails to file. When an owner files, but omits a revenue item such as cell income, a legal review is needed to determine whether this action can be subject to penalty under law. DOF legal staff is working with the Law Department to determine under what circumstances a penalty could be applied for failure to report accurately one portion of the filing by an owner. DOF amended RPIE rule 19 RCNY §33-02(e) to treat an RPIE that is not substantially complete as a failure to file that might trigger the non-compliance penalties. Unreported cell site income would need to be determined to be substantial enough to deem the RPIE filings invalid. It is unlikely that all filings which do not report, or under report, cell income would be deemed invalid, so this enforcement tool would be limited. DOF's position is that the assessors' ability to add/adjust cell site income during the valuation is a more effective tool which is now being used by DOF.

Sincerely,



Elizabeth Botwin

EB:fr