

AUDIT REPORT



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

Audit Report on Real Estate Tax Charges on Space Leased at 180 Water Street by the Human Resources Administration

MJ04-127A

June 21, 2004



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office has audited the real estate tax charges allocated to the Human Resources Administration for space leased at 180 Water Street to determine whether they were accurate and properly adjusted to account for any reassessments. The 180 Water Street Associates L.P. provided the City the use of office space at 180 Water Street pursuant to a written lease agreement, dated June 25, 1997, negotiated by the New York City Department of Citywide Administrative Services.

Our audit resulted in the findings and recommendations that are presented in this report. The findings and recommendations were discussed with City officials; their comments were considered in the preparation of this report.

Audits such as this provide a means of ensuring that City resources are used effectively, efficiently, and in the best interest of the public.

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

Very truly yours,

A handwritten signature in black ink that reads "William C. Thompson, Jr." with a stylized flourish at the end.

William C. Thompson, Jr.
WCT/fh

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*City of New York
Office of the Comptroller
Bureau of Management Audit*

**Audit Report on
Real Estate Tax Charges on Space
Leased at 180 Water Street
By the Human Resources Administration**

MJ04-127A

AUDIT REPORT IN BRIEF

This audit determined whether the landlord's real estate charges allocated to the Human Resources Administration (HRA) for space leased at 180 Water Street were accurate and properly adjusted to account for any reassessments. The 180 Water Street Associates L.P. (landlord) provided the City the use of office space at 180 Water Street pursuant to a written lease agreement (lease), dated June 25, 1997, negotiated by the New York City Department of Citywide Administrative Services (DCAS). HRA occupies approximately 430,000 square feet of rental space at the property.

Audit Findings and Conclusions

We determined that the landlord's real estate tax charges allocated to HRA were accurate and properly adjusted to account for all of the reassessments that the landlord received during the audit period. We further determined that HRA has adequate controls in place to ensure that the landlord's real estate tax charges allocated to HRA for space leased at 180 Water Street were accurate and properly adjusted to account for real estate tax credits that are listed in the DOF Fairtax database.

However, HRA does not have adequate controls in place to identify real estate tax refunds that the landlord receives as a result of Tax Commission decisions. In January 2004, HRA received a credit from the landlord totaling \$1,034,879, representing a tax refund received by the landlord for the period Tax Years 2000 through 2002. However, HRA was not aware that it was entitled to this credit until the landlord informed the agency.

Audit Recommendations

We made two recommendations to HRA. HRA should:

- Establish a control procedure to identify instances in which leased properties are reassessed due to Tax Commission action. For example, HRA could contact the Tax Commission periodically to determine whether the Commission has reassessed any of the properties that the agency is leasing.
- Follow up with the landlords of leased properties for which real estate tax credits or refunds are granted to ensure that the agency receives its proportionate share of such credits or refunds.

INTRODUCTION

Background

The 180 Water Street Associates L. P. (landlord) provided the City the use of office space at 180 Water Street pursuant to a written lease agreement (lease), dated June 25, 1997. The lease was negotiated by the Department of Citywide Administrative Services (DCAS), on behalf of the Human Resources Administration (HRA) to occupy approximately 430,000 square feet of rental space at the property.

Under the lease, HRA pays the landlord fixed rent in monthly installments. The lease also provides for the payment of additional rent to the landlord that includes operating expenses and real estate tax escalations that are above the amounts paid in the base year, Fiscal Year 1998. The focus of this audit is real estate taxes.

Pursuant to the lease, HRA is to reimburse, or receive credit from, the landlord for HRA's pro rata (100 percent) share of any increases or decreases in real estate taxes. Real estate tax escalations, for which HRA reimburses the landlord, arise when the landlord experiences increases in such costs over the base year level. Credits to HRA arise when the landlord experiences a decrease in the real estate taxes, relative to the base year.

If the landlord believes that the assessed value of the property is too high, he or she may challenge the assessment by filing a petition with the New York City Tax Commission. If the Commission finds in the landlord's favor and lowers the assessed value, the Department of Finance will adjust the tax bills for the property, and retroactively give the landlord either a credit or an actual refund for the tax reduction. If the landlord were successful in obtaining a reduction of the assessed value, HRA would be entitled to a credit—in the amount of 100 percent—of such a decrease in real estate taxes relative to the base year. The lease stipulates that the landlord should pay such credit to the tenant within 45 days of receipt.

Objective

The objective of this audit was to determine whether the landlord's real estate charges allocated to the Human Resources Administration for space leased at 180 Water Street were accurate and properly adjusted to account for any reassessments.

Scope and Methodology

The scope of this audit was July 1, 1997, through December 31, 2003.

We obtained a copy of the lease from the New York City Comptroller's Office of Contract Administration and reviewed those sections of the lease that pertained to our audit objective.

In conducting this audit, we interviewed HRA personnel and requested that they provide us with copies of any lease amendments, for 180 Water Street. We reviewed HRA payments to the landlord under the lease to ascertain the total amount paid by HRA for the base rent, and all real estate tax escalation charges.

We reviewed lease folders and examined documentation in HRA's possession (worksheets, invoices, and supporting documentation) that related to the lease payments, including real estate tax escalation charges.

We reconciled the payment vouchers listed on the City's Financial Management System (FMS) to the real estate tax and rent vouchers in HRA's lease folders.

We reviewed the DOF Fairtax database to determine the history of the assessment of this property. We contacted DOF and obtained a copy of the canceled check, which was issued to the landlord pursuant to a Tax Commission offer resulting in a real estate tax reduction for 180 Water Street.

We obtained and reviewed a statement prepared by the landlord's attorney who rendered legal services in settling and obtaining a real estate tax assessment reduction for 180 Water Street.

We reviewed the landlord's allocation methodology for allocating the legal costs for challenging the real estate tax assessment. We also reviewed the lease to determine whether the expenses associated with reducing the real estate tax assessment charged by the landlord were allowable in accordance with the lease agreement.

We asked HRA to provide documentation of these adjustments and the resulting real estate tax credit or refund due to the City. We further interviewed officials from HRA to determine what procedures HRA has for following up on subsequent real estate tax adjustments.

* * * * *

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

Discussion of Audit Results

The findings in this report were discussed with HRA officials during and at the conclusion of this audit. A preliminary draft was sent to HRA officials and was discussed at an exit conference on May 13, 2004. On May 19, 2004, we submitted a draft report to HRA officials with a request for comments. We received a written response from HRA on June 2, 2004. In its response, HRA agreed with the audit's findings and recommendations. HRA stated:

“We would like to thank you for the assistance your audit has provided us in our continuous effort to improve our operations, and trust that our corrective actions detailed above will successfully address the finding and recommendations indicated in your report.”

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

FINDINGS AND RECOMMENDATIONS

We determined that the landlord's real estate tax charges allocated to HRA were accurate and properly adjusted to account for all of the reassessments that the landlord received during the audit period. We further determined that HRA has adequate controls in place to ensure that the landlord's real estate tax charges allocated to HRA for space leased at 180 Water Street were accurate and properly adjusted to account for real estate tax credits that are listed in the DOF Fairtax database. However, HRA does not have adequate controls in place to identify real estate tax refunds that the landlord receives as a result of Tax Commission decisions.

For the period Fiscal Years 2000 through 2004, HRA paid the landlord \$9,351,971 in real estate tax escalation charges. HRA also received a credit from the landlord totaling \$1,034,879, representing a tax refund received by the landlord for the period Tax Years 2000 through 2002. However, HRA was not aware that it was entitled to this credit until the landlord informed the agency, since HRA did not have any controls in place to identify instances in which the landlord receives a real estate tax refund.

HRA Has Adequate Controls to Ensure That Real Estate Tax Charges Allocated by Landlord Are Accurate

HRA's controls over the payment of real estate taxes are adequate to ensure that the amounts paid are accurate and adjusted appropriately for tax credits received by the landlord. During the period reviewed, HRA received a credit against real estate taxes totaling \$1,034,879, representing its share of a tax refund that the landlord received for Tax Years 2000 through 2002. We determined that the amount HRA received was consistent with the terms of the lease.

HRA pays the real estate tax escalation charges separate from the monthly rent. On a semiannual basis, the landlord submits an invoice to HRA for real estate tax charges that lists the current real estate taxes, subtracting the base year taxes and any prior payments. HRA General Support Services (GSS) verifies the tax amount via the DOF Fairtax system. GSS personnel prints out the property's history detail screen from the DOF Fairtax database and reconciles the tax bill figures on the screen with the figures submitted by the landlord. If the amounts agree, HRA remits payment to the landlord. If it does not, HRA contacts the landlord to resolve the discrepancy.

We obtained and reviewed all landlord real estate tax escalation charges for the period Fiscal Years 2000-2004. We compared the tax amounts charged by the landlord with the tax amounts listed on the DOF Fairtax database. During the five-year period reviewed, HRA paid real estate escalation charges totaling \$9,351,971. We saw evidence that HRA reviewed the bills, and we verified that the tax amounts were correct.

HRA Does Not Have Controls in Place to Identify Real Estate Tax Refunds Granted

HRA does not have adequate controls to identify instances in which landlords receive a real estate tax refund due to a Tax Commission action. Accordingly, HRA is hindered in determining whether it receives all credits and monies that it is due.

HRA's share of real estate tax escalation charges paid to the landlord is based on the amount of current tax charges above the original base year amount. Accordingly, if the property is reassessed due to a Tax Commission action and the landlord receives a real estate tax credit or refund, HRA is entitled to its proportionate share of such credit or refund (for 180 Water Street, HRA's share is 100 percent), net of any allowable administrative expenses incurred by the landlord in obtaining the refund. Article 4.10, part (c), of HRA's lease with the landlord states:

"If landlord shall receive a refund of Real Estate Taxes for any Tax Year, Landlord within forty-five (45) days of receipt of such refund shall pay to Tenant, Tenant's Share (which is in effect during the Tax Year to which the applicable refund relates) of the net refund (after deducting from such refund the costs and expenses of obtaining the same, including, without limitation, reasonable appraisal, accounting and legal fees, to the extent that such costs and expense were not included in Real Estate Taxes for such Tax Year or any prior Tax Year and after adding Tenant's Share of any interest paid to Landlord by the taxing authority in connection with such refund); provided, that such payment to Tenant shall in no event exceed Tenant's Tax Payment paid for such Tax Year (except to the extent of added interest)."

In July 2003, the landlord received a tax refund totaling \$1,268,365 as the result of petitions it filed with the Tax Commission challenging the assessed value of the property for Tax Years 2000 through 2002. As a result of that petition, the assessed value was reduced a total of \$12,900,000 over the three years, resulting in the real estate tax charges for the property being reduced by \$1,268,365 for the period. The amount per year is shown in Table I, below.

Table IAmount of Real Estate Tax Refunded to Landlord

Tax Year	Original Assessed Value	Corrected Assessed Value	Amount of Reduction	Tax Rate For That Year	Tax Savings
A	B	C	D (B – C)	E	F (D x E)
2000	\$26,796,000	\$22,116,000	\$4,680,000	.09989	\$467,485
2001	28,197,000	23,637,000	4,560,000	.09768	445,421
2002	28,968,000	25,308,000	3,660,000	.09712	355,459
Totals			\$12,900,000		\$1,268,365

After making the necessary adjustments for expenses incurred in obtaining this refund, the landlord determined that HRA was entitled to \$1,034,879 of this refund. The difference between these two amounts represent expenses that the landlord deducted from the refunded amount due HRA, as shown in Table II, below.

Table IIAnalysis of Real Estate Tax Reduction Due to HRA

Description	Amount
Gross Refund	\$1,268,365
Less:	
Attorney's Fees	(190,255)
Charges by DOF:	
Late posting of tax charges	(15,548)
Real Estate tax charges FY03	(19,922)
Elevator charges	(715)
Bounced check fee	(15)
Total DOF Charges	(36,199)
Charges by Landlord:	
Maintenance for electrical services	(6,224)
Supplies	(808)
Total Landlord Charges	(7,032)
Net Refund Due HRA	\$1,034,879

We asked HRA to provide us with evidence that the charges listed in Table II should be assumed by HRA. Based on the information we received from HRA, we accept its decision to allow the above charges. The landlord and HRA agreed to apply the refund against \$1,206,492 in real estate tax charges HRA owed for January 2004 billings.

However, HRA has no procedures in place to verify instances when it is due a refund. Unlike other real estate tax credits, DOF does not record the above-mentioned refund in the tax screens that HRA reviews when it reconciles the tax bills it receives from the landlord. As a result, HRA could not know that it was due a refund unless, as in this case, the landlord notified the agency. However, to ensure that it is aware of all moneys due the agency, HRA management should establish a control procedure to identify instances in which leased properties are reassessed due to Tax Commission action. If HRA determines that tax credits or refunds are granted to landlords, it should then follow up to ensure that the agency receives its proportionate share.

Recommendations

The Human Resources Administration should:

1. Establish a control procedure to identify instances in which leased properties are reassessed due to Tax Commission action. For example, HRA could contact the Tax Commission periodically to determine whether the Commission has reassessed any of the properties that the agency is leasing.

HRA Response: “We agree with this recommendation, and as stated above, have already taken steps to follow up with landlords to whom real estate credits or refunds have been granted to ensure that we receive our proportionate share.”

2. Follow up with the landlords of leased properties for which real estate tax credits or refunds are granted to ensure that the agency receives its proportionate share of such credits or refunds.

HRA Response: “We agree with this recommendation, and as stated above, have already taken steps to follow up with landlords to whom real estate credits or refunds have been granted to ensure that we receive our proportionate share.”



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VERNA EGGLESTON
Administrator/Commissioner

DAN LEHMAN
Executive Deputy Commissioner

May 28, 2004

Mr. Greg Brooks
Deputy Comptroller
Policy, Audit, Accountancy & Contracts
The City of New York Office of the Comptroller
1 Center Street
New York, N.Y. 10007-2341

Re: New York City Comptroller
Audit Report on Real Estate Tax Charges
on Space Leased at 180 Water Street by the
Human Resources Administration
Audit No. MJ04 - 127A

Dear Mr. Brooks:

Thank you for the opportunity to respond to the referenced draft report. We were pleased to note that in general, the audit was favorable, having found that we do have controls in place to ensure that the landlord's real estate tax charges allocated to this Agency for space leased at 180 Water Street, New York, NY are accurate and properly adjusted to account for real estate tax credits that are listed in the Department of Finance's Fairtax database.

The following are our specific responses to the audit's finding and recommendations:

Auditor's Finding: HRA does not have controls in place to identify real estate tax refunds granted. Accordingly, HRA is hindered in determining whether it receives all credits and monies that it is due.

Agency's Response: We agree with this finding, and effective March 2004, we have put a new procedure in place. Under the new procedure, the Lease Payments Office of General Support Service (GSS Lease Payments) reviews reports from the Tax Commission twice per year (in September and March). These reports indicate which of our landlords have requested real estate tax reductions/refunds, and the disposition of those requests. GSS Lease Payments will then advise the landlords who have been granted reductions that it will deduct this Agency's share of the credit from rent not yet paid or request a refund on rent already paid. It will also make an appropriate adjustment to its records.

In cases where the landlord rejects the offer made by the Tax Commission and appeals to a higher court, GSS Lease Payments will follow up so as to be aware of the correct adjustments to make once a final determination has been made.

In addition, GSS Lease Payments will send a letter to all landlords, notifying them in advance that if they are granted a reduction by the Tax Commission, our share of the credit will be deducted from their rent payments.

Auditors' Recommendation #1: HRA should establish a control to identify instances in which leased properties are reassessed due to Tax Commission action. For example, HRA could contact the Tax Commission periodically to determine whether the Commission has reassessed any of the properties that the agency is leasing.

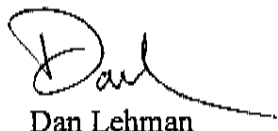
Agency's Response: We agree with this recommendation, and as stated above, have already taken steps to follow up with landlords to whom real estate credits or refunds have been granted to ensure that we receive our proportionate share.

Auditors' Recommendation #2: HRA should follow up with the landlord of leased properties for which real estate credits or refunds are granted to ensure that the agency receives its proportionate share of credits or refunds.

Agency's Response: We agree with this recommendation, and as stated above, have already taken steps to follow up with landlords to whom real estate credits or refunds have been granted to ensure that we receive our proportionate share.

We would like to thank you for the assistance your audit has provided us in our continuous effort to improve our operations, and trust that our corrective actions detailed above will successfully address the finding and recommendations indicated in your report. Should you have any questions or concerns, please contact Hope Henderson, Director of the Bureau of Audit Coordination at (212) 331-3522.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan", with a long horizontal flourish extending to the right.

Dan Lehman

c: Commissioner Verna Eggleston
Richard O'Halloran