

Expenditure of Payments in Lieu of Taxes

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Good morning. My name is James Parrott and I am the Deputy Director and Chief Economist of the Fiscal Policy Institute. The Fiscal Policy Institute (FPI) is a nonpartisan research and education organization that focuses on the broad range of tax, budget, economic and related public policy issues that affect the quality of life and the economic well-being of New York City and State residents. Thank you for the opportunity to present FPI's views on this topic.

In our opinion, there is no doubt that the City Charter and State law require legislative appropriation of payments in lieu of taxes (PILOTs). Section 227(a) of the Charter states: "No money ... shall be paid from any fund under the management of the city, or any fund under the management of any agency or officer of the city, or any other entity the majority of the members of whose board are city officials or are appointed directly or indirectly by city officials, *except in pursuance of an appropriation by the council* or other specific legal authorization (emphasis added)."

In the portion of the State General Municipal Law dealing with industrial development agencies, section 874(3) states: "Payments in lieu of taxes received by the agency shall be remitted to each affected tax jurisdiction within thirty days of receipt."

The Mayor clearly has the authority under the State General Municipal Law "[t]o enter into agreements requiring payments in lieu of taxes" (section 858(15)). If a Mayor also had the authority to spend PILOT revenues unilaterally, he or she might then be led to enter into such agreements for the purpose of generating more revenues solely under his or her control. This is clearly untenable.

Intro. No. 584 reaffirms that no PILOT funds be expended without Council appropriation, and requires the Mayor to provide a monthly report on the collection and use of all such payments in lieu of taxes.

Considering the current extent and amount of PILOT payments in New York City, and their extensive use in connection with economic development projects, including many that receive little public attention or oversight, a monthly PILOT report would help fill a noticeable gap in

city information. In particular, public understanding of the city's economic development actions would be aided by knowing: "the amount of the real property or other tax for which the person or entity paying the PILOT would have been responsible were the property or transaction not the subject of the tax exemption and the difference between such amount and the PILOT" (Intro. 584, section 3, requirement 4).

The main focus of Intro. 584 is how PILOT revenues are spent. But the very existence of PILOTs represents a tax break. An entity agrees to make a PILOT payment in exchange for a reduced tax liability, whether it's the real property, sales or mortgage recording tax. While the Mayor has the authority to grant tax breaks, the Council and the public should be fully aware of the extent and the fiscal implications of that practice. And I would urge the Council to use its influence to steer the city clear of excessive and unnecessary tax breaks. Not only do such tax breaks undermine the city's tax base, but since they most often go to large and well-endowed corporate interests, they unduly shift the tax burden to small- and medium-sized businesses and renters and homeowners.

Intro. 584 was a response to the Council's concern about how the Mayor has proposed to come up with a city subsidy of \$300 million to help pay for the New York Sports and Convention Center (a.k.a., the Jets Stadium) on Manhattan's Far West Side. I would urge the Council to go beyond the scope of Intro. 584 and look carefully at the broader situation regarding PILOTs and their role in the city's economic development, and in the West Side development in particular. PILOTs have factored heavily into the Mayor's proposed financing for various elements of the West Side.

We are particularly concerned about the proposed financing for the Hudson Yards Infrastructure Corporation (HYIC). The HYIC is the city-created entity that will borrow \$3 billion to finance the construction of the #7 line extension, the mid-block boulevard between 10th and 11th Avenues, and parks and other physical amenities on the Far West Side. The Council addressed this financing in part in its resolution adopted on January 19 at the time of Council approval of the Far West Side re-zoning.

Initially, Mayor Bloomberg had tried to maintain a fiction that the Hudson Yards project was "self-financing", i.e., that it would not come at the expense of the city budget, that the massive borrowing by the HYIC would not in any way jeopardize the city's credit standing, and that revenues generated by the project, e.g., through the sale of development bonuses and from PILOT payments received from commercial developers would be more than sufficient to repay the sizable up-front public investment. The PILOT mechanism built in substantial property tax subsidies to office building developers and promised to insulate them from property tax rate increases.

The PILOT arrangement was needed, it was argued, to provide a revenue stream negotiated by the city's economic development corporation outside of the city budget process that could be dedicated to debt repayment.

In its agreement with the Mayor to modify the financing, the City Council significantly increased the amount of affordable housing and agreed to the use of \$1B from the city operating budget as a way to keep down the overall borrowing costs. The project is now clearly not "self-financing". The Council's financing resolution did not address the issue of the PILOT mechanism or whether property tax breaks would be provided to commercial developments.

However, several Hudson Yards documents from the City have described the City's intent to provide steep property tax subsidies to developers of commercial sites. It is not clear if the subsidy component is still part of the financing plan. For a project that entails the construction of 24 million square feet of office space, building in property tax breaks from the start would permanently institutionalize property tax breaks for Manhattan commercial projects. This would likely seriously compromise the city's property tax base. Homeowners and other commercial property owners would then be forced to bear the property tax burden that will be lessened for office buildings on the West Side.

The property tax is by far the largest New York City tax and supplies nearly half of all city tax revenues. The city would be far better off dropping the PILOT provision and instead making new office developers pay taxes on the full value of their property. The financing plan approved by the Council already permits the use of general tax revenues to pay the debt service on HYIC debt. Dropping the commercial property tax subsidies would prevent the erosion of the property tax base and could help wean Manhattan developers from an excessive reliance on public subsidies. At a minimum, the bond documents that accompany the sale of HYIC debt (which could occur as early as this spring) should not make reference to a subsidy-based PILOT mechanism for commercial properties. As the elected officials controlling the HYIC, the Mayor, the City Council Speaker and the City Comptroller should assure taxpayers now that commercial developers on the future West Side will pay their own way.

It is important to establish that PILOT monies require legislative appropriation and to require monthly reporting on all PILOT funds. It is equally important to closely monitor mayoral actions with respect to granting tax breaks to prevent their unwise and unnecessary usage. The risk to the city budget is as great or greater. And in this instance, the City Council Speaker and the Comptroller should use their positions on the board of the HYIC to prevent the erosion of the city's property tax base.

Thank you for this opportunity to share our views on this important topic.

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