

# AUDIT REPORT



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

## **Audit of the Administration of Payments in Lieu of Taxes under Economic Development Corporation and Industrial Development Agency Leases**

FM05-125A

August 2, 2005



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 to determine whether Payments in Lieu of Taxes (PILOTs), associated with Economic Development Corporation and Industrial Development Agency leases, were properly calculated, billed, accounted for, and reported. The audit also determined whether PILOTs that were collected were appropriately deposited, and whether PILOT disbursements were made in accordance with New York State law.

This audit was initiated as a result of my concern regarding the transparency and accountability in the process by which revenue derived from PILOTs flow in and out of the City's general fund.

The results of our audit, which are presented in this report, have been discussed with officials of the Economic Development Corporation, Industrial Development Agency, Department of Finance, and 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 PILOTs are properly calculated, billed, accounted for, and reported in accordance with New York State and local law.

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](mailto: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: FM05-125A**  
**Filed: August 2, 2005**

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

**Audit of the Administration of Payments in Lieu of Taxes  
Under Economic Development Corporation and  
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**FM05-125A**

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**AUDIT REPORT IN BRIEF**

The audit determined whether “Payments in Lieu of Taxes” (i.e., PILOTs) were properly calculated, billed, accounted for, and reported. The audit also determined whether PILOTs that were collected were appropriately deposited, and whether PILOT disbursements were made in accordance with New York State law.

The Industrial Development Agency (IDA) provides benefits to property owners that are seeking to establish or expand their business in New York City. PILOTs, which are one of those benefits, are arrangements that exempt property owners from paying real property taxes; instead, owners pay an amount prescribed in a lease agreement that is generally less than the full real property tax. The Department of Finance is responsible for billing the property owners and directing them to make PILOT payments to an account maintained by an independent trustee. The trustee may disburse PILOT funds in the account only at the request of the Economic Development Corporation (EDC)—as directed by the Office of Management and Budget. According to New York State’s General Municipal Law, PILOT funds must be disbursed to the City treasury within 30 days of receipt. In Fiscal Years 2002 through 2004, IDA collected \$152.5 million in PILOTs from property owners who had agreements with IDA.

In addition to the PILOTs collected under IDA agreements, there are 15 development projects that EDC directly administers. The amount of PILOTs collected from these 15 projects was approximately \$17 million for Fiscal Years 2002 through 2004.

**Audit Findings and Conclusions**

In general, PILOT amounts collected were properly accounted for, reported, and deposited. However, disbursements of IDA PILOTs are not being made in accordance with New York State law because funds are not being remitted to the City treasury within 30 days of receipt. In addition, PILOT funds are being transferred to EDC in violation of the General Municipal Law. In fact, approximately \$59.4 million has been on deposit with the trustee for

more than 30 days (as of May 31, 2005) that should immediately be transferred to the City treasury. In addition, EDC has \$601,381 in its operating account that should be returned to the trustee for remittance to the City treasury.

Furthermore, DOF, did not always calculate, and therefore bill, property owners for the proper PILOT amounts due. As a result, the City did not collect approximately \$415,653 in PILOT revenue. Moreover, IDA PILOT revenue is underreported because it is not recorded on the City's books until it is transferred from the trustee to the City treasury instead of recording it when it is received by the trustee.

Finally, DOF does not always ensure that properties whose PILOTs expire are properly placed back onto the City's tax rolls. As a result, the City has not collected approximately \$2.1 million.

### **Audit Recommendations**

The audit recommended that OMB:

- Ensure that the current balance of the trust account (\$59.4 million as of May 31, 2005) be immediately transferred to the City treasury.
- Ensure that all future PILOT funds are remitted to the City treasury within 30 days of receipt, as required by the General Municipal Law.
- Report PILOT revenue in the fiscal year that it becomes available.

EDC should:

- Remit the \$601,381 in excess funding to the trustee for remittance to the City treasury.

DOF should:

- Ensure that it accurately bills property owners for PILOTs in accordance with terms of the lease agreements. In this regard, DOF should ensure that all calculations are reviewed and approved by a supervisor before bills are sent to property owners.
- Recalculate the PILOTs due for the properties identified in this report. In addition, DOF should credit those properties where overpayments were made and seek to recover the underpayments, if permissible by law.
- Ensure that properties whose PILOTs expire are immediately recorded on the City's property tax rolls.

## INTRODUCTION

### Background

This audit was initiated as a result of the Comptroller's concern regarding the transparency and accountability in the process by which revenue derived from "payments in lieu of taxes" (PILOTs) flow in and out of the City's general fund.

Property owners who are seeking to establish or expand their businesses in New York City can obtain various benefits from the Industrial Development Agency (IDA), whose purpose is to promote City economic development by its approval of industrial and commercial development projects. IDA is empowered by the New York State Industrial Development Agency Act (Title 1 of Article 18-A of the General Municipal Law) and Chapter 1082 of the 1974 Laws of New York, as amended, to issue non-recourse revenue bonds to provide financing to property owners for qualified projects. In addition, IDA provides other benefits to property owners to induce businesses to remain in, or relocate to, New York City including: exemption from City and State mortgage recording taxes; exemption from City and State sales and use taxes; and granting PILOTs.

PILOTs, which are contained in lease agreements between the City and the property owners, are intended to offer owners real property tax relief. Under these agreements, property owners are exempt from paying real property taxes; instead, they pay an amount prescribed by the agreement that is generally less than the property tax. In Fiscal Years 2002 through 2004, IDA billed \$147.6 million and collected \$152.5 million in PILOTs from property owners who had agreements with IDA.

The administration of IDA PILOTs is outlined in a July 1, 1990 Memorandum of Understanding (MOU) between IDA, the Economic Development Corporation (EDC), the Department of Finance (DOF), and the Office of Management and Budget (OMB).<sup>1</sup> According to the MOU, PILOTs collected from property owners who have agreements with IDA are deposited into an account maintained by an independent trustee (i.e., the Bank of New York). DOF is responsible for billing the property owners and directing them to make payments to the trustee. The trustee may disburse PILOT funds in the account only at the request of EDC—as directed by OMB. Funds are disbursed to either the City treasury or to EDC's operating account.<sup>2</sup> During Fiscal Years 2002 through 2004, OMB directed EDC to disburse approximately \$150.5 million in PILOT funds—\$128.4 million to the City treasury and \$22.1 million to EDC's operating account. Approximately \$10.7 million in PILOT funds remained on account as of the end of Fiscal Year 2004. Chart I on page 4 summarizes PILOT disbursements, by category, for Fiscal Years 2002 through 2004.

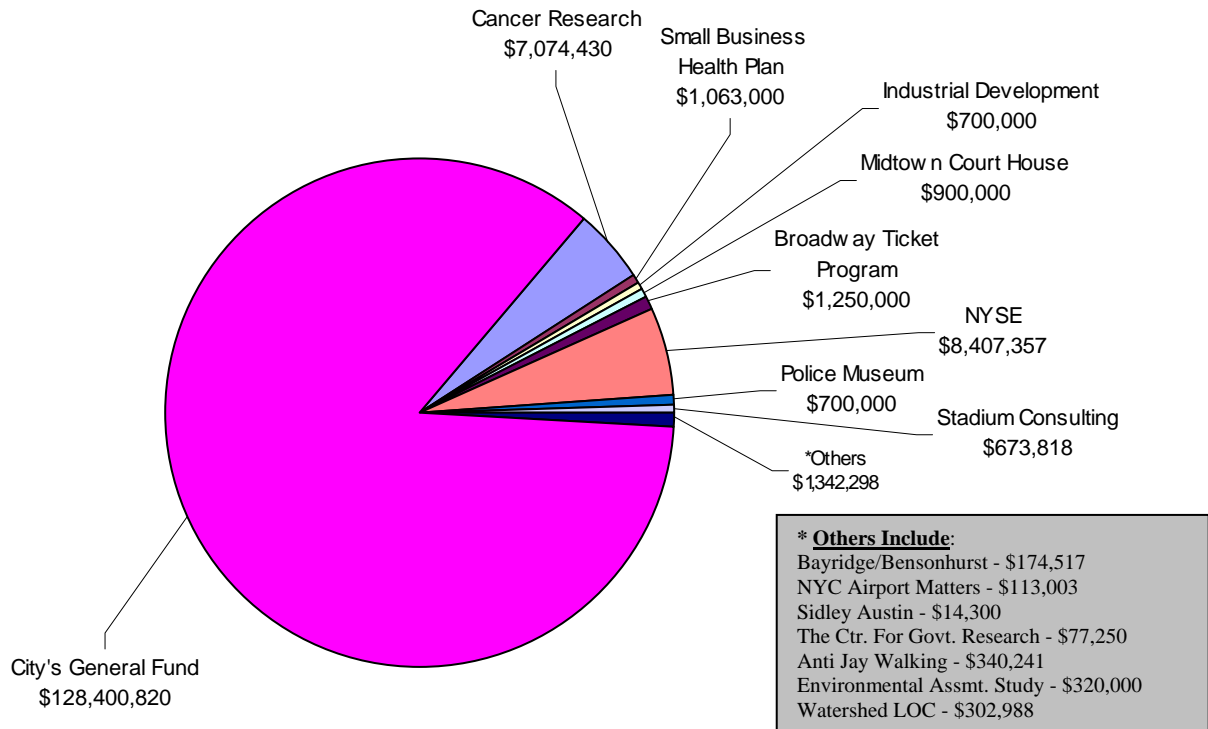
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<sup>1</sup>The MOU was renewed in July 1992.

<sup>2</sup>Funds that are disbursed to EDC's operating account are used to fund various economic development projects. Development projects are generally approved by EDC's Executive Committee Members.

In addition to receiving PILOT funds collected through IDA agreements, EDC obtains PILOT funds from the operators of 15 development projects that it directly administers. EDC is a local development corporation organized in 1966 in accordance with the not-for-profit corporation law of the State of New York.<sup>3</sup> EDC works with the private and public sectors on economic development initiatives to revitalize businesses, create jobs, and generate revenue for the City.<sup>4</sup> DOF is responsible for billing, collecting, and directing property owners to deposit these PILOT funds into the City treasury. The amount of PILOT funds collected from the property owners of the 15 projects was approximately \$17 million for Fiscal Years 2002 through 2004.

**Chart I**  
**IDA PILOT DISBURSEMENTS (FY 2002 - 2004)**



<sup>3</sup>The IDA itself consists only of its board members. EDC employees handle daily IDA activities in accordance with a management agreement between EDC and the IDA.

<sup>4</sup> EDC markets, sells, and leases City-owned commercial and industrial properties; plans and prepares sites for development; and carries out capital improvements in neighborhood shopping districts and public spaces. EDC also manages and develops the City's marine terminals, airports, heliports, markets, rail yards, and industrial parks to encourage economic growth in New York City.

## **Objectives**

The objectives of this audit were to determine whether PILOTs were properly calculated, billed, accounted for, and reported; whether the amounts collected were appropriately deposited into the IDA Trust Account (IDA PILOTs) or the City treasury (EDC PILOTs); and whether disbursements from the IDA Trust Account were made in accordance with New York State law.

## **Scope and Methodology**

The scope of this audit covers Fiscal Year 2002 through Fiscal Year 2004. To gain an understanding of the controls and processes by which PILOT funds are calculated, billed, deposited, disbursed, and reported, we interviewed officials from EDC, IDA, DOF, and OMB. We documented our understanding of these processes through narratives and flowcharts. In addition, we evaluated internal controls over the PILOT process to determine the nature, timing, and extent of our audit testing. Finally, to understand the procedures and law governing PILOT agreements, we reviewed the *Memoranda of Understanding* between IDA, EDC, DOF, and OMB dated July 1, 1990 (renewed July 1, 1992); *Title 1 of Article 18-A of the General Municipal Law*; and the *PILOT Trust Agreement* between the IDA and the Bank of New York.

### **Tests Conducted for IDA PILOTs**

To determine whether DOF accurately calculated and billed IDA PILOTs, we randomly selected 50 of 300 PILOT agreements whose property owners were billed during our audit period. DOF made 139 individual PILOT calculations for these 50 leases. Using the billing formulas stipulated in each lease, we recalculated the PILOT amounts due and compared them to the amounts billed by DOF. Although the results of our sample were not projected, they provided us a reasonable basis to determine the accuracy of PILOT billings.

To determine whether the IDA PILOTs that were billed were collected and appropriately deposited, we traced each deposit itemized on the Bank of New York bank statements for the entire audit period, to the bills obtained from DOF. Where lessees did not make payments by their due dates, DOF directed that payment should be made not to the trustee, but rather to DOF and then to the City treasury. In these instances we traced the amounts collected to the amounts deposited and recorded on the City's Financial Management System.

To determine whether the funds collected from IDA PILOTs were disbursed in accordance with New York State law, we obtained a detailed list of disbursements from OMB. The list included the recipient, date, and amount of PILOT funds disbursed from the trustee account.<sup>5</sup> We matched the OMB list with a list of disbursements recorded on the trustee account bank statements. Our analysis enabled us to determine whether PILOT funds were being transferred to either the City treasury or to EDC's operating account. For PILOT funds transferred to the City treasury, we determined whether proper authorizations were obtained and then traced the amounts to the City's bank statements and the amounts reported in the City's

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<sup>5</sup> New York State law requires that PILOT funds be remitted to the City treasury within 30 days of receipt.



Financial Management System. For those funds that were transferred to EDC's operating account, we traced the PILOT revenues and related expenses recorded on EDC's accounting system to its financial statements, and we obtained supporting documentation to determine whether the transferred funds were used to fund specific economic development projects. We also reviewed the legislation governing PILOT funds to determine whether OMB's direction of those funds for development purposes was appropriate.

### **Tests Conducted for EDC PILOTs**

To determine whether DOF accurately calculated and billed EDC PILOTs, we recalculated the billings for all 15 EDC PILOTs. Specifically, using the billing formulas stipulated in each lease, we recalculated the PILOT amounts due and compared them to the amounts billed by DOF. To determine whether the EDC PILOTs that were billed were collected and appropriately deposited, we traced the amounts billed for the entire audit period to the amounts deposited in the City treasury and reported in the City's Financial Management System.

### **Independence Disclosure**

In accordance with Article 18A, Title 2, §917 of the New York State General Municipal Law, the Comptroller is one of 15 members of the Industrial Development Agency's Board. Neither the Comptroller nor his alternate was involved in planning or conducting this audit, or in writing or reviewing the audit report.

\* \* \* \* \*

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the 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 EDC, IDA, DOF, and OMB officials during and at the conclusion of this audit. A preliminary draft report was sent to agency officials and discussed at an exit conference held on June 17, 2005. On June 21, 2005, we submitted a draft report to those officials with a request for comments. Written responses were received from OMB, EDC, and DOF on July 6, 2005—IDA did not respond directly to the draft report.

In its response, OMB stated that it disagrees with our interpretation of the law relating to PILOTs. Nevertheless, OMB agreed to comply with a recently enacted "local law governing the use of PILOTs." EDC stated that "based on the analysis by the Corporation Counsel, both EDC and the IDA believe that their treatment of PILOT funds is appropriate and in accordance with Law." In addition, EDC does not believe that its Executive Committee approved projects

without public scrutiny. Finally, DOF stated that it agrees with the audit's general findings and recommendations and has "taken steps to collect every penny owed the City by rebilling owners and retroactively restoring former PILOT properties to the tax rolls."

The responses received and our rebuttals are included in the body of this report. The full text of the responses received from OMB, EDC, and DOF are included as addenda to this report.

## **FINDINGS AND RECOMMENDATIONS**

In general, PILOT amounts collected were properly accounted for, reported, and deposited in the IDA Trust Account or in the City treasury. However, disbursements from the IDA Trust Account are not being made in accordance with New York State law because funds are not being remitted to the City treasury within 30 days of receipt and PILOT funds are being transferred to EDC in violation of the General Municipal Law. In fact, approximately \$59.4 million has been on deposit with the trustee for more than 30 days (as of May 31, 2005) that should immediately be transferred to the City treasury. In addition, EDC has \$601,381 in its operating account that should be returned to the trustee for remittance to the City treasury.

Further, DOF did not always calculate, and therefore bill, property owners for the proper PILOT amounts due. As a result, the City did not collect approximately \$415,653 in PILOT revenue. Moreover, IDA PILOT revenue is underreported because it is not recorded on the City's books until it is transferred from the trustee to the City treasury instead of recording it when it is received by the trustee.

Finally, DOF does not always ensure that properties whose PILOTs expire are properly placed back onto the City's tax rolls. As a result, the City has not collected approximately \$2.1 million.

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

### **Funds Not Remitted to the City**

OMB is not directing that PILOT funds be remitted to the City treasury within 30 days of receipt, as required by §874 of the General Municipal Law. According to Article 18-A, Title 1, Section 874(3) of the Law, "Payments in lieu of taxes received by the agency [IDA] shall be remitted to each affected tax jurisdiction with 30 days of receipt." As previously stated, the trustee (Bank of New York) may disburse the PILOT funds in the account only at the request of EDC, as directed by OMB. During Fiscal Years 2002 through 2004, OMB directed EDC to disburse approximately \$150.5 million of PILOT funds—\$128.4 million to the City treasury and \$22.1 million to EDC's operating account. None of the \$128.4 million was remitted to the City treasury within the 30-day period.

In addition, between Fiscal Years 2002 and 2004, OMB directed that \$22.1 million of PILOT funds be transferred to the EDC operating account for "economic development projects"

rather than to the City treasury. An allocation of PILOT funds to EDC is contrary to the statutory framework and express provisions of Title 1, Article 18-A of the General Municipal Law that requires payment of PILOT to the City, as the affected tax jurisdiction. These funds were used to reimburse EDC for various “economic development” projects (as listed in Chart I on page 3). EDC funded a cancer research project, expenses of the Police Museum, and an Anti Jaywalking campaign. These projects were not reviewed and approved through the City’s normal budget process. Rather the projects were approved without public scrutiny by EDC’s Executive Committee, which is comprised of Mayoral appointees, individuals selected by the Chair, and one individual, nominated by the speaker of the City Council subject to the approval of the Mayor.

The failure to remit PILOT funds promptly to the City treasury not only violates the General Municipal Law, it also constitutes a lack of public oversight and accountability for the disposition and use of PILOT funds. Moreover, transferring funds directly to the EDC operating account prevents public oversight because it bypasses the City’s normal budget process—the review and approval of the City Council. It should be noted that as of May 31, 2005, approximately \$59.4 million has been on deposit with the trustee for more than 30 days.

**EDC Response:** “After a careful review of this matter and based on the analysis by Corporation Counsel, both EDC and the IDA believe that their treatment of PILOT funds is appropriate and in accordance with law. In addition, EDC disagrees with the statement in the report that EDC’s Executive Committee approved projects without public scrutiny. In fact, meetings of EDC’s Executive Committee are open to the public and . . . public notices are announced prior to meetings of the Board of Directors of EDC and its Executive Committee.”

**Auditor Comment:** Despite EDC’s “belief” that its treatment of PILOT funds is in accordance with law, it is clear that the General Municipal Law requires that IDA funds be remitted to the City treasury within 30 days. The law does not allow funds to be redirected to EDC for projects that bypass the City’s normal budget process. Insofar as approving projects without public scrutiny is concerned, announcing and allowing the public to attend EDC Executive Committee meetings falls short of the requirements of the City Council’s appropriation and approval required by the City Charter. In addition, we found no evidence that these contracts were registered with the Comptroller’s Office, which would ensure that all applicable procurement rules were followed. Compliance with these regulations provides accountability, transparency, and proper checks and balances to ensure that these funds are used appropriately and in the best interest of the public.

### **Recommendations**

OMB should ensure that:

1. The current balance of the trust account (\$59.4 million as of May 31, 2005) is immediately transferred to the City treasury.

2. All future PILOT funds are remitted to the City treasury within 30 days of receipt, as required by the General Municipal Law.

**OMB Response:** “Upon consultation with the Office of the Corporation Counsel and based on their determination that the Mayor has the power to direct the payment of PILOTs on behalf of the City, we disagree with the Comptroller’s view as to the proper interpretation of the law relating to PILOTs. In addition, subsequent to the release of the draft report, the City Council enacted a local law governing the use of PILOTs, with which OMB will comply. For both of these reasons, we believe that the OMB actions recommended by the draft report are unnecessary.”

**Auditor Comment:** Although OMB’s response states that no action is necessary for recommendation 1, we disagree. The current balance of the trust account should be immediately transferred to the City treasury since it has been on deposit for more than 30 days in violation of the General Municipal Law. In addition, this recommendation is in line with the City Council’s new local law, which OMB has agreed to comply with.

### **\$601,381 in EDC Operating Account Should Be Returned to the Trustee**

On August 26, 2002, EDC entered into a \$250,000 contract with Deloitte and Touche LLP (Deloitte) to assess the economic impact of proposed new sports and entertainment facilities in the City. Despite a contract maximum of \$250,000, OMB allowed EDC to draw down \$773,818 in IDA PILOT funds to pay for work under the contract. Moreover, since EDC paid Deloitte only \$172,437 of the \$250,000 (presumably no other payments are due to Deloitte since the last payment was made on May 12, 2003), it has \$601,381 in its operating account that should be returned to the trustee (\$773,818 minus \$172,437). Appropriate oversight over the use of PILOT disbursements is necessary to ensure that the funds are properly accounted for and are used for their intended purpose.

### **Recommendation**

3. EDC should remit the \$601,381 in excess funding to the trustee for remittance to the City treasury.

**EDC Response:** “On June 13, 2005 OMB authorized the transfer of this amount to other approved economic development projects in lieu of drawing down additional PILOT funds from the Trustee account.”

**Auditor Comment:** OMB’s response to this recommendation contradicts its statement that it will comply with the Council’s new local law. Furthermore, by allowing EDC to transfer these funds OMB continues to violate the provisions of the General Municipal Law—the law does not allow funds to be redirected to EDC for projects that bypass the City’s normal budget process. These funds should have been returned to the trustee for remittance to the City treasury and new projects should have been approved and funded through the City’s normal budget process.

## **Incorrect Billings**

Of the 139 individual IDA PILOT calculations it made for the 50 properties in our audit sample, DOF made 78 incorrect calculations. As a result, 31 (62 percent) of the 50 properties were incorrectly billed for Fiscal Years 2002 through 2004. (See Appendix A for a list of incorrectly billed lessees.) Forty-three incorrect calculations resulted in property owners being underbilled by \$683,777, while the remaining 35 resulted in property owners being overbilled \$228,823.

Similarly, six of the 15 property owners were incorrectly billed for their EDC PILOTs. (See Appendix B for a list of incorrectly billed lessees.) We determined that DOF made nine incorrect calculations for these six property owner sites. Two incorrect calculations resulted in property owners being underbilled \$56,214. Seven incorrect calculations resulted in property owners being overbilled \$95,515.

As previously stated, DOF is responsible for billings for IDA and EDC PILOTs. PILOTs are generally determined by a property's tax assessment value and tax rate in a particular time period that is stipulated in the lease agreements. However, DOF billing clerks used tax assessment values and/or tax rates that were not consistent with those in the lease agreements. In addition, DOF clerks did not use the lowest transitional or actual assessment values to calculate PILOTs, as required by tax law.<sup>6</sup> Consequently, most of the errors made in calculating PILOTs resulted from the application of incorrect tax values by billing clerks. These incorrect calculations could have been detected with appropriate supervisory review. However, we noted that none of the calculations were reviewed and approved by supervisory personnel.

For example, in Fiscal Years 2002 through 2004, DOF underbilled a property owner by \$2,658 each year because it used the tax rate for Fiscal Year 1985. The lease agreement requires that the PILOT calculation be based on the Fiscal Year 1999 tax rate. In another example, PILOT was overbilled \$1,392 each year because DOF used the Fiscal Year 2000 tax rate instead of the Fiscal Year 2001, as required by the lease. As a final example, DOF did not use the lower of the transitional or actual value when it calculated PILOT for another property owner. As a result, this owner was underbilled \$37,953 for Fiscal Year 2004.

**DOF Response:** “The agency acknowledges some errors in calculating PILOT liabilities. In large part, these are the result of human error in manually entering assessed property values and tax rates from Finance sources into the Economic Development Corporation (EDC) computer system that is used for billing. Corrective action has been taken as outlined below in the Department's response to the audit recommendations.

“It should be emphasized, however, that various items listed by the auditors as errors are, in fact, not errors, but the result of applying an interpretation of the PILOT agreement terms that is different from the one chosen by the auditors. These fall primarily into two categories:

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<sup>6</sup> “Transitional” and “actual” assessment values are assigned annually to each property's land and building.

1. **“Transitional versus actual values.** Finance policy with respect to real estate tax billing is to bill based on either transitional or actual assessed value of land and improvements, whichever combination is lower. For the past several years, this policy has also been applied to PILOT billing. The auditors identified six cases, with total differences of \$318,259, in which the lower of transitional or actual land and the lower of transitional or actual improvements were used as the stabilized values, rather than the lower of the combined values. These cases were set up by EDC in the 1990s under a policy that differs from that currently in effect. Going forward, Finance will use the lower combination in these cases, consistent with our policy for new cases.
  
2. **“STRET versus CRET.** In one case the auditors state that Finance underbilled by \$3,023 due to billings for the lesser of PILOT based on stabilized real estate values (**STRET**) or actual current real estate tax (**CRET**) although the agreements did not specifically call for this. Finance and EDC are in agreement that the public purpose for which the IDA program was created is to provide a benefit to serve as an incentive to the taxpayer, and that strict application of **STRET** even when it is higher than **CRET** would defeat this purpose. Although some older agreements do not specify this, Finance believes that its practice reflects the intended purpose of the program.

“The agency also disagrees with the auditors’ findings regarding one EDC case in which \$53,217 was presumably underbilled in Fiscal 2004 (Appendix B). Finance staff have reviewed this case and found that \$2,429 was underbilled and the participant has been sent a bill for this correct amount.”

***Auditor Comment:*** Our calculation of the \$3,023 underbilled amount was based on the specific requirements set forth in this agreement. In its response, DOF is applying criteria to its calculation that is not contained in the agreement, which is not good public policy. If DOF wishes to apply such criteria it should only do so after an amendment has been agreed to by the appropriate parties. Furthermore, DOF’s response does not adequately address our finding regarding the taxpayer who was underbilled by \$53,217 for fiscal year 2004. In that regard, this taxpayer’s current outstanding bill of \$2,429 is irrelevant to our finding that DOF underbilled the taxpayer in 2004.

### **Recommendations**

DOF should:

4. Ensure that it accurately bills property owners for PILOTs in accordance with terms of the lease agreements. In this regard, DOF should ensure that all calculations are reviewed and approved by a supervisor before bills are sent to property owners.

***DOF Response:*** “The agency agrees. Finance instituted and/or plans to institute several changes in practices and systems that will reduce errors in the future. These include:

- “**Case history review.** Finance will immediately review the PILOT cases identified by the auditors to find cases in which stabilized values may have been established incorrectly in the past, and will correct any errors that are identified.
- “**Supervisory review.** For the upcoming billing cycle, Finance will institute an appropriate level of supervisory review of PILOT bills before they are generated.
- “**Integrating PILOT into Fairtax.** Finance is working on a project to generate PILOT bills on the Department’s Fairtax system instead of on the EDC system. Fairtax is the source of the data that is currently entered manually by Finance staff into the EDC system. Automatic updating of assessment and tax rate data will eliminate all manual entry errors. Finance also plans to incorporate the EDC (non-IDA) PILOTs into this system. These bills are currently prepared manually, with no system support.”

5. Recalculate the PILOTs due for the properties identified in this report. In addition, DOF should credit those properties where overpayments were made and seek to recover the underpayments, if permissible by law.

**DOF Response:** “The agency agrees. Finance has reviewed the auditors’ findings and is making retrospective corrections to PILOT bills.”

**Revenue Held In Trust Account  
At Year-End Not Recognized**

IDA PILOT revenue is not recorded on the City’s books until it is transferred from the trustee to the City treasury instead of when it is received by the trustee. We noted that at the end of each fiscal year there were funds left in the trust account—these funds were not transferred to EDC nor were they remitted to the City treasury by each year end. Specifically, \$7.4 million remained in the trust account at the end of Fiscal Year 2002; \$3.3 million at the end of Fiscal Year 2003; and \$10.7 million at the end of Fiscal Year 2004—these revenues were not recognized on the City’s financial statements for each respective year. §62 of NCGAS 1 (National Council of Governmental Accounting Statements), which have been incorporated into *Governmental Accounting and Financial Reporting Principles* state that measurable revenue should be recorded in the fiscal year that it becomes available to finance current expenditures. This condition is met when the PILOTs are received. As a result, the City did not have an accurate account of available revenue for budget purposes. Conceivably, OMB could build up a huge reserve of funds deposited with the trustee, which, as things currently stand, may not be subjected to the City’s budget process—which includes the review, consideration, and approval of the City Council. Recognizing revenue in the fiscal year that it becomes available is important to ensure proper public oversight and accounting of these funds.

## **Recommendation**

6. OMB should report PILOT revenue in the fiscal year that it becomes available.

**OMB Response:** OMB did not respond to this recommendation.

## **Other Issue**

DOF does not ensure that properties whose PILOTs expire are properly placed back onto the City's tax rolls. Between Fiscal Years 2002 and 2004, 62 of the 300 IDA PILOTs expired. Of the 62 PILOT projects, 37 were not properly reentered on the tax rolls. In fact, one of these projects, whose PILOT expired on October 31, 2001, has still not been placed back on the tax rolls, more than 3½ years later. The City has not collected \$175,198 in taxes from this property owner as of June 30, 2004 and it has not collected approximately \$1.9 million from the property owners of the remaining 36 PILOT projects (as of June 30, 2004). (See Appendix C for the properties not placed on the property tax roll.) Clearly, ensuring that all properties whose PILOTs have expired are placed on the tax rolls is important to ensure that the City collects all appropriate tax revenue.

**DOF Response:** "The agency acknowledges that some properties were not restored to tax rolls in a timely manner. All the cases identified by the auditors are being reviewed so that the Department can collect any outstanding back taxes."

## **Recommendation**

7. DOF should ensure that properties whose PILOTs expire are immediately recorded on the City's property tax rolls.

**DOF Response:** "The agency agrees. Finance has reorganized the exemptions area: a process and procedure for timely removal of exemptions is now in place.

"Also, a new policy has been adopted to eliminate manual restoration of exempt properties in favor of automatic restoration at the beginning of the next tax quarter. This enhancement is expected to improve workflow and thus reduce errors of omission.

"Further, Finance will meet with EDC staff to fully apprise them of its new policy and to ensure that future agreements are drafted in a manner that is consistent with this policy. In those cases where property owners voluntarily opt out of the IDA agreements prior to the end of a tax quarter, the terms of the agreement will expressly require the owner to pay the real estate tax liability that will accrue from that date to the end of the current tax billing quarter, ensuring that the City will lose no revenue in the interval between termination of PILOT and restoration to fully taxable status."



## INCORRECTLY BILLED IDA LESSEES

#	Borough/Block/Lot	Underbilled Amount	(Overbilled Amount)
	<b>Blyn/3734/1</b>		
1	FY 2002		\$ (27,140)
2	FY 2003		\$ (29,696)
3	FY 2004		\$ (4,769)
	<b>Qns/3590/42</b>		
4	FY 2002	\$ 3,536	
5	FY 2003	\$ 1,755	
6	FY 2004	\$ 1,756	
	<b>Bx/3848/57, 65 &amp; 81</b>		
7	FY 2002	\$ 1,739	
8	FY 2003	\$ 934	
	<b>Qns/50/17</b>		
9	FY 2002	\$ 8,455	
10	FY 2003	\$ 8,455	
11	FY 2004	\$ 4,051	
	<b>Bx/2561/25</b>		
12	FY 2002		\$ (5,376)
13	FY 2003		\$ (4,364)
14	FY 2004		\$ (9,453)
	<b>Qns/811/32</b>		
15	FY 2002	\$ 2,658	
16	FY 2003	\$ 2,658	
17	FY 2004	\$ 2,658	
	<b>Bx/2606/41</b>		
18	FY 2002		\$ (1,392)
19	FY 2003		\$ (1,392)
20	FY 2004		\$ (1,392)
	<b>Man/1085/1, 23, 31, 37, 39, 41, 136 &amp; 138</b>		
21	FY 2002	\$ 36,852	
22	FY 2003	\$ 174,696	
23	FY 2004	\$ 16,563	
	<b>Qns/2681/1</b>		
24	FY 2002	\$ 156	
25	FY 2003		\$ (2,456)
26	FY 2004		\$ (2,456)
	<b>Bx/2755/115</b>		
27	FY 2002	\$ 2,582	
28	FY 2003	\$ 441	

#	Borough/Block/Lot	Underbilled Amount	(Overbilled Amount)
	<b>Blyn/2539/1</b>		
29	FY 2002	\$ 171	
30	FY 2003	\$ 171	
31	FY 2004	\$ 171	
	<b>Qns/367/15, 17, &amp; 23</b>		
32	FY 2002		\$ (2,510)
33	FY 2003		\$ (5,539)
34	FY 2004		\$ (5,539)
	<b>Qns/1833/300</b>		
35	FY 2004	\$ 37,953	
	<b>Qns/4117/1, Qns/4137/12 &amp; Qns/4116/1, 45 &amp; 46</b>		
36	FY 2002	\$ 72,477	
37	FY 2003	\$ 69,766	
38	FY 2004	\$ 68,090	
	<b>Blyn/762/35</b>		
39	FY 2002		\$ (84)
40	FY 2003		\$ (114)
41	FY 2004		\$ (114)
	<b>Qns/288/5 &amp; 17</b>		
42	FY 2002	\$ 40	
43	FY 2003	\$ 40	
44	FY 2004	\$ 40	
	<b>Qns/115/1</b>		
45	FY 2002		\$ (7,677)
46	FY 2003		\$ (7,677)
47	FY 2004		\$ (7,677)
	<b>Blyn/448/13</b>		
48	FY 2002	\$ 2,038	
49	FY 2003	\$ 2,038	
50	FY 2004	\$ 2,350	
	<b>Qns/1016/98</b>		
51	FY 2002	\$ 12,139	
52	FY 2003	\$ 12,139	
53	FY 2004	\$ 12,139	
	<b>Qns/4034/5</b>		
54	FY 2002	\$ 7,898	

## INCORRECTLY BILLED IDA LESSEES

#	Borough/Block/Lot	Underbilled Amount	(Overbilled Amount)
	<b>Qns/290/25</b>		
55	FY 2002		\$ (39,498)
56	FY 2003		\$ (15,616)
57	FY 2004		\$ (23,597)
	<b>Blyn/3733/1</b>		
58	FY 2002		\$ (169)
	<b>Blyn/4386/1</b>		
59	FY 2002	\$ 20	
60	FY 2003	\$ 20	
61	FY 2004	\$ 60,976	
	<b>Qns/732/12</b>		
62	FY 2003	\$ 323	
63	FY 2004	\$ 323	
	<b>Blyn/2992/21 &amp; 55</b>		
64	FY 2002		\$ (4,829)
65	FY 2003		\$ (4,645)
66	FY 2004		\$ (4,263)
	<b>Qns/665/10</b>		
67	FY 2002		\$ (5,340)

#	Borough/Block/Lot	Underbilled Amount	(Overbilled Amount)
	<b>Blyn/3883/1</b>		
68	FY 2002		\$ (331)
69	FY 2003		\$ (508)
70	FY 2004		\$ (508)
	<b>Blyn/8132/16</b>		
71	FY 2003	\$ 4,699	
	<b>SI/2705/225</b>		
72	FY 2002	\$ 21,104	
73	FY 2003	\$ 24,085	
74	FY 2004		\$ (1,415)
	<b>Bx/2353/120 Bx/2354/74</b>		
75	FY 2002		\$ (377)
76	FY 2003		\$ (455)
77	FY 2004		\$ (455)
	<b>Blyn/2927/42</b>		
78	FY 2002	\$ 2,622	
	<b>Total</b>	<b>\$ 683,777</b>	<b>\$ (228,823)</b>

Net Underbilled Amount

**\$ 454,954**

## INCORRECTLY BILLED EDC LESSEES

#	<i>Borough/Block/Lot</i>	<i>Underbilled Amount</i>	<i>(Overbilled Amount)</i>
	<b>Qns/639/16, Qns/643/1 &amp; Qns/644/1</b>		
1	FY 2002		\$ (6,195)
2	FY 2003		\$ (31,909)
	<b>Blyn/239/1</b>		
3	FY 2003		\$ (14,500)
	<b>Blyn/132/1, 14 &amp; 23</b>		
4	FY 2004	\$ 53,217	
	<b>Blyn/3718/1</b>		
5	FY 2002		\$ (1,586)
6	FY 2003		\$ (374)
7	FY 2004		\$ (960)
	<b>Bx/4226/5</b>		
8	FY 2004	\$ 2,997	
	<b>Blyn/140/1101, 1102, 1103, 1104 &amp; 1105</b>		
9	FY 2003		\$ (39,991)
	<b>Total</b>	<b>\$ 56,214</b>	<b>\$ (95,515)</b>

Net (Overbilled Amount)

**\$ (39,301)**

**PROPERTIES NOT PROPERLY PLACED ON TAX ROLL**

<b>Project #</b>	<b>Borough/ Block/Lot</b>	<b>Date Project Should Return to Tax Roll</b>	<b>Date Project Returned to Tax Roll</b>	<b>Estimated Taxes Owed as of June 30, 2004</b>
1	Blyn/2979/25	04/24/02	07/01/02	
	Blyn/2979/27	04/24/02	07/01/03	
	Blyn/2979/43	04/24/02	07/01/03	
	Blyn/2979/45	04/24/02	07/01/03	
	Blyn/2979/50	04/24/02	07/01/03	
	Blyn/2979/175	04/24/02	07/01/02	\$ 40,267
2	Blyn/2228/35	07/03/02	07/01/03	\$ 10,456
3	Bx/3848/57	12/13/02	07/01/03	
	Bx/3848/65	12/13/02	07/01/03	
	Bx/3848/81	12/13/02	07/01/03	\$ 52,422
4	Qns/50/17	12/18/03	07/01/04	\$ 45,452
5	Qns/441/16	04/23/02	07/01/03	\$ 179,471
6	Qns/442/18	12/19/01	07/01/02	\$ 35,447
7	Qns/2611/452	10/22/01	N/A	\$ 39,528
8	Qns/3541/1	12/13/02	01/01/03	\$ 3,487
9	Blyn/4109/91	12/13/01	07/01/03	
	Blyn/4109/107	12/13/01	07/01/03	\$ 49,894
10	Qns/775/1	04/26/02	07/01/03	\$ 181,332
11	Bx/2761/169	10/26/01	07/01/02	\$ 9,687
12	SI/1318/223	12/22/03	07/01/04	
	SI/1318/224	12/22/03	07/01/04	\$ 27,724
13	Qns/665/10	11/14/01	07/01/03	\$ 109,498
14	Man/761/10	11/13/01	07/01/02	\$ 45,716
15	Blyn/2969/1	05/25/04	07/01/04	\$ 2,387
16	Qns/4160/26	05/21/02	01/01/02	\$ 47,763
17	Bx/2764/92	04/26/02	07/01/03	\$ 14,364
18	Bx/2600/1	05/19/04	07/01/04	\$ 15,612
19	Qns/16153/28	10/31/01	N/A	\$ 175,198
20	Qns/2611/104	04/15/04	07/01/04	\$ 27,055
21	Qns/4035/1	10/30/02	07/01/03	\$ 54,607
22	Blyn/539/24	05/29/02	07/01/02	\$ 2,967
23	Blyn/583/1	12/22/03	07/01/04	
	Blyn/583/36	12/22/03	07/01/04	\$ 77,956
24	Blyn/735/20	05/28/04	07/01/04	\$ 8,888
25	Blyn/2571/1	01/31/02	07/01/03	\$ 53,894
26	Qns/4273/75	09/27/02	07/01/03	\$ 62,940
27	Qns/5323/219	12/10/02	07/01/03	
	Qns/5323/250	12/10/02	07/01/03	\$ 58,927
28	Qns/222/17	12/21/01	07/01/02	\$ 18,749
29	Man/47/1002	04/30/04	07/01/04	\$ 91,286
30	Qns/237/33	08/15/01	07/01/03	\$ 113,431
31	Qns/2575/300	09/09/03	01/01/04	\$ 20,829
32	Man/693/56	02/26/02	07/01/03	\$ 62,003
33	Qns/4273/105	06/13/02	07/01/02	\$ 6,444
34	Qns/10304/5	02/13/03	07/01/03	
	Qns/10343/205	02/13/03	07/01/03	
	Qns/10343/227	02/13/03	07/01/03	\$ 30,555
35	Blyn/2477/52	12/20/01	07/01/03	\$ 143,536
36	Qns/1016/9	07/30/03	07/01/04	
	Qns/1018/20	07/30/03	07/01/04	\$ 161,894
37	Blyn/2974/51	12/19/03	01/01/04	\$ 6,742
<b>Total</b>				<b>\$ 2,088,409</b>



New York City  
Economic Development  
Corporation

July 6, 2005

Mr. Greg Brooks  
Deputy Comptroller  
Office of the Comptroller  
1 Centre Street  
New York, NY 10007-2341

**Re: Audit # FM05-125A  
Draft Audit of the Administration of Payments in Lieu of Taxes under Economic  
Development Corporation and Industrial Development Agency Leases**

Dear Mr. Brooks:

Thank you for the opportunity to respond to the City of New York Office of the Comptroller ("Comptroller") Draft Audit on the Administration of Payments in Lieu of Taxes under Economic Development Corporation and Industrial Development Agency Leases.

Before addressing the specific EDC related recommendation of the report, we would like to respond to the draft audit's conclusion that disbursements from the IDA Trust Account are not being made in accordance with New York State law, and that funds are being transferred to EDC in violation of the General Municipal Law. After a careful review of this matter and based on the analysis by Corporation Counsel, both EDC and the IDA believe that their treatment of PILOT funds is appropriate and in accordance with law.

In addition, EDC disagrees with the statement in the report that EDC's Executive Committee approved projects without public scrutiny. In fact, meetings of EDC's Executive Committee are open to the public and the following public notices are announced prior to meetings of the Board of Directors of EDC and its Executive Committee:

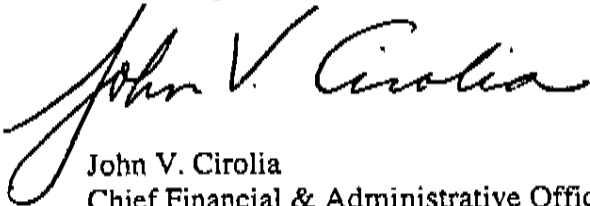
- o A notice of date, time and place of meetings are faxed to major national and financial news organizations: Bloomberg News, AP Daybook, Reuters and Dow Jones Wire Service.
- o The same notice is also posted locally outside the main entrance to EDC's offices and at a Department of Citywide Administrative Services ("DCAS") bulletin board.

The draft report includes one (1) recommendation for EDC. Following is the recommendation and EDC's response:

**Recommendation:** EDC should remit the \$601,381 in excess funding to the trustee for remittance to the City treasury.

**EDC Response:** On June 13, 2005 OMB authorized the transfer of this amount to other approved economic development projects in lieu of drawing down additional PILOT funds from the Trustee account. The appropriate documents with respect to the authorized transfer were provided to the auditors at the exit conference held on Friday, June 17, 2005.

Yours truly,



John V. Cirolia  
Chief Financial & Administrative Officer

CC: Andrew M. Alper  
Deo Singh



**FINANCE  
NEW YORK**  
THE CITY OF NEW YORK  
DEPARTMENT OF FINANCE

**BY FAX AND HAND DELIVERY**

July 6, 2005

Mr. Greg Brooks  
Deputy Comptroller  
Office of the Comptroller  
1 Centre Street  
New York, NY 10007-2341

**Re:   Audit of the Administration of Payments in Lieu of Taxes  
      Under Economic Development Corporation and Industrial  
      Development Agency Leases  
      FM05-125A**

Dear Mr. Brooks:

Thank you for the opportunity to respond to the City of New York Office of the Comptroller (Comptroller) Draft Audit Report on the Administration of Taxes Under Economic Development Corporation and Industrial Agency Leases (PILOT).

The comments that follow address the audit's findings and recommendations with respect to the Department of Finance's (Finance) role in the administration of this program.

While Finance agrees with these general findings and recommendations, it is important to note that Finance has already taken steps to collect every penny owed the City by rebilling owners and retroactively restoring former PILOT properties to the tax rolls. In addition, Finance's administration of the PILOT program has been completely reorganized since the period of time covered by this audit. These organizational, procedural and policy changes have since enhanced the efficiency of the program's administration and are in keeping with the agency's on-going commitment to improving its services to the public and the City.

**Findings and Recommendations:**

**Finding:**

Finance did not always calculate, and therefore bill, property owners for the proper PILOT amounts due. As a result, the City did not collect approximately \$416,396 in PILOT revenue.

**Finance Response:**

The agency acknowledges some errors in calculating PILOT liabilities. In large part, these are the result of human error in manually entering assessed property values and tax rates from Finance sources into the Economic Development Corporation (EDC) computer system that is used for billing. Corrective action has been taken as outlined below in the Department's response to the audit recommendations.

It should be emphasized, however, that various items listed by the auditors as errors are, in fact, not errors, but the result of applying an interpretation of the PILOT agreement terms that is different from the one chosen by the auditors. These fall primarily into two categories:

1. **Transitional versus actual values.** Finance policy with respect to real estate tax billing is to bill based on either transitional or actual assessed value of land and improvements, whichever combination is lower. For the past several years, this policy has also been applied to PILOT billing. The auditors identified six cases, with total differences of \$318,259, in which the lower of transitional or actual land and the lower of transitional or actual improvements were used as the stabilized values, rather than the lower of the combined values. These cases were set up by EDC in the 1990s under a policy that differs from that currently in effect. Going forward, Finance will use the lower combination in these cases, consistent with our policy for new cases.
2. **STRET versus CRET.** In one case the auditors state that Finance underbilled by \$3,023 due to billings for the lesser of PILOT based on stabilized real estate values (**STRET**) or actual current real estate tax (**CRET**) although the agreements did not specifically call for this. Finance and EDC are in agreement that the public purpose for which the IDA program was created is to provide a benefit to serve as an incentive to the taxpayer, and that strict application of **STRET** even when it is higher than **CRET** would defeat this purpose. Although some older agreements do not specify this, Finance believes that its practice reflects the intended purpose of the program.

The agency also disagrees with the auditors' findings regarding one EDC case in which \$53,217 was presumably underbilled in Fiscal 2004 (Appendix B). Finance staff have



reviewed this case and found that \$2,429 was underbilled and the participant has been sent a bill for this correct amount.

**Recommendations:**

**Recommendation 4:**

Finance should ensure that it accurately bills property owners for PILOTs in accordance with terms of the lease agreements. In this regard, Finance should ensure that all calculations are reviewed and approved by a supervisor before bills are sent to property owners

**Finance Response:**

The agency agrees. Finance instituted and/or plans to institute several changes in practices and systems that will reduce errors in the future. These include:

- **Case history review.** Finance will immediately review the PILOT cases identified by the auditors to find cases in which stabilized values may have been established incorrectly in the past, and will correct any errors that are identified.
- **Supervisory review.** For the upcoming billing cycle, Finance will institute an appropriate level of supervisory review of PILOT bills before they are generated.
- **Integrating PILOT into Fairtax.** Finance is working on a project to generate PILOT bills on the Department's Fairtax system instead of on the EDC system. Fairtax is the source of the data that is currently entered manually by Finance staff into the EDC system. Automatic updating of assessment and tax rate data will eliminate all manual entry errors. Finance also plans to incorporate the EDC (non-IDA) PILOTs into this system. These bills are currently prepared manually, with no system support.

**Recommendation 5:**

Finance should recalculate the PILOTs due for the properties identified in this report. In addition, Finance should credit those properties where overpayments were made and seek to recover the underpayments, if permissible by law.

**Finance Response:**

The agency agrees. Finance has reviewed the auditors' findings and is making retrospective corrections to PILOT bills.

**Finding:**

Finance does not always ensure that properties whose PILOTs expire are properly placed back onto the City's tax rolls. As a result, the City has not collected approximately \$2.1 million.

**Finance Response:** The agency acknowledges that some properties were not restored to tax rolls in a timely manner. All the cases identified by the auditors are being reviewed so that the Department can collect any outstanding back taxes.

**Recommendation 7:**

Finance should ensure that properties whose PILOTs expire are immediately recorded on the City's property tax rolls.

**Finance Response:**

The agency agrees. Finance has reorganized the exemptions area: a process and procedure for timely removal of exemptions is now in place.

Also, a new policy has been adopted to eliminate manual restoration of exempt properties in favor of automatic restoration at the beginning of the next tax quarter. This enhancement is expected to improve workflow and thus reduce errors of omission.

Further, Finance will meet with EDC staff to fully apprise them of its new policy and to ensure that future agreements are drafted in a manner that is consistent with this policy. In those cases where property owners voluntarily opt out of the IDA agreements prior to the end of a tax quarter, the terms of the agreement will expressly require the owner to pay the real estate tax liability that will accrue from that date to the end of the current tax billing quarter, ensuring that the City will lose no revenue in the interval between termination of PILOT and restoration to fully taxable status.

If you have any questions regarding this response, please call me at 212 669-4878.

Sincerely,

*Michael Koslow* <sup>PKS</sup>

Michael Koslow  
Audit Coordinator

cc: Martha E. Stark, Commissioner, Department of Finance  
Rochelle Patricof, First Deputy Commissioner, Department of Finance  
Robert Y. Lee, Deputy Commissioner, Treasury, Department of Finance  
Sam Miller, Assistant Commissioner, Communications & Customer Service,  
Department of Finance



The City of New York  
**Office of Management and Budget**  
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**Mark Page**  
*Director*

July 6, 2005


Mr. Greg Brooks  
Deputy Comptroller  
Office of the Comptroller  
1 Centre Street  
New York, NY 10007

**Re: Audit # FM05-125A**  
**Draft Audit of the Administration of Payments in Lieu of Taxes**  
**under Economic Development Corporation and Industrial**  
**Development Agency Leases**

Dear Mr. Brooks:

Thank you for the opportunity to comment on the New York City Comptroller's Draft Audit of the Administration of Payments in Lieu of Taxes under Economic Development Corporation and Industrial Development Agency Leases. We have reviewed the findings of the draft report as well as the OMB recommendations contained therein. Upon consultation with the Office of the Corporation Counsel and based on their determination that the Mayor has the power to direct the payment of PILOTs on behalf of the City, we disagree with the Comptroller's view as to the proper interpretation of the law relating to PILOTs. In addition, subsequent to the release of the draft report, the City Council enacted a local law governing the use of PILOTs, with which OMB will comply. For both of these reasons, we believe that the OMB actions recommended by the draft report are unnecessary.

Yours truly,

  
Mark Page