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June 20, 2013

The Honorable David M. Frankel, Commissioner
New York City Department of Finance
1 Centre Street, Room 500
New York, NY 10007

**Re: Final Letter Report on the Audit on the
Calculation and Application of Property Tax Abatement Benefits for the
Commercial Revitalization Program by the Department of Finance
(Audit Number FM13-086AL)**

Dear Commissioner Frankel:

We are sending this Letter Report to provide the results of the audit regarding the Calculation and Application of Property Tax Abatement Benefits for the Commercial Revitalization Program by the Department of Finance (DOF). Our objective was to determine whether DOF properly calculated and applied property tax abatement benefits according to the requirements of Section 499 of the New York State Real Property Tax Law. Our audit concluded that DOF properly calculated and applied property tax abatement benefits in accordance with program requirements. However, there were some procedural weaknesses that could be improved upon.

Background

The Commercial Revitalization Program (CRP) is designed to increase tenant occupancy in office and retail space in lower Manhattan and reduce building obsolescence by encouraging investment in older commercial space built before 1975. The CRP provides tax incentives through property tax abatements for non-residential or mixed-use premises. To qualify for a CRP abatement benefit, property must be located in the area bounded by Murray Street and Frankfort Street on the north, South Street on the east, Battery Place on the south, and West Street on the west. The abatement is a reduction in property tax for the building owner and is usually passed through to the tenant in lower rent. However, DOF does not decide how the building owner will credit the benefit to the tenant. This is determined between the two parties.

Benefit dollar amounts as well as the required lease term are based on the number of persons employed by the tenant on the premises 60 days after the lease commencement. If fewer than 125 people will be employed, the minimum required lease term is three years, and if more than 125 people will be employed, the minimum required lease term is 10 years. The lease must be a new, renewal, or expansion lease and must begin on or before March 31, 2014. Subleases are not eligible.

Building owners are required to make certain minimum expenditures to improve the eligible property. The minimum cost of improvements varies by the type of lease and number of employees. Eligible expenditures must be permanent, capital improvements to real property with a useful life of at least three years. For new and expansion leases, required proof of expenditures must be submitted no later than 60 days following the rent commencement date. For renewal leases, required proof of expenditures must be submitted no later than 14 months following lease commencement. According to Section 499 of the New York State Real Property Tax Law, a completed CRP Application must be submitted within 180 days of the lease start date. CRP benefits will be denied if an application is received after this date. Along with the CRP application, a Proof of Expenditure form, a Proof of Employment form, and a \$500 non-refundable application fee must be submitted. The CRP application and the accompanying forms should be notarized.

The building owner is required to complete a Certificate of Continuing Eligibility form (CCE) annually during the month of June, attesting that the tenant is still occupying the space in conformance with program requirements. The CCE form, signed by the building owner and tenant, must be notarized. Benefits can be revoked if the building owner fails to submit the CCE form when due or the tenant vacates the premises prior to the required lease term. Building owners are required to notify DOF within 30 days after the tenant vacates the premises. If a building owner fails to notify DOF, it will result in DOF recouping the CRP abatement benefit plus interest.

Findings and Recommendations

Our review of 50 (23 active and 27 revoked), 10 percent of the 493, applications for properties that received CRP benefits from July 1, 2010, through December 2012 found that DOF properly calculated, correctly applied, and where applicable, appropriately revoked the CRP benefits. For each of the cases, we found that DOF ensured that a complete notarized package was received before the benefits were provided. The package included the CRP Application, Proof of Expenditure form, a Proof of Employment form, and a \$500 non-refundable application fee. We then recalculated the benefit amounts granted and found that the amounts were correctly calculated based on the number of employees and the dollar value of the physical improvements. Furthermore, benefits were removed from the property tax rolls when the benefit period expired or the benefit was revoked by DOF. However, while not a requirement, our audit found that DOF did not always insist that the building owner submit sufficient documentation such as invoices or checks to support renovation costs when the renovations were completed. In addition, DOF did not always revoke the benefits when the building owner failed to file the CCE form, and building owners did not always inform DOF when a tenant vacated the premises.

Specifically, 10 of the 23 active case files reviewed did not have the invoices or checks to substantiate the cost of renovation. The 10 case files only contained a Proof of Expenditure form, which is completed by a building owner or his/her representative, detailing the renovation costs incurred. This notarized form signed by the building owner or his/her representative prior to submission certifies to DOF that the information contained on the document is true and accurate. According to the CRP Administrators, reliance is placed on the notarized certification on the form, and DOF does not require the building owner to provide the related invoices or checks. A notarized certification on the Proof of Expenditure form only gives DOF limited

assurance that work was actually done. Submission of invoices and checks can provide greater assurance to support that work was performed at the required CRP amount.

In addition, our review found that all 23 active cases in our sample had the required CCE forms for June 2012 (which become effective in Fiscal Year 2013) on file. However, 19 of the 23 case files did not have the required CCE forms for the prior fiscal year even though the building owners received benefits in the prior year. A CCE form is required to be submitted annually in June in order for the abatement to continue. Failure to file a CCE form when due should result in the revocation of the applicant's benefits. According to the CRP Administrator, prior to Fiscal Year 2013, DOF did not revoke benefits if the building owner failed to submit the CCE form.

Furthermore, our review found that 26 of 27 revoked case files were due to non-filing of the CCE form for June 2012. The one remaining case was revoked because the tenant vacated the premises effective July 1, 2012. A further review of the 26 cases found that building owners for 24 cases did not submit CCE forms in the prior year. Consequently, these building owners may have improperly received benefits totaling \$251,703.

During our on-site visits to the premises occupied by the 23 active cases, we found one tenant at 110 Wall Street had vacated the premises during October 2012 due to the effects of Hurricane Sandy. We inquired with the CRP Administrator as to the procedure that would be followed for this situation. The CRP Administrator stated that as soon as DOF is informed by the building owner of the situation, the abatement benefits would terminate immediately. However, this would only happen if the building owner notifies the CRP Administrator or DOF fails to receive a CCE form. If the building owner does not call to inform the CRP Administrator of the situation, the building owner may still receive benefits. DOF's Abatement Revitalization Program (ABRP) database shows that from November 2012 through May 15, 2013, this building owner continued to receive CRP benefits totaling \$9,475 without a penalty for not informing DOF that the tenant vacated the premises.

We recommend that DOF should:

1. Require building owners to provide sufficient reliable supporting documentation (invoices and canceled checks) indicating the total renovation costs expended.
2. Continue to revoke benefits when a CCE form is not submitted.
3. Recoup the benefits granted to the owner of the building where the tenant vacated the property identified in this audit.

Audit Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was July 1, 2010, to December 31, 2012. To determine whether the benefits were properly calculated and correctly applied or appropriately revoked, we judgmentally selected 50 of the 493 applications for CRP benefits that were active as of July 1, 2012. From the sample population, we reviewed 23 applications that were active as of July 2012 to verify that the application package was completed prior to the abatement being approved. We verified that the application package contained signed and notarized applications, expenditure and employment forms, and had indication that these documents were submitted in accordance with CRP timelines. We also verified whether leases were signed by both the owner and the tenant and that the \$500 application fee was paid. We matched the information on the applications to the information in DOF's online property tax database and the ABRP database to ensure that the information was accurate. We recalculated the benefits and matched it to the ABRP database to verify that the abatement amounts were correctly calculated. Lastly, we visited the premises to verify that the tenants were still there.

For the 27 applications that were revoked as of December 31, 2012 (26 failed to submit a CCE form and one vacated the premises effective July 1, 2012), we checked the ABRP database and DOF's online property tax database to verify that the benefits did not continue past the revocation dates. For those that were revoked because the building owner failed to file a CCE form during the month of June 2012, we checked whether DOF's files had proof that the building owner filed a CCE form during June 2011.

To determine whether the abatement benefits ceased at the end of the abatement period, we randomly selected 50 applications from a population of 1621 applications that were no longer active as of July 1, 2010. We requested the Borough, Block, and Lots for the 50 selected applications from the CRP Administrator. We created a schedule using the 50 randomly selected application numbers and matched them to DOF's online property tax database and the ABRP database to verify that the abatement benefits were not continued past their expiration or revocation dates.

On May 31, 2013, an exit conference was held and the preliminary letter report dated May 20, 2013, was discussed. On June 3, 2013, we submitted a draft letter report providing DOF an opportunity to respond to matters discussed herein. Your written comments indicating agreement with our findings and recommendations are attached as an addendum to this final letter report.

Sincerely yours,



Tina Kim

c: Celia Carino, Director of Internal Audit
Sara Myers, Assistant Commissioner, Tax & Parking Program Operations
Elizabeth Weinstein, Director, Mayor's Office of Operations
George Davis, III, Deputy Director, Mayor's Office of Operations



David M. Frankel
Commissioner

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June 17, 2013

H. Tina Kim
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Sent via e-mail: tkim@comptroller.nyc.gov

Re: Draft Letter Report on the Calculation and Application of the Property Tax Abatement Benefits for the Commercial Revitalization Program by the Department of Finance (Audit Number FM13-086AL)

Dear Deputy Comptroller Kim:

The Department of Finance (DOF) has reviewed the Audit on the Calculation and Application of Property Tax Abatement Benefits for the Commercial Revitalization Program (Audit Number FM13-086AL).

We are pleased the audit concluded that DOF properly calculated and applied CRP tax abatements in accordance with the program requirements.

Audit Recommendations and DOF Responses

1. Require building owners to provide sufficient, reliable supporting documentation (invoices and canceled checks) indicating the total renovation costs expended.

DOF Response: DOF agrees with this recommendation. Currently, each applicant for the abatement file a notarized Proof of Expenditure form, which certifies that the information relating to costs are accurate. At the exit conference, DOF asked specifically for any instances where the Comptroller's audit revealed that the expenditures were inaccurate or misconstrued, and resulted in benefits that should have been denied. Auditors stated that there were no indications that there were any benefits granted in error because of failure to confirm expenditures with canceled checks and invoices. While there is no evidence to support the theory that fraudulent statements were filed, DOF agrees with this recommendation and will begin to mandate submission of canceled checks and invoices in addition to the notarized Proof of Expenditure form for all new applications starting July 1, 2013.

2. Continue to revoke benefits when a Certificate of Continuing Eligibility (CCE) form is not submitted.

DOF Response: DOF has been requiring CCEs well before the commencement of this audit so we are puzzled by the recommendation. In April 2012, DOF sent out notices to all current recipients that the CCE was required for benefits to continue for tax year 2012/2013. This requirement predated the Comptroller's Office announcement of an audit. The result of the CCE requirement led to 85 non-responders having benefits revoked for the 12/13 tax year, and also resulted in reductions of 23 other recipients. Prior to the Comptroller's Office preliminary audit findings, in April 2013 DOF sent CCEs to all recipients for the second year. DOF has every intention of continuing a process that it started before learning of a review of the program, and continued before seeing the findings of the review that validated DOF's decisions made over a year ago.

3. Recoup the benefits granted to the owner of the building where the tenant vacated the property identified in this audit.

DOF Response: DOF agrees with this statement and is already doing it. The audit discusses one property at 110 Wall Street, which due to Hurricane Sandy, had vacated the premises, and as such was ineligible to continue receiving CRP benefits. DOF mandates the CCE process for examples such as these. During the CCE process from last year, we reviewed both responders and non-responders to determine if there were any lease terminations. The result of this review resulted in 10 retroactive revocations for terminated leases. DOF then imposed charges on these properties to recoup whatever money was due to the City. The property at 110 Wall Street would be identified as ineligible as of November 2012 during the CCE process taking place right now. It would be virtually impossible to monitor all properties on a continual basis to determine when leases were potentially vacated, and the City is better served when this is done as part of the annual CCE process.

Sincerely,



Celia Carino

CC: fr

Cc: Elizabeth Botwin, Deputy Commissioner, Administration & Planning
Sara Meyers, Assistant Commissioner, TAPPO
Ted Oberman, Director, Commercial Exemptions & Abatements
George Davis III, Mayor's Office of Operations