

OFFICE OF THE NASSAU COUNTY COMPTROLLER



**Limited Review of the
Department of Assessment
Collection of Payments in
Lieu of Taxes
(PILOT) Revenue**

October 3, 2018

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COMPTROLLER**

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NOTE: This audit was started under the prior Comptroller's administration.

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OFFICE OF THE NASSAU COUNTY COMPTROLLER
REVIEW OF DEPARTMENT OF ASSESSMENT COLLECTION OF PAYMENTS
IN LIEU OF TAXES (PILOT) REVENUE

REPORT SUMMARY

WHY WE DID THIS REPORT

This report was initiated to review the Payment in Lieu of Taxes (PILOT) revenue collection process. This includes determining if the Nassau County Department of Assessment is collecting all PILOTs for which it is entitled, and verifying that proper controls are in place to restore parcels to the tax rolls when PILOT agreements expire. Additionally, a review of the Nassau County IDA's administration of PILOT agreements was conducted, including the monitoring and tracking of job creation.

WHAT WE FOUND

- The Nassau Department of Assessment did not record nor receive the County's portion of \$7.6 million in PILOT revenues from the Town of Hempstead (\$5.2 million for 2017 & \$2.4 million for the first half of 2018). This audit prompted the payment of these funds.
- More than \$6 million in total potential PILOT revenues to Nassau County were permanently lost because: the Department of Assessment failed to ensure that the Town of Hempstead billed expired PILOTS at the full assessed value until the parcels were restored to the tax roll; and the Town of Hempstead did not notify the Department of Assessment of early termination of PILOT agreements.
- The Department of Assessment did not invoice the Nassau County IDA for over \$500,000 in reimbursements for contractual services provided. These are greatly needed County General Fund revenues.
- Late fees were waived in several circumstances.
- The Nassau County IDA did not provide requested evidence until *after* field work was completed regarding the monitoring and compliance of PILOT employment benefits, **and** in nearly half of the sampled PILOT projects, employment goals were not met.

WHAT WE RECOMMEND

The Department of Assessment should:

- Take the necessary steps to ensure that County PILOT revenues are collected;
- Work with the three IDAs in Nassau County to establish procedures to prevent expired or early terminated PILOTS from remaining off the tax rolls, which can lead to lost revenues;
- Investigate state legislation or PILOT contract wording that would require PILOT recipients to record their deeds within 30 days of expiration of the PILOT or incur a penalty;
- Invoice and collect from the Nassau County IDA the over \$500,000 in staff salary costs owed to the County, which are greatly needed General Fund revenues;
- Not waive late fees;

The Nassau County IDA should monitor and track the number of employees retained or hired and obtain supporting documents to ensure compliance with the PILOT and lease agreements.

WHAT WAS THE RESPONSE?

- The Town of Hempstead IDA was unaware that the County did not receive \$7.6 million for 2017 and the first half of 2018 of PILOT payments, as they had disbursed the funds to the Town of Hempstead's Comptroller's Office for distribution. Recently, the Town remitted the \$7.6 million in PILOT payments due to Nassau County.
- The Department of Assessment agreed with the majority of recommendations and is undertaking corrective actions.

WHY IS THIS REPORT IMPORTANT?

- IDAs are crucial economic engines. In exchange for tax breaks and other incentives, jobs are supposed to be created, in both construction of new projects and new jobs in local businesses for residents trying to stay in Nassau County. IDAs must diligently monitor compliance and ensure that employment goals are met and if not, benefits should immediately be recaptured.
- A number of significant operational issues in the Department of Assessment were identified which result in lost taxpayer revenue. The Department needs additional resources and must work to strengthen their internal controls.

Executive Summary

Purpose:

The purpose of this review was to:

- Determine if the County’s Department of Assessment is collecting all Payment in Lieu of Taxes (PILOT) revenue for which it is entitled, including penalties and interest.
- Verify that the County portion of all PILOT revenues has been allocated correctly, and that PILOT allocations to municipalities and school districts have been made in a timely and accurate manner.
- Ascertain that controls are in place to restore parcels to the tax roll when PILOT agreements expire.
- Review the Nassau County Industrial Development Agency’s (NCIDA) administration of the PILOT agreements, which they facilitate to determine if the benefits each agreement has brought to the County (i.e., increased employment) are tracked and monitored.

Introduction:

In 1969 the General Municipal Law, Article 18-A, Section 852¹ enacted the New York State Industrial Development Act, “*to promote the economic welfare, recreation opportunities and prosperity of its inhabitants...through governmental action, for the purpose of preventing unemployment and economic deterioration by the creation of industrial development agencies...*” (“IDAs”). Within Nassau County, there are three active IDAs: the Nassau County IDA; the Town of Hempstead IDA; and the City of Glen Cove IDA.

The IDAs are independent agencies established under the 1969 law to promote and encourage economic development by providing tax exemptions to industrial or commercial parcels under contractual payment in lieu of tax (“PILOT”) agreements.

Under General Municipal Law, Article 18-A, Section 854², PILOT payments “shall mean any payment made to an agency, or affected tax jurisdiction equal to the amount, or a portion of, real property taxes, or other taxes, which would have been levied by or on behalf of an affected tax jurisdiction if the project was not tax exempt by reason of agency involvement.” Nassau County IDA PILOTs are paid to the County’s Treasurer’s Office and are allocated to each affected tax jurisdiction (school districts and municipalities) within thirty days of receipt by the County’s

¹ General Municipal Law, Article 18-A, Industrial Development Title 1, Agencies, Organization and Powers, Section 852. Policy and purposes of article.

² General Municipal Law, Article 18-A, Industrial Development Title 1, Agencies, Organization and Powers, Section 854. (17) Definitions.

Executive Summary

Department of Assessment. The Town of Hempstead Comptroller's Office and City of Glen Cove IDAs pay the PILOT payments directly to the affected jurisdictions.

Summary of Audit Findings and Recommendations		
#	Audit Finding	Audit Recommendations
1	The Department of Assessment Did Not Record nor Receive the County's Portion of PILOT Revenue of \$5.2 Million from the Town of Hempstead for 2017 and an Estimated \$2.4 Million for 2018	<p>The Department of Assessment should:</p> <ul style="list-style-type: none"> a) take the necessary steps to ensure that all County revenue is collected; specifically the \$5.2 million for 2017 that they failed to collect from the Town of Hempstead; b) develop and distribute to the staff written procedures to correctly prepare accounting entries to record PILOT revenues receivables from the three IDAs in Nassau County; and c) develop procedures for the Office of Assessment management to monitor the PILOT receivables on a quarterly basis to ensure that they are actually collected and the County receives its share.
2	The Department of Assessment Failed to Ensure that the Town of Hempstead IDA & Town of Hempstead Comptroller Continued to Bill Expired PILOTs at the Full Assessed Value Until the Parcels were Restored to the Tax Roll Resulting in a Loss of Approximately \$3.6 Million in Tax Revenue	<p>The Department of Assessment should:</p> <ul style="list-style-type: none"> a) work with the IDAs to investigate State legislation or PILOT contract wording that would require PILOT recipients to record their deeds within 30 days of the expiration of the PILOT or incur a penalty; b) meet with the IDAs to establish control procedures that require the Agencies to: <ul style="list-style-type: none"> i. notify the Exempt Division on the extension of PILOT agreements before the expiration dates; ii. obtain from the Department of Assessment the tax to be billed (based on the fully assessed value of the parcel) until the PILOT parcel is restored to the tax roll; and iii. follow-up with the PILOT owner to ensure the deed transfer was filed with the County Clerk in a timely manner. c) meet with the County Clerk's Office to establish procedures to provide the Exemption Changes (transcripts) to the Assessment Department on a monthly basis.
3	Failure to Notify the Department of Assessment of Early Termination of Two Town of Hempstead PILOTs Resulted In a Tax Loss of Over \$3.1 Million	<p>The Department of Assessment should:</p> <ul style="list-style-type: none"> a) work with the TOHIDA to require timely notification of terminated or amended PILOTs by the Agencies; and b) contact Agencies on a timely basis when PILOT agreements are nearing expiration to determine whether the projects are going to be terminated or extended.
4	The Department of Assessment did not Remit Over \$7.4 Million of PILOT Receipts to the Affected Tax Jurisdictions within 30 Days as Required by NYS Law	<ul style="list-style-type: none"> a) As the Department of Assessment needs to rely on other departments to distribute payments, they need to follow-up with the other departments to process the distribution documents promptly in order to ensure distributions on a timely basis. b) Management of the Department of Assessment needs to monitor the processes in the Department, to ensure the Department is acting in compliance with the law. This includes ensuring staff resources are adequate to satisfy statutory requirements.

Executive Summary

Summary of Audit Findings and Recommendations		
#	Audit Finding	Audit Recommendations
5	The Department of Assessment Did Not Invoice the Nassau County IDA and Obtain Reimbursement for Over \$530,000 in County Staff Salaries	<p>The Department of Assessment should:</p> <ul style="list-style-type: none"> a) invoice and collect from the Nassau County IDA the cost of County PILOT salaries of approximately \$532,224 for contracted services provided to the Nassau County IDA, (required by the License and Cooperation Agreement and allowed by New York State General Municipal Law); and b) diligently track the percentage of time County employees perform IDA services, calculate the related payroll cost and routinely bill the IDA for these costs.
6	Two Delinquent Nassau County IDA PILOT Payments Totaling \$22,193 Were Waived Although There Were No Written Policies on Waiving Delinquent PILOT Charges	<p>The Department of Assessment should:</p> <ul style="list-style-type: none"> a) not waive statutorily required late fees; and b) establish written policies on delinquent PILOT payments that includes the process for billing and collection and addresses the waiving of late charges to ensure compliance with the Law.
7	The Department of Assessment Does Not Have Written Policies and Procedures for the Billing, Recording or Monitoring of PILOTs	<p>The Department of Assessment should:</p> <ul style="list-style-type: none"> a) develop and disseminate written policies and procedures on PILOT for: <ul style="list-style-type: none"> i. billing; ii. collection; iii. allocation and distribution of revenues; and iv. delinquent PILOT payments. These should detail each process, including due dates/times of each activity and the responsibilities for each staff title involved. Sample documents and examples should be included; and b) develop a procedure for updates to policies and procedures that are documented and dated.
8	The Nassau County IDA Did Not Provide Sufficient Information for Recaptured Monies for the Period 2014 to 2017 Until After Fieldwork was Completed; Auditors Could Not Determine if the NCIDA was Properly Monitoring the PILOTs for Compliance with PILOT and Lease Agreements	<p>As the Nassau County IDA did not provide the requested list of PILOT projects that were recaptured (stating the project name, the date the project began and ended, date of recapture, amount of recapture and whether the funds collected were distributed to the affected tax jurisdictions) until after the end of fieldwork on October 20, 2017, the Auditors could not ensure that PILOT projects were properly monitored for compliance with the PILOT and Lease agreements. Therefore, this is one of the reasons this Office is currently conducting an audit of the Nassau County IDA.</p>
9	Auditors Were Not Provided With Evidence that the Nassau County IDA Monitored and Ensured Compliance with the Employment Benefits Specified in the PILOTs	<p>The Nassau County IDA should monitor and track the number of employees retained or hired and obtain the supporting documents to ensure compliance with the PILOT and Lease agreements.</p> <p>As noted in Audit Finding (8) above, this Office is currently conducting an audit of the Nassau County IDA, which will include an evaluation of its Project Monitoring and Compliance Policy.</p>

Executive Summary

The matters covered in this report have been discussed with the officials of the Department of Assessment and the Nassau County, Town of Hempstead and Glen Cove Industrial Development Agencies (IDAs). On April 3, 2018 we submitted a draft report to the parties for their review. Based on the responses from each party and an Exit Conference with the Nassau County IDA on May 9, 2018, a revised draft report was sent to parties on July 25, 2018. Each agency provided their responses on August 8, 2018. Their August 8, 2018 responses and Auditors follow up to their responses, including clarifications discussed with the Nassau County IDA on September 18, 2018 and the Department of Assessment on September 19, 2018, are included at the end of this report.

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Introduction

Background

Payments in Lieu of Taxes (“PILOTs”) are pursuant to contractual agreements with corporations, property developers, and other businesses, which are facilitated by municipalities and the Industrial Development Agencies (“IDAs”). They provide an inducement to spur economic growth through the operation of businesses, commercial real estate development and multi-family housing including senior and low-income projects in the County. The parcels of property are removed from the tax rolls, and the entities remit contractually determined PILOT payments equal to the amount of, or a portion of, the real property taxes, which would have been levied if the parcels were not tax exempt and left on the tax rolls.³

In Nassau County, there are three IDAs⁴ authorized by New York State to provide financial assistance to businesses or projects that are expected to benefit the County and its taxpayers by creating or retaining jobs, providing economic development opportunities and attracting companies.

The Department of Assessment (“Assessment”) monitors the PILOT revenues received by the County and allocates the revenues received to school districts, various municipalities, and the County’s General Fund for the Nassau County IDA (“NCIDA”). The Town of Hempstead IDA (“TOHIDA”) contracts with the Town of Hempstead Comptroller's Office for the billing, collection and distribution of PILOT revenue to the affected jurisdictions. The Glen Cove (“GCIDA”), bills, collects and disburses their PILOT payments to the various school districts and local municipalities.

Between 2013 and 2016 PILOT revenues to Nassau County increased 43.4%, primarily due to new PILOT agreements with the various IDAs within the County⁵.

The County’s Office of Management & Budget noted that there was a significant increase in projects, which started in 2014, and indicated that there is a total of 86 PILOT agreements, 40 of which are in the Town of Hempstead (“TOH”)⁶.

A PILOT agreement may cover one or more parcels of real property. Exhibit I on the next page lists the number of real property parcels with active PILOTs as of November 3, 2016, along with the name of the IDA that granted the PILOTs, the year granted and the real estate taxes associated with the parcels removed from the tax roll that year.

Exhibit I shows that the parcels granted tax exemptions increased from 23 parcels in 2004/2005 to a total of 370 parcels over the 14 year period ending in 2017/2018, with approximately

³ General Municipal Law, Article 18-A, Industrial Development Title 1, Agencies, Organization and Powers, Section 854(17). Definitions.

⁴ The three Industrial Development Agencies are: Nassau County IDA, Town of Hempstead IDA and the City of Glen Cove IDA.

⁵ Nassau County Office of Management & Budget “2018 Proposed Budget, Summary of Fiscal 2018,” Historical Trends on page 97.

⁶ Nassau County Office of Management & Budget “2015 Property Tax Freeze Credit Adopted Budget,” 2015 Budget Highlights on page 88.

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\$88,548,648 in taxes removed from the tax roll. The tax exemptions were replaced by PILOT payments equal to the original tax amount, or a portion of the original taxes.

Exhibit I

Pilot Parcels Added Per Year by IDA Agency and Year - 2004/2005 to 2017/2018 <i>As of November 3, 2016</i>								
Nassau County IDA Parcels			Town of Hempstead IDA Parcels		City of Glen Cove IDA Parcels		Total IDA Parcels	
Year	Count	Tax Amount	Count	Tax Amount	Count	Tax Amount	Count	Tax Amount
2004/2005	5	\$ 22,585	6	\$ 979	12	\$ 22,106	23	\$ 45,670
2005/2006	3	390,574	2	9,777,707	-	-	5	10,168,281
2006/2007	14	3,511,883	22	1,572,913	1	-	37	5,084,796
2007/2008	6	467,811	25	1,132,429	2	1,956	33	1,602,196
2008/2009	19	2,514,873	10	833,225	-	-	29	3,348,098
2009/2010	13	3,847,008	-	-	-	-	13	3,847,008
2010/2011	7	89,839	2	140,702	-	-	9	230,541
2011/2012	4	747,836	8	1,823,756	1	1	13	2,571,593
2012/2013	12	3,348,010	18	3,713,080	1	6,965	31	7,068,055
2013/2014	4	804,847	12	1,007,171	-	-	16	1,812,018
2014/2015	44	21,888,255	8	334,181	1	97,212	53	22,319,648
2015/2016	21	4,844,015	9	170,834	33	27,775	63	5,042,624
2016/2017	20	2,320,619	22	22,385,858	1	6,681	43	24,713,158
2017/2018 *	1	399,886	1	295,076	-	-	2	694,962
Totals	173	\$ 45,198,041	145	\$ 43,187,911	52	\$ 162,696	370	\$ 88,548,648

Source: Wholly Exempt Division ("WED") IDA Active PILOT Schedules as of 11/3/16.

Note: The PILOT schedule shows that 370 Parcels with Active PILOTS as of November 3, 2016 were removed from the tax rolls. The corresponding tax exemptions removed from the tax roll totaled at least \$88,548,648 and were replaced by PILOT payments equal to the amount of property taxes, or a portion of, which would have been levied if the parcels were not tax exempt by reason of the IDAs' involvement.

The WED did not provide a tax exemption amount for 72 of the 370 parcels listed. Of the 72, 31 were tax exempt. Not all parcels granted PILOTS were listed separately by the WED.

*Pilot granted prior to November 3, 2016.

History

The IDAs offer benefits to project owners or companies, such as real property tax, mortgage recording and state and local sales and use tax exemptions, as inducements for them to relocate to, expand in or remain in their jurisdictions. In order to be granted a tax exemption, title to, ownership of or an interest in the parcel(s) of property or equipment is transferred to the IDA through a deed, lease, bill of sale or other conveyance document to bring the property parcel under the IDA's jurisdiction or control.⁷

Prior to providing any financial assistance in excess of \$100,000 to a project, the IDAs are required to adopt a resolution describing the project and the financial assistance being contemplated by the

⁷ General Municipal Law, Article 18-A, Industrial Development Title 1, Agencies, Organization and Powers, Section 874. Tax exemptions.

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agency with respect to such project, hold a public hearing, give at least ten days of published notice prior to the hearing and provide notice to the chief executive officer of each affected tax jurisdiction regarding the hearing.⁸ With respect to a project property parcel that is primarily used in making retail sales that constitute more than one-third of the total project, the project shall not be approved unless the agency finds that undertaking the project will serve the public purpose by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state.⁹ Payments in lieu of taxes received by the agency shall be remitted to each affected tax jurisdiction within thirty days of receipt.

The IDAs must establish a uniform tax exemption policy with input from affected taxing jurisdictions that provides guidelines for the claiming of real property, mortgage recording and sales tax exemptions. The guidelines must include the period of exemptions, percentage of exemptions, types of projects for which exemptions can be claimed; procedures for payments-in-lieu-of-taxes and circumstances under which real property appraisals are required¹⁰.

Operations

In order for a parcel of property to qualify for a real property tax exemption, the IDAs are required to file an “Application for Real Property Tax Exemption” with the Nassau County Board of Assessors and provide copies of the application to the chief elected official of each school district, city, county, town and village where the project is located¹¹. Such application shall include a copy of any agreement relating to the project or an extract of the terms related to payments to be made to the municipalities and termination of the agreement.

For the purposes of billing and collecting PILOT payments for the Nassau County IDA, a copy of the PILOT agreement is provided to the Department of Assessment’s Accounting Division, which electronically scans and saves the agreement. As noted above, the other two IDAs¹² bill, collect and distribute the PILOT payments for the agreements that are issued by each Agency.

Procedure for Removal of Property Parcels from Tax Roll

When the Application for Real Property Tax Exemption and the PILOT agreements are received from the IDAs, the Department of Assessment’s Wholly Exempt Division (“Division”) takes the following steps:

- Date stamps the documents;
- Reviews the documents and removes the parcel of property from the tax roll “*Adapt*” system¹³; and

⁸ Ibid. Section 859-a. Additional prerequisites to the provisions of financial assistance.

⁹ Ibid. Section 862. (2) (c), Restrictions on funds of the agency.

¹⁰ Ibid. Section 874 (3), (4) (a), Tax exemptions.

¹¹ Real Property Tax Law, Section 412-a, Application for property tax exemption.

¹² The Town of Hempstead IDA contracts with the Town of Hempstead Comptroller's Office for the billing, collection and distribution of PILOT revenue to the affected jurisdictions.

¹³ The Nassau County electronic tax roll system.

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- The removed parcels are added to excel worksheets that are used by the Division to monitor when parcels are added and removed from the tax roll¹⁴. The excel worksheets shows the section, block, lot, project name, address, begin, end and amended dates and description of the parcel of property.
 - One worksheet is for Active (Off Roll) PILOTs that are reviewed by the Division to determine if the PILOTs are due to expire. E-mails are sent to the IDAs asking the Agencies to confirm the expiration or termination of the PILOT agreements.
 - Another worksheet is for Inactive PILOTs (On Roll) that are terminated or expired and the parcels have been placed back on the tax roll.

Process of Restoring Property Parcels to the Tax Roll.

When the PILOT agreements expire or are terminated, the property parcels are placed back on the tax rolls by the Division as follows:

- If an IDA owns a parcel of property through a deed, the ownership of the parcel is transferred back to the owner and recorded. The owner is responsible to record the deed and pay the recording fees to the Nassau County Clerk's Office. The Records Department of the Nassau County Clerk's Office notifies the Division, which will restore the parcel to the tax roll on the date of the deed or to a specified date.
- If an IDA has control of the parcel of property via a lease agreement, the Division will remove the exemption related to the PILOT on the projected expiration date stated on the application, unless they are notified that the parcel was transferred back to the owner.

Restored Tax Petition Process

When a tax exempt parcel of property of an IDA is transferred back to a taxable entity, the parcel is subject to pro-rata taxation and a "petition" must be prepared as required by the New York State Real Property Tax Law Section 520¹⁵. The petition is a formal notice which is completed by the Department of Assessment and is sent to the Nassau County Assessment Review Commission for their approval. The Department can only restore taxes on a parcel for the current year and the immediately preceding tax year, in accordance with the settlement of the 2009 case between Broadval, L.L.C. vs. County of Nassau.¹⁶ The process of restoring the parcel to the tax roll is as follows:

- An e-mail is sent by the Department of Assessment (Wholly Exempt Division) to the Department of Assessment (Accounting Division) for NCIDA and to the other IDAs to

¹⁴ The excel worksheet was created in December 2015 during the year the Director of the Wholly Exempt Division was hired. Prior to this time, the Division was not aware of the type of records that were used to monitor the PILOT agreements.

¹⁵ New York State Real Property Tax Law, Section 520. Assessment and taxation of exempt property upon transfer of title.

¹⁶ Broadval L.L.C. v County of Nassau, 2009.

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obtain the last PILOT payment made in order to capture the time period for which taxes should be paid.

- The parcel is assessed by the Field Division as of the date of the termination and/or transfer of ownership, as required by the Real Property Tax Law, Section 520(2).
- Once the parcel is assessed, the Division will remove the exemption in the next applicable tax year and restore the taxes.
- The Division prepares the petition based on the information above, then it is signed by the Department of Assessment's Accounting Division and submitted to the Nassau County Assessment Review Commission for their approval. Once the Assessment Review Commission approves the petition, the taxes on the parcel are officially restored.
- A letter is sent to the owner of the parcel of property notifying them that the parcel is going back on the tax roll and that the assessed value is being used. The letter also advises them of their right to challenge the value with the Assessment Review Commission.

Billing of PILOT Agreements and Collection of PILOT Payments

The billing and collection of PILOT payments for the NCIDA is performed by the County's Department of Assessment's Accounting Division. The Glen Cove IDA processes their own billing and the Town of Hempstead IDA has the Town Comptroller's Office bill, collect and distribute their PILOT payments.

When a new NCIDA PILOT agreement is received from the Exempt Division, the Accounting Division adds the PILOT project to an excel worksheet. This worksheet serves as the internal data reference for monitoring the billing and collection of PILOT payments, and disbursement of monies collected to the affected municipalities. The excel spreadsheet shows the PILOT project name, parcel ID, date and amount due, date and amount paid, receipt number, disbursement amount and entity and disbursement voucher number.

Allocation of PILOT Revenue for the NCIDA Only

PILOT revenues for the NCIDA are received by the Nassau County Treasurer's Office and deposited into the County's Agency & Trust Fund. The account is reviewed monthly by the Department of Assessment's Accounting Division, which then allocates the PILOT revenues to the affected jurisdictions (school districts, towns, cities and villages, and the County's General Fund) based on calculating the taxable assessed value divided by 100 times the tax rate of the taxing jurisdiction from the prior year. A payment voucher (VBAS voucher¹⁷) is prepared by the Assessment's Accounting Division, which is then sent to the Office of the Nassau County Comptroller, Claims Division, for approval. Once approved, a check is processed by the Treasurer's Office and sent to the affected jurisdictions.

¹⁷ VBAS is a claim voucher prepared by the Department of Assessment.

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Delinquent PILOT Payments

Payments in lieu of taxes that are delinquent under the PILOT agreement are subject to a late payment penalty of 5% of the amount due and 1% interest per month on the total amount, including penalty for non-payment beyond the first month, in accordance with the New York State General Municipal Law¹⁸.

Budgeted and Actual PILOT Revenues

As of October 3, 2017, the PILOT balance in the Agency & Trust Fund awaiting allocation was \$27.8 million. Exhibit II shows all Nassau County's budgeted and actual PILOT revenues for the period January 1, 2010 to October 3, 2017.

Exhibit II

PILOT Revenues to Nassau County 01/01/10 - 10/03/17			
Year	Budgeted	Actual	Variance
2010	\$ 6,500,725	\$ 6,880,970	\$ 380,245
2011	6,805,057	7,368,866	563,809
2012	8,661,865	8,583,256	(78,609)
2013	9,646,819	10,791,179	1,144,360
2014	9,424,089	10,006,152	582,063
2015	11,663,465	12,305,280	641,815
2016 ⁽¹⁾	50,777,307	12,851,706	(37,925,601)
2017 ⁽²⁾	42,346,721	8,934,497	(33,412,224)
Total	<u>\$ 145,826,048</u>	<u>\$ 77,721,906</u>	<u>\$ (68,104,142)</u>

Source: NIFS - Actual amounts are from Index Code BUGEN1700, Sub-Object R1301. Budget amounts are from the Office of Management and Budget's Budget Reports.

⁽¹⁾ The budget amount shown for 2016 is higher than 2015 because it includes \$37.8 million in LIPA PILOTS transferred from property tax to adhere to a state statute to cap these parcels at 2% for levy purposes. The remainder, \$13 million, is IDA PILOT revenue.

⁽²⁾ The budgeted amount shown for 2017 includes \$27.7 million in LIPA PILOTS transferred from property tax to adhere to a state statute to cap these parcels at 2% for levy purposes. The remainder of \$14.6 million is IDA PILOT revenue. The actual revenue amount shown for 2017 is as of 10/3/17.

¹⁸ New York State General Municipal Law, Article 18-A, Industrial Development Title 1, Agencies, Organization and Powers, Section 874 (5), Tax Exemptions.

Introduction

Audit Scope, Objectives and Methodology

The audit period was from January 1, 2014 to December 31, 2017.

The objective of the PILOT revenue review was to determine: whether all revenues (including penalties and interest) were collected; the County's share ratio of revenue was correctly calculated; and allocations to municipalities and school districts were accurate and performed in a timely manner. The restoration of parcels to the tax roll when PILOT agreements expire and the NCIDA's administration of PILOT agreements was also reviewed. In addition, we reviewed laws, policies and procedures and interviewed employees to determine responsibilities, duties and work procedures.

Specifically, we:

- Reviewed current State and County laws and regulations covering PILOTs.
- Identified PILOT revenues received by the County during the audit period by entity, amount and period covered.
- Reviewed the County's PILOT Agency & Trust Account (Balance Sheet Account 69L) to determine if allocations to the school districts, towns, cities and villages were made in a timely manner.
- Tested PILOT allocations prepared by the Department of Assessment for accuracy and timeliness.
- Determined if all active Nassau County IDAs (Nassau County IDA, Town of Hempstead IDA, Glen Cove IDA) PILOTs have been identified and are being tracked by the Department of Assessment.
- Reviewed delinquent PILOT payments, verifying if follow-ups were performed and if appropriate, penalties and interest were being charged.
- Reviewed the Department of Assessment's process for returning parcels to the tax roll once PILOT agreements expire or are terminated and to ensure that this was being done correctly and on a timely basis.
- Communicated with Nassau County IDA officials regarding the monitoring process for the PILOT agreements they oversee and to determine if PILOT projects are being monitored for compliance with the terms of the agreements and whether the benefits each PILOT brings to the County (i.e., senior citizen housing, employment opportunities) are identified and tracked.
- Determined if non-performing Nassau County IDA projects are subject to penalties and/or the termination of the PILOT agreement and whether "recaptured" PILOT amounts for unsuccessful projects were remitted to the County, municipalities and school districts.

We believe our review provides a reasonable basis for the findings and recommendations contained herein.

Finding and Recommendations

AUDIT FINDING (1)

(1) The Department of Assessment Did Not Record nor Receive the County's Portion of PILOT Revenue of \$5.2 Million from the Town of Hempstead for 2017 and an Estimated \$2.4 Million for 2018

The Office of Assessment's Accountant who was responsible for monitoring and recording the PILOT payments for the NCIDA retired from the County in September 2017. Remaining Assessment staff had difficulty performing these accounting functions, one, because written procedures did not exist and two, per Assessment staff, the Department was understaffed.

As a result, Assessment did not monitor the County's portion of the TOH PILOT payments due from the Town of Hempstead Comptroller's Office to ensure timely collection. This led to Assessment not being aware that the Town of Hempstead did not remit to the County the PILOT payments due for 2017 totaling \$5.2 million. This amount has been confirmed by the Town of Hempstead Comptrollers' Office.

Additionally, Auditors note that as of mid-July 2018, **no PILOT payments have been received from the Town of Hempstead for 2018. Based on the 2017 amount due of \$5.2 million, Auditors estimate that the 2018 amount due as of mid-July 2018 would be \$2.4 million.**

Audit Recommendations:

We recommend that the Department of Assessment:

- a) take the necessary steps to **ensure that all County revenue is collected**; specifically, the \$5.2 million for 2017 that they failed to collect from the Town of Hempstead;
- b) develop and distribute to the staff written procedures to correctly prepare accounting entries to **record PILOT revenues receivables from the three IDAs in Nassau County**; and
- c) develop procedures for the Office of Assessment **management to monitor the PILOT receivables on a quarterly basis to ensure that they are actually collected**, and the County receives its share.

AUDIT FINDING (2)

(2) The Department of Assessment Failed to Ensure that the Town of Hempstead IDA & Town of Hempstead Comptroller Continued to Bill Expired PILOTs at the Full Assessed Value Until the Parcels were Restored to the Tax Roll Resulting in a Loss of Approximately \$3.6 Million in Tax Revenue

When PILOT agreements expire, the parcels should no longer be receiving a tax incentive and should be placed back on the tax roll and taxed at its full assessed value by the Department of Assessment. **The County can only collect taxes back one year from the current tax year date**

Finding and Recommendations

the parcel is assessed on the tax roll.¹⁹ It is therefore essential that PILOT transactions are recorded promptly, to ensure County revenues are not lost.

Section 858(15) of the New York General Municipal Law and Section 412-a of the New York Real Property Tax Law requires the Industrial Development Agencies (“IDAs” or “Agencies”) to send copies of the PILOT agreements to all taxing jurisdictions and the Department of Assessment’s Wholly Exempt Division (“Exempt Division”) at the time PILOTS are granted. The PILOT agreements include the termination dates.

Auditors were advised that the Department of Assessment sends emails to each respective IDA to inquire about expiring, terminated, or amended PILOTS in order to begin the tax restoration process. However, the Department of Assessment has not developed adequate internal control procedures to track IDAs’ responses and ensure that the IDAs continue to bill terminated PILOTS at the full assessed value until the parcels are restored to the tax roll.

Auditors also noted that a formal process does not exist to ensure that the PILOT owners file the termination paperwork (the deed transfer) with the County Clerk as per the IDA’s instructions and pay the recording fees. This filing is important because the County Clerk periodically sends Exemption Change transcripts of recorded deeds to the Department of Assessment which are then used to restore the parcel to the tax roll. The Department of Assessment’s (Wholly Exempt Division) Director stated the transcripts from the County Clerk are not generated monthly and it is up to the County Clerk when these reports are generated. The establishment of a monthly process would reduce the length of time to restore parcels back to the tax roll.

The IDAs are not legally required to notify the Department of Assessment when PILOTS have expired or terminated. However, if the project owner does not record the deed with the County Clerk in a timely manner, or not at all, the parcel does not go back on the tax roll.

The Auditors noted the Department of Assessment’s Accounting Division will continue to bill the terminated or expired Nassau County IDA PILOTS at full assessed value until the parcels are placed back on the roll.

The Town of Hempstead IDA advised the Auditors that “they do not invoice after termination” and that Town of Hempstead IDA invoicing was performed by the Town of Hempstead Comptroller’s Office.²⁰

We reviewed the Inactive and Active PILOT schedules as of November 3, 2016 used by the Exempt Division to monitor when PILOT agreements end. Our findings for the Inactive schedule are shown below and for the Active schedule are shown in Finding (3).

¹⁹ Real Property Tax Law, Section 520,553, permits the Assessor to restore only those assessments which have been omitted from (1) the current tax year, and/or (2) the immediately preceding tax year and then only if restorations have been properly authorized in accord with specifically applicable procedures and statutory notice requirements. (As cited in Broadval L.L.C. v County of Nassau.)

²⁰ The Town of Hempstead provided no evidence that entities were required to pay PILOTS at 100% of property taxes after PILOTS expired or PILOT agreements were terminated.

Finding and Recommendations

Review of Inactive PILOTs Returned to the Tax Roll for Timeliness

Exhibit III shows the time it took for the parcels related to expired PILOTs to be placed back on the tax roll for 118 PILOT parcels totaling \$20,799,347 in property taxes from 2003 to 2016²¹ for the NCIDA and the TOHIDA. The TOHIDA tax amounts highlighted in yellow represent the \$3.6 million lost from 2003 to 2016 as a result of 15 terminated TOHIDA PILOT parcels that took from three months to almost two years for the related parcels to be placed back on the tax roll. See Appendix A for more detail by parcel and the reasons for the delays, when known.

Exhibit III

IDA Inactive PILOT Parcels On Tax Roll Time Span from the Date PILOT Expired/Terminated to the Date Exemption Was Removed (Restored to Tax Roll) as of November 3, 2016							
Time Span (in months, days) from Expired to Date Exemption Removed (Restored to Tax Roll)		Nassau County IDA Parcels ⁽¹⁾		Town of Hempstead IDA Parcels ⁽²⁾		Total IDA Parcels	
From	To	Count	Tax Amounts	Count	Tax Amounts	Count	Tax Amounts
<i>Prior to Expiration</i>		64	\$ 2,321,991	3	2,088,321	67	\$ 4,410,312
0.0	0.0	3	605,221	2	535,211	5	1,140,432
0.1	12.0	7	1,792,075	7	2,710,702	14	4,502,777
12.1	24.0	1	183,937	8	894,671	9	1,078,608
24.1	36.0	4	773,020			4	773,020
<i>Date Expired or Restored Unknown</i>		11	2,535,582	8	6,358,616	19	8,894,198
Total		90	\$8,211,826	28	\$ 12,587,521	118	\$20,799,347

Source: Wholly Exempt Division ("WED") Inactive PILOT Schedule as of 11/3/16.

⁽¹⁾ NCIDA tax amounts were replaced by PILOT payments equal to the amount of property taxes, or a portion of, which would have been levied if the parcels were not tax exempt by reason of the NCIDA's involvement. Once the PILOT terminated, the PILOT was billed at 100% of assessed value until the parcel was restored to the tax roll and the normal Department of Assessment billing process resumed. General Municipal Law, Article 18-A, Industrial Development Title 1, Agencies, Organization and Powers, Section 854. (17) Definitions.

⁽²⁾ TOHIDA tax amounts were replaced by PILOT payments equal to the amount of property taxes, or a portion of, which would have been levied if the parcels were not tax exempt by reason of the TOHIDA's involvement. Once the PILOT terminated, billing ceased until the parcel was restored to the tax roll and the normal Department of Assessment billing process resumed. As a result, **the TOHIDA tax amounts highlighted in yellow represent \$3,605,373 in Lost Revenue.**

²¹ Date Exemption Removed on Wholly Exempt Inactive PILOT Schedule as of November 3, 2016.

Finding and Recommendations

Audit Recommendations:

We recommend that:

- a) the Department of Assessment and the IDAs investigate State legislation or PILOT contract wording that would require PILOT recipients to record their deeds within 30 days of the expiration of the PILOT or incur a penalty;
- b) the Department of Assessment meet with the IDAs to establish control procedures that require the Agencies to:
 - i. notify the Exempt Division on the extension of PILOT agreements before the expiration dates;
 - ii. obtain from the Department of Assessment the tax to be billed (based on the fully assessed value of the parcel) until the PILOT parcel is restored to the tax roll; and
 - iii. follow-up with the PILOT owner to ensure the deed transfer was filed with the County Clerk in a timely manner.
- c) the Department of Assessment meet with the County Clerk's Office to establish procedures to provide the Exemption Changes (transcripts) to the Assessment Department on a monthly basis.

AUDIT FINDING (3)

(3) Failure to Notify the Department of Assessment of Early Termination of Two Town of Hempstead PILOTs Resulted In a Tax Loss of Over \$3.1 Million

Active PILOT Review

We reviewed the Active PILOT schedule and found that the Department of Assessment was not notified of two early TOHIDA PILOT terminations that resulted in a loss of approximately \$3.1 million.

As shown in Exhibit I, the active PILOT schedules as of November 3, 2016, indicated there were 370 PILOT parcels with total property taxes of \$88.5 million from the period 2004/2005 to 2017/2018²² that were granted tax exemptions from the three IDAs²³ in Nassau County. We examined the PILOT expiration dates and support for those projects nearing expiration to determine whether the Department of Assessment contacted the TOHIDA before the PILOT agreements were terminated or expired and/or whether the TOHIDA had communicated with the Department of Assessment.

Our review noted early termination problems with the following two TOHIDA PILOT agreements:

²² Beginning Date of PILOT property on the Wholly Exempt IDA Active Pilot Schedule as of November 3, 2016.

²³ The Nassau County IDA had 173 parcels, the Town of Hempstead IDA had 145 parcels, and the Glen Cove IDA had 52 parcels.

Finding and Recommendations

- East Meadow A.L LLC c/o Sunrise Assisted Living Investment Inc. (“Sunrise Assisted Living”); and
- Janice Mary Associates Ltd, Rose Fence Inc. (“Rose Fence”).

Auditors were informed that the TOHIDA did not notify the Exempt Division of the two early terminated projects. However, for the Sunrise Assisted Living PILOT, the TOHIDA provided evidence that the County of Nassau was a party to the early termination agreement dated October 1, 2013. These documents show that the Nassau County Attorney signed the early termination agreement, but we have no way of knowing if the Exempt Division received copies of the documentation. **As a result, tax revenues for three years or more were lost on the 1st and 2nd TOH PILOT projects.**

The details of the two TOH PILOT projects are discussed below.

Sunrise Assisted Living:

- The TOHIDA did not inform Assessment of the Sunrise Assisted Living PILOT, which was due to expire on December 31, 2014, that the agreement was terminated on October 1, **2013**. Documents provided by the TOHIDA revealed that the County of Nassau was a party to the early termination agreement, which was signed by the County Attorney.
- The Assessment Exempt Division contacted the TOHIDA regarding the status of the Sunrise Assisted Living PILOT on April 1, 2016 and responded to by the TOHIDA on April 4, 2016.
- On November 9, 2016, the Sunrise Assisted Living PILOT was restored to the tax roll for the **2018 tax year**.
- Due to the lack of communication and monitoring between the TOHIDA and the Exempt Division, **taxes were lost on the Sunrise Assisted Living parcel for 4 years from 2014 to 2017 totaling approximately \$2,755,136.**

Rose Fence

- The TOHIDA did not inform Assessment that the Rose Fence PILOT, that was due to expire on December 31, 2016, was terminated on April 1, 2015 for non-compliance.
- The TOHIDA advised the Auditors that they were not aware that the parcel owner’s counsel had not recorded the deed until the Assessment Exempt Division contacted the TOHIDA for the status of the Rose Fence PILOT on January 19, 2017.
- Documents provided by the TOHIDA revealed that a letter was sent to the parcel owner’s counsel on June 12, 2015 requesting that the deed and recording forms be filed with the Nassau County Clerk no later than June 30, 2015. Auditors noted that there is no follow-up process in place to ensure the parcel owner completes the recording process.
- Follow-up by the TOHIDA in 2017 revealed that the principal of the parcel of property had died and the estate took time to be settled.

Finding and Recommendations

- Assessment was finally provided with the recorded deed on August 10, 2017 and the Rose Fence PILOT was restored to the tax roll for the **2018** tax year.
- Due to the lack of communication and monitoring, taxes were lost for the Rose Fence parcel for **three years from 2015 to 2017 totaling approximately \$354,155.**

Our review also found that the lack of communication between the TOHIDA and the Department of Assessment led to the premature removal of the exemption on a PILOT project lease (Richner Communications) on its expiration date (December 31, 2015), adding Richner Communications back on the tax roll. According to the Department of Assessment, they were not aware the TOHIDA had amended the PILOT agreement. The miscommunication was discovered when the TOHIDA received the June 7, 2016 notification letter from the Assessment Review Commission that the parcel's tax status was changed to taxable. The TOHIDA sent the amended and restated PILOT and Lease Agreement to the Department of Assessment on August 31, 2016,

Audit Recommendations:

We recommend that the Department of Assessment:

- a) work with the TOHIDA to require timely notification of terminated or amended PILOTs by the Agencies; and
- b) contact Agencies on a timely basis when PILOT agreements are nearing expiration to determine whether the projects are going to be terminated or extended.

AUDIT FINDING (4)

(4) The Department of Assessment did not Remit Over \$7.4 Million of PILOT Receipts to the Affected Tax Jurisdictions within 30 Days as Required by NYS Law

NYS General Municipal Law Section 874(3) and 858(15) requires PILOT receipts be remitted to the affected tax jurisdictions within 30 days of receipt. Auditors found **76 out of 133²⁴, or 57% of PILOT receipts** totaling \$7,401,558 of the \$13,319,356 for 2016 were not remitted to affected tax jurisdictions within the 30 days of receipt for 22 NCIDA PILOT agreements tested in 2016.

The Auditors:

- examined the allocated amounts paid to affected jurisdictions for 22 PILOT projects to determine compliance with the Law, which states the “payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction...” The dates of payment to the jurisdictions were also examined for compliance to Section 874 (3) of the Law, which states “Payments in lieu of taxes received by the agency shall be remitted to each affected tax jurisdiction within thirty days of receipt.”

²⁴ The total of 133 remittances do not include the County's portion of the PILOT receipts of 61 remittances totaling \$2,514,576, since receipts are collected by the County.

Finding and Recommendations

- verified the dates and amounts of the remitted receipts to the affected jurisdictions listed on the Assessment's Accounting Division's billing schedule²⁵ and data pod²⁶ excel schedules to the general ledger for the periods of 2013/2014, 2014/2015, 2015/2016 and 2016/2017.
- calculated the allocation of distributed PILOT receipts to schools, local municipalities, and the County using the respective jurisdiction's tax rates. The one exception found was a PILOT receipt totaling \$7,227, which was received on August 8, 2014. The allocated portion amounting to \$1,710 was not distributed by the Department of Assessment to the affected municipality.

Our review of 133 remitted PILOT receipts totaling \$13,319,356 for 22 PILOT projects tested in 2016 are shown below:

- 57 remittances totaling \$5,917,798, or 43%, were paid within 30 days;
- 26 remittances totaling \$2,133,723, or 19%, were paid in 31 to 40 days; and
- 50 remittances totaling \$5,267,835, or 38%, were paid 41 days or more past the 30 day receipt limit.

As a result, Assessment did not comply with Section 874(3) of the Law due to the length of time it takes to process the remitted receipt payments and the untimely monitoring of when receipts are remitted. When PILOT payments are received, the Assessor's Accounting Division prepares payment vouchers that need to be approved by the Acting County Assessor and by the Comptroller's Vendor Claims Division before checks are generated by the Treasurer's Office to pay the affected jurisdictions.

We reviewed 22 NCIDA PILOT projects to **determine whether the PILOT billing and collection amounts were accurate** and performed on a timely basis for each of the stated periods below:

- Auditor's test samples totaled \$10,771,435, or 32.9% of the total PILOT payments for 2013/2014;
- Auditor's test samples totaled \$14,958,870, or 32.2% of the total PILOT payments for 2014/2015;
- Auditor's test samples totaled \$15,833,932, or 7.6% of the total PILOT payments for 2015/2016; and,

²⁵ The Assessment's Accounting Division maintains a billing schedule to monitor PILOT payments that shows the date and amount billed, collected, and distributed to the affected tax jurisdictions.

²⁶ The Assessment's Accounting Division maintains excel schedules ("data pods") of NCIDA PILOT agreements to allocate the PILOTS to the affected tax jurisdictions. The excel schedules show the school, general tax rates, and PILOT payments and also calculates the allocation of payments to the affected jurisdictions by year.

Finding and Recommendations

- Auditor's test samples totaled \$16,551,300, or 9.2% of the total PILOT payments for 2016/2017,

We verified the PILOT billing amounts and dates on the Assessment's Accounting Division billing schedules to the PILOT agreement payment schedules²⁷, verified the collected payments and dates on the billing schedule to the general ledger **and found no exceptions.**

Audit Recommendations:

We recommend the following:

- a) As the Department of Assessment needs to rely on other departments to distribute payments, they need to follow-up with the other departments to process the distribution documents promptly in order to ensure distributions on a timely basis.
- b) Management of the Department of Assessment needs to monitor the processes in the Department, to ensure the Department is acting in compliance with the law. This includes ensuring staff resources are adequate to satisfy statutory requirements.

AUDIT FINDING (5)

(5) The Department of Assessment Did Not Invoice the Nassau County IDA and Obtain Reimbursement for Over \$530,000 in County Staff Salaries

The Nassau County Department of Assessment did not invoice the Nassau County IDA for the cost of salaries totaling approximately \$532,224²⁸ for the contracted services performed by County employees on behalf of the NCIDA from 2014 to September 30, 2017, as required by the License and Cooperation Agreement²⁹ between Nassau County and the NCIDA that was created as permitted by Section 858. (6)³⁰ of the New York State General Municipal Law.

New York State General Municipal Law, Section 858.(6) states that Industrial Development Agencies ("IDAs") are independent agencies of the State of New York and with the consent of the municipality may use County agents, employees and facilities so long as it pays the County an agreed upon portion of the compensation or cost incurred by the County.

²⁷ PILOT agreements include a PILOT schedule that shows the years and amounts that are to be paid by the project owners.

²⁸ The \$532,224 is an estimate that was calculated by the Auditors for NCIDA PILOT contracted services performed by three County employees between 1/1/14 and 9/30/17. The amount was calculated by multiplying each employee's base rate of pay by the percentage of time the employee estimated was spent on NCIDA activities during this period.

²⁹ The License and Cooperation Agreement between the County and the NCIDA dated January 1, 2011, was for the rental of office space at 1550 Franklin Avenue, Mineola, N.Y. and for the costs of employees that work on behalf of the NCIDA.

³⁰ New York State General Municipal Law, Article 18-A, Industrial Development Title 1, Agencies, Organization and Powers, Section 858. (6), Purposes and powers of the agency.

Finding and Recommendations

The License and Cooperation Agreement between Nassau and the NCIDA states “each party agrees to be responsible for the appropriate portion of the other Party’s cost for such employees, agents and consultants.”

The work referred to in the License and Cooperation Agreement is done by the Accounting Division of Nassau County’s Department of Assessment and the Treasurers’ Office. The Accounting Division bills and monitors the collection of the Nassau County IDA PILOT payments and processes the disbursement of the collected monies to affected jurisdictions and the Treasurers’ Office records the receipt and disbursement of the PILOT payments in separate accounts in its accounting system.³¹

The Auditors made inquiries to both Assessment and the Nassau County IDA:

- Three emails that were sent to the then Acting County Assessor and the Deputy Assessor regarding the lack of reimbursement to the County for services performed by three Assessment employees went unanswered.
- The NCIDA replied to the same question, stating “the IDA can only pay for services based on appropriate invoices for services rendered. At this point in time **we have not received any invoices from the County for such services....**”

As a result, the County provided services to the NCIDA and did not bill or receive reimbursement for the employee cost of approximately \$532,224.

In addition, **Assessment laid off one of the three fully reimbursable (billable to the Nassau County IDA) PILOT revenue employees working on collections and disbursements, and another unit Accountant left the County in 2017. This further diminished staff to perform revenue collection functions.**

Audit Recommendations:

We recommend that the Department of Assessment:

- a) **invoice and collect from the Nassau County IDA the cost of County PILOT salaries of approximately \$532,224 for contracted services provided to the Nassau County IDA**, (required by the License and Cooperation Agreement and allowed by New York State General Municipal Law); and
- b) diligently track the percentage of time County employees perform IDA services, calculate the related payroll cost and routinely bill the IDA for these costs.

³¹ The Town of Hempstead IDA contracts with the Town of Hempstead Comptroller to perform its PILOT billings and distribution of revenues to the affected municipalities. The Glen Cove IDA handles their own PILOT billings and distribution of revenues to the affected municipalities.

Finding and Recommendations

AUDIT FINDING (6)

(6) Two Delinquent Nassau County IDA PILOT Payments Totaling \$22,193 Were Waived Although There Were No Written Policies on Waiving Delinquent PILOT Charges

During our sample review of delinquent PILOT payments, we noted:

- One late charge due on February 10, 2014 of \$1,741 that was nine days late for the 75 Commercial Realty LLC project was waived by Assessment's Accounting Division; and
- A late charge due December 24, 2015 of **\$20,452** for the 101 Uniondale LP project was 12 days late and was **waived by the NCIDA**.
- We also found no provision allowing late fees to be waived during the processing of delinquent PILOT payments in the written policies.

The NYS General Municipal Law, Article 18-A, Section 874(5)³² states that **delinquent PILOT payments to the IDA are subject to a penalty of 5% on the amount due and 1% interest on the total for non-payment after the first month.**

We tested ten delinquent charges totaling \$73,574 in 2016/2017, 12 delinquent charges totaling \$100,670 in 2015/2016, 12 delinquent charges totaling \$48,544 in 2014/2015 and 14 delinquent charges of \$64,170 for 2013/2014. **There were no exceptions in the calculations of penalty and interest except for the two waived late fees** that are discussed above.

Audit Recommendations:

We recommend that the Department of Assessment:

- a) not waive statutorily required late fees; and
- b) establish written policies on delinquent PILOT payments that includes the process for billing and collection and addresses the waiving of late charges to ensure compliance with the Law.

AUDIT FINDING (7)

(7) The Department of Assessment Does Not Have Written Policies and Procedures for the Billing, Recording or Monitoring of PILOTs

The Department of Assessment does not have written policies and procedures regarding the processes of:

- PILOT billing;
- PILOT cash receipts;

³² General Municipal Law, Article 18-A, Industrial Development Title 1, Agencies, Organization and Powers, Section 874 (5), Tax exemptions.

Finding and Recommendations

- the distribution of revenues to the affected tax jurisdictions within 30 days of receipt as required by the New York State General Municipal Law Article 18-A, Section 874, (3),
- delinquent PILOT payments;
- recording transactions into the Nassau Integrated Financial System (“NIFS”); and
- monitoring the expiration and termination of PILOT agreements.

This is concerning as the Department of Assessment recently lost a long-term staff Accountant who oversaw the billing and allocation and the distribution of the PILOT revenue.

Written policies and procedures are an effective internal control to provide guidance, accountability and reliability of financial reporting. Policies and procedures are an effective tool to ensure continuity of a business process when a key employee is absent for a length of time.

At our entrance conference in October 2016, we asked for copies of written policies and procedures for the PILOT process and were told by the Department of Assessment’s Accounting Division they did not have these documents. Subsequently, when we met with the Department of Assessment’s Exempt Division³³, the Auditors were provided with a written PILOT process to make parcels tax exempt and to restore the parcels back on the tax roll when the PILOTs expire or are terminated.

These procedures were written by the Head of the Division and were not disseminated to employees. The policies were written in a generalized format and did not address the employees’ responsibilities, authorization levels, controls and supervisory oversight functions or reporting responsibilities.

Audit Recommendations:

Management of the Department of Assessment needs to establish proper internal control by developing written procedures for PILOTs.

We recommend that the Department of Assessment:

- a) develop and disseminate written policies and procedures on PILOT for:
 - i. billing;
 - ii. collection;
 - iii. allocation, and distribution of revenues; and
 - iv. delinquent PILOT payments.

These should detail each process, including due dates/times of each activity and the responsibilities for each staff title involved. Sample documents and examples should be included; and

- b) develop a procedure for updates to policies and procedures that are documented and dated.

³³ The Wholly Exempt Division is responsible for removing and restoring property on the tax roll for Pilot agreements.

Finding and Recommendations

AUDIT FINDING (8)

(8) The Nassau County IDA Did Not Provide Sufficient Information for Recaptured Monies for the Period 2014 to 2017 Until After Fieldwork was Completed; Auditors Could Not Determine if the NCIDA was Properly Monitoring the PILOTs for Compliance with PILOT and Lease Agreements

The NCIDA did not provide a list of all recaptured funds for the period 2013/2014 to 2016/2017 prior to October 20, 2017, the end of the fieldwork, despite repeated requests made by the Audit staff. As a result, we were unable to determine whether the NCIDA adequately monitored and remitted monies to the County and other municipalities on non-performing PILOT parcels³⁴.

The review of recaptured funds is essential to ensure that there is accountability and transparency for the benefits offered by the PILOT projects.

The NCIDA agreement includes a recapture clause that requires the NCIDA to recoup the benefits provided to the project if the project does not meet its intended goals or is terminated. The recapture clause is used when a project fails to perform or fulfill its obligations³⁵ according to the agreement. The monies recaptured are from the sale and mortgage tax exemptions, real estate property benefits and other financial assistance granted to the project.

The NCIDA has a Uniform Tax Exemption Policy (“UTEP”) on **Recapture Events that states it may require the project to remit to the Agency a return of benefits conferred by the Agency** in accordance with the Recapture Schedule³⁶. Also, the UTEP states “unless otherwise provided for by the applicable law, **upon the collection of a recapture of benefits from an applicant, the Agency shall redistribute or cause to be redistributed such recaptured benefits to the appropriate affected tax jurisdictions(s)...**”

New York State General Municipal Law, Section 874 (11) requires the NCIDA to distribute funds collected from a recapture to the County or other municipalities. The law states “Each agency shall develop policies for the return of all or a part of the financial assistance provided for the project, including all or part of the amount of any tax exemptions, as specified in the policy, which may include but shall not be limited to material shortfalls in job creation and retention projections or material violations of the terms and conditions of project agreements. All such returned amounts of tax exemptions shall be redistributed to the appropriate affected tax jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.”³⁷

³⁴ The list of all recaptured funds for the period 2013/2014 to 2016/2017 was provided by the NCIDA to the Auditors in March 2018 in connection with a separate audit of the NCIDA which commenced in February 2018.

³⁵ NCIDA leases include a clause to recapture the financial assistance granted to projects that do not obtain its expected goals, or if the lessee or sub-lessee of the project opts to terminate the project, vacate the premises or end its participation in the financial assistance program offered by the NCIDA.

³⁶ The Recapture Schedule is based on a percentage of the benefits and the year of occurrence.

³⁷ General Municipal Law, Article 18-A, Industrial Development Title 1, Agencies, Organization and Powers, Section 874 (11), Tax exemptions

Finding and Recommendations

Audit Limitation:

As the Nassau County IDA did not provide the requested list of PILOT projects that were recaptured (stating the project name, the date the project began and ended, date of recapture, amount of recapture and whether the funds collected were distributed to the affected tax jurisdictions) until after the end of fieldwork on October 20, 2017, the Auditors could not ensure that PILOT projects were properly monitored for compliance with the PILOT and Lease agreements. **Therefore, this is one of the reasons this Office is currently conducting an audit of the Nassau County IDA.**

AUDIT FINDING (9)

(9) Auditors Were Not Provided With Evidence that the Nassau County IDA Monitored and Ensured Compliance with the Employment Benefits Specified in the PILOTs

Tax exemptions are granted to parcels of property by the IDAs in exchange for benefits to the County such as the retention and creation of jobs. We selected for review 22³⁸ of the 103 PILOT projects shown on the Department of Assessment Accounting Division's 2015/2016 PILOT Billing and Collection schedule that required Job creation. The objective of our review was to determine whether the NCIDA monitors and tracks the employment benefits achieved to ensure compliance with the specific number of employees required to be retained or hired as stated in the PILOT agreements. The total amount billed for the 22 PILOTs for the three years from 2013/2014 through 2015/2016 was \$41,529,989.

We found that of the 22 PILOT projects tested, 10 (or 45%), **which represented \$17,519,924 in PILOT billings did not meet the employment goals specified in the PILOT or Lease agreements** for one or more of the three years from 2013/2014 through 2015/2016.

Our review of the 22 PILOT projects consisted of comparing the number of employees to be retained or hired as shown in the PILOT agreements to the employment numbers on the annual Job Confirmation Form, which is required for each PILOT project. The Job Confirmation Form shows the number of full time employees hired and the average annual salary of employees hired by year. It is completed annually by the PILOT projects and submitted to the NCIDA each February 1 of the following year.

For the **10 projects that did not meet the employment goals** required by their respective agreements, we noted the following:

- three projects³⁹ employment goals were not met for any of the three years tested. The PILOT payments associated with the three projects totaled \$2,746,491 for the period 2013/2014 through 2015/2016; and,

³⁸ All 22 PILOTs were billed for 2016/2017 year but may not have been billed for prior years since the PILOT payments had not started yet.

³⁹ Subsequent information provided by the NCIDA states recapture of benefits imposed on three projects.

Finding and Recommendations

- seven projects⁴⁰ employment goals were not met for one to two years out of the three years tested. The PILOT payments associated with these seven projects totaled \$14,773,433 for the period 2013/2014 through 2015/2016.

The review also found that there was little evidence that the Job Confirmation Forms were being verified by the NCIDA. Of the 22 PILOTs tested, seven (or 32%) had confirmations which were missing the Total Annual Payroll Dollar Amounts and/or the Form NYS-45⁴¹ that are required on the form to be included with the Job Confirmation Form. We requested the missing Forms NYS-45 that would verify the number of employees and the annual payroll report for the three years to substantiate the employment numbers. As of the end of the fieldwork on October 20, 2017, we have not received any documentation.

Also, **we requested, and did not receive, the leases and/or the amended leases for three out of the 22 PILOT projects⁴² tested and therefore we could not verify the number of full time employee jobs that were required to be retained or created.** Subsequently we were provided with the three amended leases and only one out of the three did not meet the job requirements.

Review of NCIDA Job Compliance Schedule

The Auditors requested a Job Compliance Schedule from the NCIDA for all PILOT projects to determine whether the NCIDA monitored PILOT projects for compliance with the number of required jobs specified in the lease agreements and whether the recapture of funds was performed on projects that did not meet their job goals. In response to this request, the NCIDA provided a Job Compliance Schedule which listed 111 PILOT projects with Total Exemptions Net of the Real Property Tax Law Section 485-b Exemptions⁴³ of \$72,315,923 and total PILOT Payments of \$40,468,395 as of December 31, 2016. The Job Compliance Schedule compared the jobs to be retained or created to the current full-time employees employed and identified the reasons why job goals were not met for the PILOT projects listed below:

- 23 PILOTs were not required to have all required jobs since the PILOT agreements had not yet commenced;
- seven PILOTs did not meet job goals but were shown as achieved on the Job Compliance Schedule;
- five PILOTs were negotiating the amendment/recapture of the projects;
- four PILOTs were missing information or support for original jobs retained or created or for current full-time employees;

⁴⁰ Subsequent information provided by the NCIDA states recapture of benefits imposed on one project.

⁴¹ Form NYS-45 is also known as the “Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return.” Subsequent information on the Form NYS-45 for one project was provided by the NCIDA.

⁴² The NCIDA did not provide lease agreements for the 101 Uniondale LP, Dreyfus Service Corp (Rexcorp, MBSC) and the Syosset Properties PILOT projects. Subsequent information on lease agreements were provided by the NCIDA on 05/03/18.

⁴³ New York State Real Property Tax Law, Section 485-b, authorizes a partial exemption from real property taxation for commercial, business or industrial property constructed, altered, installed or improved as specified in a county, city, town, or village local law or in a school district’s resolution.

Finding and Recommendations

- four PILOTs showed a high number of current full-time employees compared to the number of required jobs to be retained or created (ex. Long Island Industrial Portfolio had 1,874 current full-time employees compared to required retained or created jobs of two); and
- one PILOT project had expired and the documents to verify the information was not provided.

The Auditors sent repeated requests for documentation that supports the reason why job goals were not achieved by the PILOT projects, and as of the date of our report, the NCIDA has not complied with these requests.

The NCIDA is required to monitor the project employment benefits to comply with its Project Monitoring and Compliance Policy to ensure the projects that are granted financial assistance achieve their employment goals to benefit the County and its taxpayers. PILOT projects that do not meet their employment benefit goals are subject to recapture as discussed in the Recapture Finding (8).

Audit Recommendation:

We recommend that the Nassau County IDA monitor and track the number of employees retained or hired and obtain the supporting documents to ensure compliance with the PILOT and Lease agreements.

As noted in Audit Finding (8) above, this Office is currently conducting an audit of the Nassau County IDA, which will include an evaluation of its Project Monitoring and Compliance Policy.

Appendix A – Length of Time to Place Expired PILOTs Back on the Tax Roll

PILOT Parcels Length of Time Between Expired or Terminated PILOT Parcels to the Date Exemption Was Removed (Restored to Tax Roll) As of November 3, 2016								
IDA Agency	PILOT Parcel Description	Expiration (A)	Date Exemption Removed (B)	Months =(A)- (B)/30	Parcel Taxes By Months			Total
					0.1 ≤ 12 Months	12.1 ≤ 24 Months	24.1 ≤ 26.5 Months	
NC	Nakoda Bherav & Co. LLC ⁽¹⁾	12/31/13	03/17/16	26.9	\$ -	\$ -	\$ 299,094	\$ 299,094
NC	71 Inip Drive LLC ⁽¹⁾	03/31/14	03/21/16	24.0	\$ -	\$ -	\$ 77,810	\$ 77,810
NC	40 Inip Drive Associates LLC ⁽¹⁾	03/31/14	03/21/16	24.0	\$ -	\$ -	\$ 70,873	\$ 70,873
NC	100 Inip Drive Associates ⁽¹⁾	03/31/14	03/21/16	24.0	\$ -	\$ -	\$ 325,243	\$ 325,243
NC	Sultzer Metco ⁽¹⁾⁽⁶⁾	03/29/04	06/30/05	15.3	\$ -	\$ 183,937	\$ -	\$ 183,937
NC	57 Seaview Realty ⁽¹⁾	09/10/15	04/13/16	7.2	\$ 583,763	\$ -	\$ -	\$ 583,763
NC	Manley Holdings Inc.	08/26/15	03/17/16	6.8	\$ 286,394	\$ -	\$ -	\$ 286,394
NC	Harpark Associates	07/22/11	10/12/11	2.7	\$ 726,473	\$ -	\$ -	\$ 726,473
NC	HSRE-EB Westbury LLC ⁽⁵⁾	10/14/16	11/03/16	0.7	\$ -	\$ -	\$ -	\$ -
NC	HSRE-EB North Hills LLC 0602C	10/14/16	11/01/16	0.6	\$ 60	\$ -	\$ -	\$ 60
NC	HSRE-EB North Hills LLC 0602D ⁽⁵⁾	10/14/16	11/01/16	0.6	\$ -	\$ -	\$ -	\$ -
NC	75 Commercial Realty LLC	05/12/15	05/29/15	0.6	\$ 195,385	\$ -	\$ -	\$ 195,385
Total NCIDA ⁽⁷⁾					\$1,792,075	\$ 183,937	\$ 773,020	\$2,749,032
TOH	IA Orchard Hotels Westbury LLC ⁽²⁾⁽⁵⁾	11/17/14	08/09/16	21.0	\$ -	\$ -	\$ -	\$ -
TOH	MagnaCare LLC ⁽²⁾	03/31/11	11/27/12	20.2	\$ -	\$ 152,805	\$ -	\$ 152,805
TOH	IA Orchard Hotels Westbury LLC ⁽²⁾⁽⁵⁾	12/31/14	08/09/16	19.6	\$ -	\$ -	\$ -	\$ -
TOH	Barthco International Inc. ⁽³⁾	04/09/08	08/14/09	16.4	\$ -	\$ 261,800	\$ -	\$ 261,800
TOH	1 Merrick LLC 0122A ⁽⁴⁾	01/13/09	02/24/10	13.6	\$ -	\$ 277,480	\$ -	\$ 277,480
TOH	1 Merrick LLC 0122B ⁽⁴⁾	01/13/09	02/24/10	13.6	\$ -	\$ 127,443	\$ -	\$ 127,443
TOH	336 Pearsall Avenue Inc. 0500 ⁽²⁾	04/07/15	04/13/16	12.4	\$ -	\$ 4,065	\$ -	\$ 4,065
TOH	336 Pearsall Avenue Inc. 7110 ⁽²⁾	04/07/15	04/13/16	12.4	\$ -	\$ 71,078	\$ -	\$ 71,078
TOH	JDM Long Island LLC ⁽¹⁾	07/01/13	03/13/14	8.5	\$ 959,734	\$ -	\$ -	\$ 959,734
TOH	Carbo Realty LLC ⁽¹⁾	08/01/14	04/13/15	8.5	\$ 232,046	\$ -	\$ -	\$ 232,046
TOH	F.O.B. Realty Ltd.	09/23/03	05/17/04	7.9	\$ 126,652	\$ -	\$ -	\$ 126,652
TOH	Nassau Educators Fed Credit Union	01/01/13	06/17/13	5.6	\$ 413,672	\$ -	\$ -	\$ 413,672
TOH	Dentaco Corp.	07/01/12	11/15/12	4.6	\$ 149,807	\$ -	\$ -	\$ 149,807
TOH	LQ Garden City LLC	10/16/15	01/19/16	3.2	\$ 791,426	\$ -	\$ -	\$ 791,426
TOH	Whaley Real Estate LLC	05/12/16	08/09/16	3.0	\$ 37,365	\$ -	\$ -	\$ 37,365
Total TOH IDA ⁽⁸⁾					\$2,710,702	\$ 894,671	\$ -	\$3,605,373
Grand Total					\$4,502,777	\$1,078,608	\$ 773,020	\$6,354,405

Source: Wholly Exempt Division ("WED") IDA Inactive PILOT Schedule 11/3/16.

⁽¹⁾ Delay due to deed not recorded on a timely basis.

⁽²⁾ Per the WED, delay due to WED not being aware of PILOT termination.

⁽³⁾ Parcel sold 4/9/08, added to the next applicable tax roll. 2009 Taxes restored on 2010 tax roll.

⁽⁴⁾ Transfer ownership back to 1 Merrick 1/13/09. The parcel was added to the next applicable tax roll.

⁽⁵⁾ Parcel taxable in 2018.

⁽⁶⁾ There were two parcels. This parcel was removed on 3/29/04 & the other parcel was extended to 7/1/13.

⁽⁷⁾ NCIDA tax amounts were replaced by PILOT payments equal to the amount of property taxes, or a portion of, which would have been levied if the parcels were not tax exempt. Once the PILOT terminated, the PILOT was billed at 100% of assessed value until the parcel was restored to the tax roll and the normal Department of Assessment billing process resumed.

⁽⁸⁾ TOHIDA tax amounts were replaced by PILOT payments equal to the amount of property taxes, or a portion of, which would have been levied if the parcels were not tax exempt. Once the PILOT terminated, billing ceased until the parcel was restored to the tax roll and the normal Department of Assessment billing process resumed.

Note: No footnote indicates that this information was not obtained.

Appendix B - Legal References

The following five laws are consolidated into Appendix B, in the order shown below, as a separate attachment to the report.

New York State General Municipal Law, Article 18-A	55 Pages
New York State Real Property Tax Law, Section 412-a	1 Pages
New York State Real Property Tax Law, Section 485-b	4 Pages
New York State Real Property Tax Law, Section 520	2 Pages
New York State Real Property Tax Law, Section 553	4 Pages

Appendix C – Auditor’s Comments on the Auditees’ Responses

The matters covered in this report have been discussed with the officials of the Department of Assessment and the Nassau County, Town of Hempstead and Glen Cove Industrial Development Agencies (IDAs).

On April 3, 2018 we submitted a draft report to the aforementioned parties for their review. Based on the responses from each party and an Exit Conference with the Nassau County IDA on May 9, 2018, a revised draft report was sent to parties on July 25, 2018.

The responses received from the Agencies on August 8, 2018 can be found in Appendices D through G. Our follow up to their responses, including clarifications discussed with the Nassau County IDA on September 18, 2018 and the Department of Assessment on September 19, 2018, are included below.

We thank the officials representing these agencies for their cooperation throughout the audit process.

Please note that all four Agencies were not required to respond to every recommendation. We included all responses below.

Audit Finding (1)

1) The Department of Assessment Did Not Record nor Receive the County’s Portion of PILOT Revenue of \$5.2 Million from the Town of Hempstead for 2017 and an Estimated \$2.4 Million for 2018

Audit Recommendations:

We recommend that the Department of Assessment:

- a) take the necessary steps to **ensure that all County revenue is collected**; specifically, the \$5.2 million for 2017 that they failed to collect from the Town of Hempstead;
- b) develop and distribute to the staff written procedures to correctly prepare accounting entries to **record PILOT revenues receivables from the three IDAs in Nassau County; and**
- c) develop procedures for the Office of Assessment **management to monitor the PILOT receivables on a quarterly basis to ensure that they are actually collected**, and the County receives its share.

Department of Assessment Response to Recommendation 1

“We believe this section only refers to the Town of Hempstead.”

Appendix C – Auditor’s Comments on the Auditees’ Responses

Town of Hempstead IDA Response to Recommendation 1

“As per the attached spreadsheets⁴⁴, the Agency forwarded all PILOT payments from all active PILOTS, as have been past practice for many years, to the Town of Hempstead Comptroller’s Office to disburse the funds for all PILOT projects within the jurisdiction of the TOHIDA. (See attached yellow highlighted document). The Agency is unaware as to the status of the funds or why the funds were not disbursed by the Town of Hempstead Comptroller’s Office. All information circulated to the Agency from the Town of Hempstead Comptroller’s Office indicated that the disbursements were made. (See attached PILOT reports for 2017 and 2018 generated by the Town of Hempstead Comptroller’s Office). The Agency was not informed by the Town that the funds were not being released to the appropriate jurisdictions until the question was posed by the Nassau County Comptroller’s Office as a result of the Audit.”

Nassau County IDA Response to Recommendation 1

“While this recommendation seems to apply only to the Department, we agree that all County revenues should be timely collected and recorded.”

Glen Cove IDA Response to Recommendation 1

“While the IDA cannot attest to the factual content of the report, we do not have any further comment or clarification on the findings or recommendations.”

Auditor’s Comments to Auditees’ Responses to Recommendation 1

We do not concur with the Department of Assessment’s (“Assessment”) response to our recommendations. As the overseer of PILOT funds for the County, Assessment bears some responsibility in this matter.

We reiterate that Assessment should develop written procedures to record and monitor PILOT revenue receivables from all three IDAs. Assessment should also investigate the \$5.2 million for 2017 and the \$2.4 million for 2018 that the Town of Hempstead owes the County.

*** On August 17, 2018 the TOH Comptroller’s Office delivered to the County a check for \$7,628,275 for outstanding 2017-2018 PILOT payments to Nassau County.**

⁴⁴ Detail spreadsheets provided to the Comptroller’s Office were too cumbersome to reproduce and are available for review at Room 207 in the Comptroller’s Office.

Audit Finding (2)

2) The Department of Assessment Failed to Ensure that the Town of Hempstead IDA & Town of Hempstead Comptroller Continued to Bill Expired PILOTs at the Full Assessed Value Until the Parcels were Restored to the Tax Roll Resulting in a Loss of Approximately \$3.6 Million in Tax Revenue

Audit Recommendations:

We recommend that:

- a) the Department of Assessment and the IDAs investigate State legislation or PILOT contract wording that would require PILOT recipients to record their deeds within 30 days of the expiration of the PILOT or incur a penalty;
- b) the Department of Assessment meet with the IDAs to establish control procedures that require the Agencies to:
 - i. notify the Exempt Division on the extension of PILOT agreements before the expiration dates;
 - ii. obtain from the Department of Assessment the tax to be billed (based on the fully assessed value of the parcel) until the PILOT parcel is restored to the tax roll; and
 - iii. follow-up with the PILOT owner to ensure the deed transfer was filed with the County Clerk in a timely manner.
- c) the Department of Assessment meet with the County Clerk’s Office to establish procedures to provide the Exemption Changes (transcripts) to the Assessment Department on a monthly basis.

Department of Assessment Response to Recommendation 2

“The Department of Assessment agrees (the “Department”) should meet regularly with the TOHIDA and adopt policies and procedures to ensure that exempt properties are timely returned to the tax rolls. With such policies and procedures in place, we do not believe that further State legislation would be necessary. Additionally, the Department, working with Information Technology, is in the process of implementing new software to improve the process of billing, communicating, tracking, and reconciling PILOTS. Information Technology took data pods and converted them to tables into database. Writing data entry screens to input NEW pilots and manage old/existing PILOTS. Implemented multiple scripts to generate PILOT bills for both IDA and LIPA pilot agreements.”⁴⁵

Town of Hempstead IDA Response to Recommendation 2

“As was previously stated in our letter of April 20, 2018, Paragraph 4, “The Agency cannot and does not bill taxes.” The Department of Assessment on many occasions has made it clear

⁴⁵In a meeting on September 19, 2018 the Department of Assessment changed its response that is shown on page 38 of Appendix D to indicate that the new software has not been implemented yet and to change NCIDA to TOHIDA.

Appendix C – Auditor’s Comments on the Auditees’ Responses

they will not do tax calculations for developed or undeveloped parcels, to develop a PILOT or to bill for a PILOT. The Town of Hempstead does not have its own Assessor and has no way to ascertain the actual tax payments due and owing on any parcel or property outside of the PILOT Agreement. As we pointed out, absent a formal procedure whereby the Nassau County Assessor's Office would furnish tax information, the TOHIDA would not have an accurate way to calculate the taxes due or any mechanism to disburse.”

“With regard to email verification on page 9, paragraph 3, the TOH IDA rarely receives an email to confirm the information you outline in the Audit. As stated in the letter of April 20th, termination is defined in the PILOT Agreement and the Lease Agreement at the time of filing of the termination documents with the Nassau County Clerk's Office. Amended PILOT's are filed with the Nassau County Assessor's Office together with Form RP 412a, copies of which are also sent to the Chief Elected Officer of each affected Tax Jurisdiction as required by Section 874 of the New York General Municipal Law. PILOT's are filed with the Assessor's Office in the same manner that a new PILOT is filed.”

Nassau County IDA Response to Recommendation 2

“While this recommendation seems to apply primarily to the Town of Hempstead Industrial Development Agency (“TOHIDA”) and the Town of Hempstead, we agree that the Department should work with the IDAs regarding timely notification of expiring PILOTs. We note that the Department, any applicable village assessor and all of the affected tax jurisdictions are advised of the stated expiration date of a PILOT within 15 days after the initial closing date of a project transaction pursuant to the filing of an RP-412-a Form in accordance with state law. That expiration date remains in effect unless and until NCIDA (or any other IDA) files an amendment to the RP-412-a Form.”

“Also, while we disagree with a number of the factual findings, the NCIDA agrees that the Department should meet regularly with the County IDAs and adopt policies and procedures to ensure that exempt properties are timely returned to the tax rolls. We would appreciate the opportunity to meet with the Department prior to the adoption of such policies and procedures because we believe there are a number of circumstances under which exempt properties should not be or cannot be returned to the tax rolls as soon as the PILOT benefit expires. With such policies and procedures in place, we do not believe that further state legislation would be necessary.”

Glen Cove IDA Response to Recommendation 2

“While the IDA cannot attest to the factual content of the report, we do not have any further comment or clarification on the findings or recommendations.”

Auditor’s Comments to Auditees’ Responses to Recommendation 2

We reiterate that Assessment meet with all IDA’s to: 1) adopt policies and procedures regarding notification before PILOTS expire, 2) obtain from Assessment the tax to be billed based on the full assessed value of the parcels until the parcels are restored to tax roll and 3) follow-up with the PILOT owners to file deed transfers with the County Clerk in a timely manner to ensure that exempt parcels are returned to the tax rolls timely.

Appendix C – Auditor’s Comments on the Auditees’ Responses

We do not concur with Assessment and the NCIDA that State legislation is not necessary and reiterate that legislation to change PILOT contract wording to require PILOT recipients to record their deeds within 30 days of expiration or incur a penalty to ensure parcels are returned to the roll promptly.

We reiterate that Assessment create procedures with the County Clerk to provide the Exemption Change reports to Assessment on monthly basis. We commend Assessment’s plans to automate the billing, tracking and reconciling PILOT process.

We commend the NCIDA’s actions to advise Assessment, the applicable village assessors and affected tax jurisdictions of expired PILOTs within 15 days after the initial closing date of the project transaction.

Audit Finding (3)

3) Failure to Notify the Department of Assessment of Early Termination of Two Town of Hempstead PILOTs Resulted in a Tax Loss of Over \$3.1 Million

Audit Recommendations:

We recommend that the Department of Assessment:

- a) work with the TOHIDA to require timely notification of terminated or amended PILOTs by the Agencies; and
- b) contact Agencies on a timely basis when PILOT agreements are nearing expiration to determine whether the projects are going to be terminated or extended.

Department of Assessment Response to Recommendation 3

“We agree that the Department should, and will, work with the NCIDA and Town of Hempstead IDA regarding timely notification of early terminating PILOTs.”

Town of Hempstead IDA Response to Recommendation 3

“The Agency gave an extensive explanation in our letter of April 20th concerning two terminated PILOT Agreements; Rose Fence and Sunrise Assisted Living. The Agency also takes exception to the information stated in the Audit that “the TOHIDA did not respond promptly to requests from the Exempt Division” concerning Sunrise Assisted Living. Any questions raised with the Agency by the Department of Assessment are always responded to in a timely manner so as to avoid any confusion about the status of a project. Please furnish the Agency with specifics of the IDA’s failure to respond “timely”. ”

“With regard to Sunrise Assisted Living, the project was terminated 3 years prior (October 2013) to the Nassau County Assessment Department contacting the Agency to ask about the status (April 2016). The schedule date of termination, as per the filed PILOT Agreement was December 31, 2014. This project was part of a ground lease with the County of Nassau and

Appendix C – Auditor’s Comments on the Auditees’ Responses

Nassau County was a party to the termination documents and executed same and filed with an RPT 584 dated October 1, 2013. (See attached)”

“As previously stated, Rose Fence was terminated for non-compliance and the TOHIDA and counsel were in constant contact with Lynne Lemieux of the Assessor's Office to keep her updated on the status of this project and the difficulties encountered in the recordation of the deed.”

“The Agency read the last paragraph of page 12 with great interest and objects to the reference of the lack of communication concerning Richner Communications. The Agency communicated effectively with regard to this PILOT extension. The Agency entered into an amended and Restate Lease and Project Agreement dated as of August 1, 2016 which contained the amended, restated and extended PILOT provisions. The Nassau County Department of Assessment returned the property to the tax rolls prematurely without the required documentation or deed to do so. As was previously pointed out, the project was the subject of litigation and settled by the County of Nassau without any obligation on the part of the TOHIDA and, once satisfied, the appropriate amendment documentation was filed in October 2017. Attached is the final Order and Stipulation dated January 17, 2018 settling the Article 78 Proceeding and an accompanying Article 7 Proceeding involving the Richner Communications Facility.”

Nassau County IDA Response to Recommendation 3

“While this recommendation seems to apply only to TOHIDA, we agree with the need for policies and procedures designed to ensure continued PILOT billing between the end of the abatement period and the return of the subject properties to the tax rolls.’

Glen Cove IDA Response to Recommendation 3

“While the IDA cannot attest to the factual content of the report, we do not have any further comment or clarification on the findings or recommendations.”

Auditor’s Comments to Auditees’ Responses to Recommendation 3

We concur with the corrective action to be taken by Assessment to work with the NCIDA and TOHIDA regarding timely notification of early terminating PILOTs.

We reiterate that Assessment should contact Agencies when PILOT agreements are near expiration to determine whether the project is extended or terminated on a timely basis.

We changed the report regarding the Sunrise Assisted Living PILOT as documents were provided by the TOHIDA that indicate the County of Nassau was a party to the early termination agreement which was signed by the County Attorney.

With respect to the TOHIDA’s objection to the lack of communication concerning the Richner Communication PILOT property, the PILOT expired on December 31, 2015. Assessment reclassified the leased parcel to a taxable status on June 7, 2016 and the Assessment Review Commission (ARC) notified the TOHIDA. Then 8 months later, the TOHIDA amended the

Appendix C – Auditor’s Comments on the Auditees’ Responses

PILOT. Documentation provided with the TOHIDA’s response shows that the County Attorney’s Office was aware of a lawsuit involving the Richner Communication PILOT property, but Assessment states it was not notified.

We concur that policies and procedures be created to ensure continued PILOT billing between the end of the abatement period and the return of the subject parcel to the tax rolls.

Audit Finding (4)

(4) The Department of Assessment did not Remit Over \$7.4 Million of PILOT Receipts to the Affected Tax Jurisdictions within 30 Days as Required by NYS Law

Audit Recommendations:

We recommend the following:

- a) As the Department of Assessment needs to rely on other departments to distribute payments, they need to follow-up with the other departments to process the distribution documents promptly in order to ensure distributions on a timely basis.
- b) Management of the Department of Assessment needs to monitor the processes in the Department, to ensure the Department is acting in compliance with the law. This includes ensuring staff resources are adequate to satisfy statutory requirements.

Department of Assessment Response to Recommendation 4

“The department agrees with the recommendation, the County is currently working to hire additional accounting staff in the Department, who will assist address this and other findings in the Review.”

Nassau County IDA Response to Recommendation 4

“While this recommendation seems to apply only to the Department, we agree with the need to timely remit to the affected tax jurisdictions all PILOT payments received.”

Glen Cove IDA Response to Recommendation 4

“While the IDA cannot attest to the factual content of the report, we do not have any further comment or clarification on the findings or recommendations”.

Auditor’s Comments to Auditees’ Responses to Recommendation 4

We concur with Assessment’s efforts to hire staff to assist in addressing the need to monitor and follow-up with other departments on the distribution of PILOT receipts to affected jurisdiction, which are required to be remitted within 30 days of receipt to comply with the Law.

Audit Finding (5)

(5) The Department of Assessment Did Not Invoice the Nassau County IDA and Obtain Reimbursement for Over \$530,000 in County Staff Salaries

Audit Recommendations:

We recommend that the Department of Assessment:

- a) **invoice and collect from the Nassau County IDA the cost of County PILOT salaries of approximately \$532,224 for contracted services provided to the Nassau County IDA, (required by the License and Cooperation Agreement and allowed by New York State General Municipal Law); and**
- b) **diligently track the percentage of time County employees perform IDA services, calculate the related payroll cost and routinely bill the IDA for these costs.**

Department of Assessment Response to Recommendation 5

“The department agrees with the recommendation that invoices should be presented to the NCIDA routinely. The County is currently working to hire additional accounting staff in the Department, who will assist address this and other findings in the Review.”

Nassau County IDA Response to Recommendation 5

“The NCIDA is ready to reimburse the County for all proper expenses incurred in providing PILOT-related services to the NCIDA. Upon receipt of an itemized invoice, the appropriate personnel of the Agency will review it and process it for payment. We also agree with the recommendation that such invoices should be presented to the NCIDA routinely.”

Glen Cove IDA Response to Recommendation 5

“While the IDA cannot attest to the factual content of the report, we do not have any further comment or clarification on the findings or recommendations.”

Auditor’s Comments to Auditees’ Responses to Recommendation 5

We reiterate that the Department of Assessment should invoice the NCIDA as soon as possible for the contracted services performed by County employees on behalf of the NCIDA from January 1, 2014 through September 30, 2017, estimated to be \$532,224.

We concur with the hiring of additional accounting staff and reiterate the need to diligently track the percentage of time County employees perform IDA services, calculate the related payroll cost and routinely bill the IDA for these costs.

We concur with the NCIDA to reimburse the County for expenses incurred in providing PILOT-related services to the NCIDA upon receipt of itemized invoices that will be presented on a routine basis.

Audit Finding (6)

(6) Two Delinquent Nassau County IDA PILOT Payments Totaling \$22,193 Were Waived Although There Were No Written Policies on Waiving Delinquent PILOT Charges

Audit Recommendations:

We recommend that the Department of Assessment:

- a) not waive statutorily required late fees; and
- b) establish written policies on delinquent PILOT payments that includes the process for billing and collection and addresses the waiving of late charges to ensure compliance with the Law.

Department of Assessment Response to Recommendation 6

“We agree that statutorily mandated late fees and interest should not be waived by the Department, the NCIDA or otherwise. The policy, as recommended, will be written.”

Nassau County IDA Response to Recommendation 6

“We agree that statutorily mandated late fees and interest should not be waived by the Department, the NCIDA or otherwise. The NCIDA includes a statement to this effect in its Uniform Tax Exemption Policy as a reminder to its staff and the public.”

Glen Cove IDA Response to Recommendation 6

“While the IDA cannot attest to the factual content of the report, we do not have any further comment or clarification on the findings or recommendations.”

Auditor’s Comments to Auditees’ Responses to Recommendation 6

We concur with Department of Assessment’s decision to establish written policies not to waive statutorily required late fees and penalties on delinquent PILOT payments.

Audit Finding (7)

(7) The Department of Assessment Does Not Have Written Policies and Procedures for the Billing, Recording or Monitoring of PILOTs

Audit Recommendations:

Management of the Department of Assessment needs to establish proper internal control by developing written procedures for PILOTs.

We recommend that the Department of Assessment:

Appendix C – Auditor’s Comments on the Auditees’ Responses

- a) develop and disseminate written policies and procedures on PILOT for:
 - i. billing;
 - ii. collection;
 - iii. allocation, and distribution of revenues; and
 - iv. delinquent PILOT payments.

These should detail each process, including due dates/times of each activity and the responsibilities for each staff title involved. Sample documents and examples should be included; and

- c) develop a procedure for updates to policies and procedures that are documented and dated.

Department of Assessment Response to Recommendation 7

“We concur with the need for policies and procedures for the timely billing, collection, allocation and distribution of PILOT payments, including delinquencies. The Department establishes appropriate policies and procedures as required.”

Nassau County IDA Response to Recommendation 7

“While this recommendation seems to apply only to the Department, we concur with the need for policies and procedures for the timely billing, collection, allocation and distribution of PILOT payments, including delinquencies.”

Glen Cove IDA Response to Recommendation 7

“While the IDA cannot attest to the factual content of the report, we do not have any further comment or clarification on the findings or recommendations.”

Auditor’s Comments to Auditees’ Responses to Recommendation 7

We concur with Assessment’s decision to develop policies and procedures for the timely billing, collection, allocation and distribution of PILOT payments, including delinquencies.

We reiterate that Assessment also develop procedures for updates to policies and procedures that are documented and dated.

Audit Finding (8)

8) The Nassau County IDA Did Not Provide Sufficient Information for Recaptured Monies for the Period 2014 to 2017 Until After Fieldwork was Completed; Auditors Could Not Determine if the NCIDA was Properly Monitoring the PILOTs for Compliance with PILOT and Lease Agreements

Audit Limitation:

As the Nassau County IDA did not provide the requested list of PILOT projects that were recaptured (stating the project name, the date the project began and ended, date of recapture, amount of recapture and whether the funds collected were distributed to the affected tax jurisdictions) until after the end of fieldwork on October 20, 2017, the Auditors could not ensure that PILOT projects were properly monitored for compliance with the PILOT and Lease agreements. **Therefore, this is one of the reasons this Office is currently conducting an audit of the Nassau County IDA.**

Department of Assessment Response to Recommendation 8

“We believe this section only refers to the Nassau County IDA.”

Nassau County IDA Response to Recommendation 8

“We believe that the requested information was provided to the Comptroller's Office prior to the issuance of the initial Draft Review. The NCIDA agrees to timely respond to any such future requests.”

Glen Cove IDA Response to Recommendation 8

“While the IDA cannot attest to the factual content of the report, we do not have any further comment or clarification on the findings or recommendations.”

Auditor’s Comments to Auditees’ Responses to Recommendation 8

The NCIDA did not provide the Auditors the requested recapture information during the fieldwork phase of the audit. The information was first provided to the Auditors in March 2018 in connection with a separate audit of the NCIDA which commenced in February 2018. As a result, there was an audit scope limitation and we were not able to determine if the NCIDA actively monitored and remitted monies to the County and other municipalities on non-performing PILOT projects.

As a result of the scope limitation, this office is now conducting a separate audit of the NCIDA.

Audit Finding (9)

(9) Auditors Were Not Provided With Evidence that the Nassau County IDA Monitored and Ensured Compliance with the Employment Benefits Specified in the PILOTs

Audit Recommendation:

We recommend that the Nassau County IDA monitor and track the number of employees retained or hired and obtain the supporting documents to ensure compliance with the PILOT and Lease agreements.

As noted in Audit Finding (8) above, this Office is currently conducting an audit of the Nassau County IDA, which will include an evaluation of its Project Monitoring and Compliance Policy.

Department of Assessment Response to Recommendation 9

“We believe this section only refers to the Nassau County IDA”.

Nassau County IDA Response to Recommendation 9

“Again, we would welcome the opportunity to meet with your office to resolve what we believe to be the factual issues in this finding and we offer the attached Exhibit A which sets forth the correct job requirements and job reporting for what we believe to be the referenced 22 projects as well as the status of those projects. That being said, the NCIDA agrees that all IDAs should "monitor and track the number of employees retained or hired" to "ensure compliance with the PILOT and Lease agreements." In this regard, we note that the Agency adopted a Project Monitoring and Compliance Policy on or about June 28, 2016 (in response to changes in state law) to guide its efforts in monitoring project employment compliance. That policy, as currently in effect, can be found on the Agency's website.”

Glen Cove IDA Response to Recommendation 9

“While the IDA cannot attest to the factual content of the report, we do not have any further comment or clarification on the findings or recommendations.”

Auditor’s Comments to Auditees’ Responses to Recommendation 9

Based on additional information provided by the NCIDA after the Exit conference, the Auditors made changes to this finding which were included in the July 25, 2018 draft.

The Audit Staff reviewed the NCIDA’s Exhibit A (attached to its response to this report and included in Appendix F) regarding the job requirements for the 22 projects tested. Auditors stand by their ten exceptions. The additional job requirements documentation provided by the NCIDA did not support their claim of factual issues with this portion of the finding. According to NCIDA’s Exhibit A, 10 of the 22 projects were required to report a total of 1,733 jobs for 2015/16, but 1,279 jobs were reported, a difference of 454 less jobs for this time period. The IDA noted that in some instances, recapture of benefits were imposed.

Appendix C – Auditor’s Comments on the Auditees’ Responses

The Auditors met with the NCIDA on September 18, 2018 to discuss the factual issues referred to in their response and made clarifications in the report where deemed necessary and appropriate.

This office is now conducting a separate audit of the NCIDA and compliance with employment benefits will be included.

We concur with the NCIDA’s statement that all IDAs should monitor and track the number of employees retained or hired to ensure compliance with the PILOT and Lease agreements that are cited in the Agency’s Project Monitoring and Compliance Policy.

Auditor’s Comments to Auditees’ Responses to Appendix A

With respect to the TOHIDA’s request to make an adjustment to Appendix A to correct what the Agency believes to be duplicate references to the same project, Appendix A shows individual PILOT parcels. There can be more than one parcel associated with a PILOT agreement; none of the PILOT parcels are duplicated.

Appendix D – Department of Assessment Response

LAURA CURRAN
County Executive



DAVID F. MOOG, IAO
County Assessor

NASSAU COUNTY
DEPARTMENT OF ASSESSMENT
240 Old Country Road
Mineola, New York 11501
(516) 571-1500

August 8, 2018

Ms. JoAnn Greene
Director of Field Audit
Office of the Nassau County Comptroller
240 Old Country Road
Mineola, NY 11501

Re: Limited Review of the Department of Assessment
Collection of Payments In Lieu of Taxes (PILOT)
Revenue - Draft - April 3, 2018 (the "Draft Review")

Dear Ms. Greene:

We are in receipt of the Draft Review. The Department of Assessment welcomes the opportunity to offer our comments thereon.

The Department of Assessment would like to address each of the "Audit Findings & Recommendations".

Audit Finding & Recommendation No. 1. We believe this section only refers to the Town of Hempstead.

Audit Finding & Recommendation No. 2. The Department of Assessment agrees (the "Department") should meet regularly with the NCIDA and adopt policies and procedures to ensure that exempt properties are timely returned to the tax rolls. With such policies and procedures in place, we do not believe that further State legislation would be necessary. Additionally, the Department, working with Information Technology, has implemented new software to improve the process of billing, communicating, tracking, and reconciling PILOTS. Information Technology took data pods and converted them to tables into database. Writing data entry screens to input NEW pilots and manage old/existing PILOTS. Implemented multiple scripts to generate PILOT bills for both IDA and LIPA pilot agreements.

Appendix D – Department of Assessment Response

Audit Finding & Recommendation No. 3. We agree that the Department should, and will, work with the NCIDA and Town of Hempstead IDA regarding timely notification of early terminating PILOTs.

Audit Finding & Recommendation No. 4. The department agrees with the recommendation, the County is currently working to hire additional accounting staff in the Department, who will assist address this and other findings in the Review.

Audit Finding & Recommendation No. 5. The department agrees with the recommendation that invoices should be presented to the NCIDA routinely. The County is currently working to hire additional accounting staff in the Department, who will assist address this and other findings in the Review.

Audit Finding & Recommendation No. 6. We agree that statutorily mandated late fees and interest should not be waived by the Department, the NCIDA or otherwise. The policy, as recommended, will be written.

Audit Finding & Recommendation No. 7. We concur with the need for policies and procedures for the timely billing, collection, allocation and distribution of PILOT payments, including delinquencies. The Department establishes appropriate policies and procedures as required.

Audit Finding & Recommendation No. 8. We believe this section only refers to the Nassau County IDA.

Audit Finding & Recommendation No. 9. We believe this section only refers to the Nassau County IDA.

Thank you again for the opportunity to address these very important issues.



David F. Moog, IAO
Nassau County Assessor
Department of Assessment

Appendix E – Town of Hempstead IDA Response



350 FRONT STREET, HEMPSTEAD, NY 11550-4037
(516) 489-5000 EXT. 4200 • FAX: (516) 489-3179

INDUSTRIAL DEVELOPMENT
AGENCY

BOARD MEMBERS
FLORESTANO GIRARDI
ERIC C. MALLETT
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JAMES MARSH
JOHN ARDITO
RICHARD DEBROSSE
JACK MAJKUT

FREDERICK E. PAROLA
CHIEF EXECUTIVE OFFICER

August 8, 2018

HAND DELIVERY

JoAnn Greene, Director of Field Audit
Office of the Nassau County Comptroller
240 Old Country Road
Mineola, New York 11501

Dear Ms. Greene,

The Town of Hempstead Industrial Development Agency (the "Agency" or "TOHIDA") is in receipt of your letter and Draft Audit dated July 25, 2018. Please accept this as our second response to this "DRAFT Limited Review of the Department of Assessment Collection of Payments in Lieu of Taxes (PILOT) Revenue draft dated July 25, 2018.

This information is again being provided without prejudice to the Town of Hempstead IDA's rights as are asserted in *Maragos v. TOHIDA* (App. Div. 2nd Department Docket No. 2017-05229).

Page 1 and Page 3 of the Draft Audit discusses how the PILOT revenues are collected. It mistakenly stated that "the Town of Hempstead Industrial Development Agency bills and collects the PILOT payments and disburses the PILOT revenues to the various school districts and local municipalities." As was previously stated in our letter of April 20th, 2018, Page 2, last paragraph, (copy of letter attached), the Town of Hempstead IDA has contracted with the Town of Hempstead Comptroller's Office for billing and collection of PILOT's (dating back to the early 2000's). This task is not performed by the TOHIDA.

Audit Finding (1), Findings and Recommendations; Page 8: As per the attached spreadsheets, the Agency forwarded all PILOT payments from all active PILOTS, as have been past practice for many years, to the Town of Hempstead Comptroller's Office to disburse the funds for all PILOT projects within the jurisdiction of the TOHIDA. (see attached yellow highlighted document) The Agency is unaware as to the status of the funds or why the funds were not disbursed by the Town of Hempstead Comptroller's

Appendix E – Town of Hempstead IDA Response

Office. All information circulated to the Agency from the Town of Hempstead Comptroller's Office indicated that the disbursements were made. (See attached PILOT reports for 2017 and 2018 generated by the Town of Hempstead Comptroller's Office). The Agency was not informed by the Town that the funds were not being released to the appropriate jurisdictions until the question was posed by the Nassau County Comptroller's Office as a result of the Audit.

Audit Finding (2), as was previously stated in our letter of April 20, 2018, Paragraph 4, "The Agency cannot and does not bill taxes." The Department of Assessment on many occasions has made it clear they will not do tax calculations for developed or undeveloped parcels, to develop a PILOT or to bill for a PILOT. The Town of Hempstead does not have its own Assessor and has no way to ascertain the actual tax payments due and owing on any parcel or property outside of the PILOT Agreement. As we pointed out, absent a formal procedure whereby the Nassau County Assessor's Office would furnish tax information, the TOHIDA would not have an accurate way to calculate the taxes due or any mechanism to disburse.

With regard to email verification on page 9, paragraph 3, the TOH IDA rarely receives an email to confirm the information you outline in the Audit. As stated in the letter of April 20th, termination is defined in the PILOT Agreement and the Lease Agreement at the time of filing of the termination documents with the Nassau County Clerk's Office. Amended PILOT's are filed with the Nassau County Assessor's Office together with Form RP 412a, copies of which are also sent to the Chief Elected Officer of each affected Tax Jurisdiction as required by Section 874 of the New York General Municipal Law. PILOT's are filed with the Assessor's Office in the same manner that a new PILOT is filed.

Audit Finding (3): The Agency gave an extensive explanation in our letter of April 20th concerning two terminated PILOT Agreements; Rose Fence and Sunrise Assisted Living. The Agency also takes exception to the information stated in the Audit that "the TOHIDA did not respond promptly to requests from the Exempt Division" concerning Sunrise Assisted Living. Any questions raised with the Agency by the Department of Assessment are always responded to in a timely manner so as to avoid any confusion about the status of a project. Please furnish the Agency with specifics of the IDA's failure to respond "timely".

With regard to Sunrise Assisted Living, the project was terminated 3 years prior (October 2013) to the Nassau County Assessment Department contacting the Agency to ask about the status (April 2016). The schedule date of termination, as per the filed PILOT Agreement was December 31, 2014. This project was part of a ground lease with the County of Nassau and Nassau County was a party to the termination documents and executed same and filed with an RPT 584 dated October 1, 2013. (See attached)

Appendix E – Town of Hempstead IDA Response

As previously stated, Rose Fence was terminated for non-compliance and the TOHIDA and counsel were in constant contact with Lynne Lemieux of the Assessor's Office to keep her updated on the status of this project and the difficulties encountered in the recordation of the deed.

The Agency read the last paragraph of page 12 with great interest and objects to the reference of the lack of communication concerning Richner Communications. The Agency communicated effectively with regard to this PILOT extension. The Agency entered into an amended and Restate Lease and Project Agreement dated as of August 1, 2016 which contained the amended, restated and extended PILOT provisions. The Nassau County Department of Assessment returned the property to the tax rolls prematurely without the required documentation or deed to do so. As was previously pointed out, the project was the subject of litigation and settled by the County of Nassau without any obligation on the part of the TOHIDA and, once satisfied, the appropriate amendment documentation was filed in October 2017. Attached is the final Order and Stipulation dated January 17, 2018 settling the Article 78 Proceeding and an accompanying Article 7 Proceeding involving the Richner Communications Facility.

Lastly, Page 22 of the Audit reflects duplicative references to the same project. We request an adjustment be made to correct the graph.

Should you have any additional questions, please do not hesitate to contact the Agency. In an effort to verify the record, please furnish the Agency with the communications that your audit alleges were not responded to related to the Exempt Division of the Assessor's Office.

Sincerely,



Frederick E. Parola
CEO



Edie M. Longo
Deputy Executive Director
CFO

Appendix F – Nassau County IDA Response



NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY
1 WEST STREET, SUITE 326
MINEOLA, NY 11501
TELEPHONE (516) 571-1945 FAX (516) 571-1076
www.nassauida.org

August 8, 2018

BY HAND

Ms. JoAnn Greene
Director of Field Audit
Office of the Nassau County Comptroller
240 Old Country Road
Mineola, NY 11501

Re: Limited Review of the Department of Assessment
Collection of Payments In Lieu of Taxes (PILOT)
Revenue - Draft - July 25, 2018 (the "Draft Review")

Dear Ms. Greene:

The Nassau County Industrial Development Agency ("NCIDA") is in receipt of the Draft Review of the Department of Assessment (the "Department") and we welcome the opportunity to offer our further comments thereon.

It appears that there are a number of factual issues in the Draft Review that need clarification. We attempted to address many of these factual issues in our meeting with you and your staff on May 9, 2018. Rather than enumerate all of the factual issues here, we would suggest another meeting with your staff to review them again.

Of more importance, we would like to address the "Audit Findings & Recommendations".

Audit Finding & Recommendation No. 1. While this recommendation seems to apply only to the Department, we agree that all County revenues should be timely collected and recorded.

Audit Finding & Recommendation No. 2. While this recommendation seems to apply primarily to the Town of Hempstead Industrial Development Agency ("TOHIDA") and the Town of Hempstead, we agree that the Department should work with the IDAs regarding timely notification of expiring PILOTs. We note that the Department, any applicable village assessor and all of the affected tax jurisdictions are advised of the stated expiration date of a PILOT

Doc #05-497664.2

Appendix F – Nassau County IDA Response

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within 15 days after the initial closing date of a project transaction pursuant to the filing of an RP-412-a Form in accordance with state law. That expiration date remains in effect unless and until NCIDA (or any other IDA) files an amendment to the RP-412-a Form.

Also, while we disagree with a number of the factual findings, the NCIDA agrees that the Department should meet regularly with the County IDAs and adopt policies and procedures to ensure that exempt properties are timely returned to the tax rolls. We would appreciate the opportunity to meet with the Department prior to the adoption of such policies and procedures because we believe there are a number of circumstances under which exempt properties should not be or cannot be returned to the tax rolls as soon as the PILOT benefit expires. With such policies and procedures in place, we do not believe that further state legislation would be necessary.

Audit Finding & Recommendation No. 3. While this recommendation seems to apply only to TOHIDA, we agree with the need for policies and procedures designed to ensure continued PILOT billing between the end of the abatement period and the return of the subject properties to the tax rolls.

Audit Finding & Recommendation No. 4. While this recommendation seems to apply only to the Department, we agree with the need to timely remit to the affected tax jurisdictions all PILOT payments received.

Audit Finding & Recommendation No. 5. The NCIDA is ready to reimburse the County for all proper expenses incurred in providing PILOT-related services to the NCIDA. Upon receipt of an itemized invoice, the appropriate personnel of the Agency will review it and process it for payment. We also agree with the recommendation that such invoices should be presented to the NCIDA routinely.

Audit Finding & Recommendation No. 6. We agree that statutorily mandated late fees and interest should not be waived by the Department, the NCIDA or otherwise. The NCIDA includes a statement to this effect in its Uniform Tax Exemption Policy as a reminder to its staff and the public.

Audit Finding & Recommendation No. 7. While this recommendation seems to apply only to the Department, we concur with the need for policies and procedures for the timely billing, collection, allocation and distribution of PILOT payments, including delinquencies.

Audit Finding & Recommendation No. 8. We believe that the requested information was provided to the Comptroller's Office prior to the issuance of the initial Draft Review. The NCIDA agrees to timely respond to any such future requests.

Audit Finding & Recommendation No. 9. Again, we would welcome the opportunity to meet with your office to resolve what we believe to be the factual issues in this finding and we offer the attached Exhibit A which sets forth the correct job requirements and job reporting for what we believe to be the referenced 22 projects as well as the status of those projects. That being said, the NCIDA agrees that all IDAs should "monitor and track the number of employees

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Appendix F – Nassau County IDA Response

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retained or hired” to “ensure compliance with the PILOT and Lease agreements.” In this regard, we note that the Agency adopted a Project Monitoring and Compliance Policy on or about June 28, 2016 (in response to changes in state law) to guide its efforts in monitoring project employment compliance. That policy, as currently in effect, can be found on the Agency’s website.

Thank you again for the opportunity to address these very important issues. As mentioned above, we would suggest holding another meeting with your staff to review the various factual issues contained in the Draft Report.

NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____


Joseph J. Kearney
Executive Director

cc: NCIDA Board Members

Doc #05-497664.2

Appendix F – Nassau County IDA Response

Exhibit A

1	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
2	Project	Closing Date	Scheduled Completion Date	Jobs Required at 12/31/14	Jobs Reported at 12/31/14	Jobs Required at 12/31/15	Jobs Reported at 12/31/15	Jobs Required at 12/31/16	Jobs Reported at 12/31/16	Jobs Required at 12/31/16	Jobs Reported at 12/31/16	Jobs Required at 12/31/16	Jobs Reported at 12/31/16	Notes		
3																
4	101 Unloadade	1/15/2015	1/31/2021	n/a	n/a	223	242	223	254.6							
5	Amsterdam CCRC	11/13/2014	n/a	139	170	139	157	139	164.75							
6	AVR Curle Place	11/3/2011	3/30/2013	19	41	39	33	39	45							
7	AVR Curle Place Two	6/26/2014	7/1/2015	n/a	n/a	n/a	n/a	n/a	33					Following 6/17 default notice, Applicant confirmed it was in compliance at 6/15/17		
8	Cablevision	12/5/1997	n/a	n/a	1601	n/a	1563	n/a	1233					This transaction has no job covenant		
9	Delectrack Tech.	6/24/2015	7/1/2019	n/a	n/a	367	566	367	662					Project not required to have jobs in 2014 & 2015		
10	Dreyfus Service Corp.	12/31/2004	n/a	275	254	275	243	275	233					Recapture of benefits imposed each year		
11	Inesco Lighting Group	9/4/2013	5/1/2014	40	48	48	57	48	56							
12	Lowe Properties	2/11/2010	9/1/2012	7	0	14	9	20	18							
13	Kozy Shack (a/o/a Land O' Lakes)	6/30/2008	7/31/2009	200	217	200	191	200	181					Recapture of benefits imposed and job covenant amended as per Agreement dated 7/30/12; transaction terminated and recapture imposed 9/13/16		
14	Mill River	12/21/2005	n/a	6	5	6	5	6	6							
15	Mizeola Properties	7/26/2013	7/31/2016	n/a	20	n/a	21	n/a	20							
16	MCONY	1/31/2003	10/3/2005	14	115	14	114	14	14							
17	Nassau Steel LLC	10/21/2011	10/1/2016	n/a	596	n/a	1002	11	969							
18	Neptune	7/15/2005	2/1/2008	3	4	3	4	3	4							
19	Pull Corp.	6/1/2008	12/31/2009	517	585	517	508	517	283					Project terminated and replaced in May 2017 with new job covenant		
20	RVC Housing Authority	10/18/2007	9/30/2010	9	8	9	8	9	8							
21	Sleepys	11/16/2007	12/31/2009	474	621	474	609	474	342					Recapture of benefits imposed		
22	Southern Wines	9/27/2006	12/31/2007	750	1021	750	1028	750	1110							
23	Steel G	7/20/2015	4/1/2016	n/a	n/a	n/a	n/a	n/a	84					Project not required to have jobs in 2014 & 2015		
24	Steel One	5/30/2013	n/a	3	7	3	1	3	218							

Appendix G – Glen Cove IDA Response

From: Ann Fangmann

Sent: Wednesday, August 08, 2018 3:29 PM

Subject: RE: Draft- Limited Review of the Department of Assessment Collection of Payments in Lieu of Taxes (PILOT) Revenue

The IDA is in receipt of the letter and revised report dated July 25, 2018. While the IDA cannot attest to the factual content of the report, we do not have any further comment or clarification on the findings or recommendations.

Thank you and please feel free to contact me with any questions.

Best regards-

|

Ann S. Fangmann, AICP
Executive Director, Glen Cove CDA & IDA
City Hall - 9 Glen Street
Glen Cove, NY 11542