Alexander Heil, PhD
Practicing Economist and Adjunct Faculty at Columbia University and New York University
Email: Ah3182@columbia.edu
Phone: 347-616-9039

Dear Member and Chair of the New York State Public Subsidy Board,

My name is Alexander Heil, PhD, practicing applied economist and adjunct faculty member at both Columbia University and New York University. For more than a decade, I held the position as Chief Economist for the Port Authority of NY & NJ. I am presenting this testimony on my own behalf, not representing any organization, and as a practitioner with more than two decades of experience in economic and cost-benefit analysis.

Thank you for allowing me to testify about calculating future tax savings and calculating other funds. In particular, the New York State Public Subsidy Board is seeking guidance on three related issues:

- When and how to use Present Discounted Value in Calculating Future Tax Savings.
- The average annual increase in property taxes in New York City vs. New York State.
- How to Calculate the Value of Tax Savings from PILOT Programs.

In my brief remarks, I will focus on the first point of how to use and apply a discounted cash flow analysis and the choice of an appropriate discount rate.

Financial or economic analyses such as the assessments of projects or policies frequently depend on the projections of costs, benefits, or disbenefits over a multi-year period. In case of infrastructure projects, the timescale of the analysis might be the expected useful life of an asset; a policy analysis might rely on a sensible assessment of what period should be the basis for the evaluation. Regardless of the specific circumstances, any multi-period analysis relies on proper discounting to incorporate what is called “time value of money”.

Cash or benefit flows received by or accrued to stakeholders in the future need to be adjusted to account for the opportunity cost of funds and time preferences. The typical analytical approach is to first project financial or economic impacts on an annual basis and then apply appropriate discount factors to determine a net present value today or for the starting point of the analysis. This is a standard approach that should be followed in cases of cost-benefit or other financial analyses. That includes the projection of future costs, investments, or the value of future tax savings.

When calculating present values of benefits, disbenefits, or costs, the choice of the appropriate discount rate is critical. A higher discount rate in a sense diminishes future financial flows while a lower discount rate results in a higher present value of future financial or economic impacts. For private sector analyses, analysts typically choose the weighted average cost of capital (WACC) as the appropriate discount rate. The WACC is the opportunity cost of obtaining financial resources for the private entity. It is typically a weighted average between equity and debt borrowing rates.

In the case of public sector analyses, the choice of an appropriate discount rate is different. In social cost-benefit analysis, for instance in an analysis that addresses very long-term investments to mitigate climate change impacts, discount rates should be relatively low, usually well below market borrowing rates, to establish inter-generational equity and assure that future financial or economic impacts are not ignored in the analysis because they occur too far in the future. The Federal Office of Management and Budget has provided guidance on the appropriate choice of discount rates in its Circular A-94.

In the case of financial or fiscal assessments for a municipal or state entity, it might make sense to resort back to the opportunity cost of obtaining funds, i.e. the long-term borrowing rate using fixed rate debt instruments. In the case of NY State, an appropriate discount rate for multi-year projects would be equal to the current 30-year bond yield that can be achieved when additional funds are obtained in financial markets. If yields for specific debt durations that match the timeframe of the analysis are available, then those might be preferred compared to the 30-year rate.

Overall, regardless of the specific circumstances, it is important to apply an appropriate discounting methodology, including a well-chosen time horizon and discount rate, when analyzing financial or economic policies or projects.

However, applying such an analytical approach might not address the equity considerations, i.e. while the discounted value of future net financial flows might be positive, it might not be clear which stakeholder group is likely to experience the greatest benefit when compared to other groups in society. Hence, paired with a traditional discounted cash flow analysis, it is also recommended that the distribution and equity of financial or economic benefits is transparently considered.

Thank you again for allowing me to share some thoughts and considerations with you as part of this testimony. I shall be available if any questions on my submitted testimony arise in the future.

Best,

Alex Heil, PhD

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September 16, 2024

Commissioner Roberta Reardon
NYS Department of Labor
W.A. Harriman Campus
Building 12, Room 500
Albany, NY 12226

Re: Request for Agency Testimony on New York State Labor Law Section 224-a

To Commissioner Reardon,

We are in receipt of your request for information regarding prevailing wage requirements pursuant to New York State Labor Law 224-a. First and foremost, I would like to thank you and the rest of the Public Subsidy Board ("the Board") for the opportunity to address this critical issue that significantly impacts economic and industrial development throughout our state.

The Town of Babylon Industrial Development Agency ("the Agency") is grateful that the Board has focused on PILOT agreements to examine how public funding is defined and see that prevailing wage requirements are met when such agreements are made. This topic has been extensively discussed by stakeholders and experts at public hearings, specifically regarding the possibility of utilizing a project's net present value (NPV) to determine if it meets the thirty percent (30%) threshold for public funding as mandated by the New York Labor Law Section 224-a. I submit this testimony to help the Board determine the best method of calculation for such benefits.

This Agency serves as the economic engine for the Town of Babylon, a town of over two hundred and eighteen thousand (218,000) people here on Long Island. Industrial development is the backbone of our town, and the effects of its twentieth-century boom are still felt today. The presence of the aerospace industry during World War II, with manufacturers such as Fairchild Aircraft, once provided substantial employment and economic stability to the area during the war. However, as these industries declined, Babylon Town faced significant economic challenges threatening this newfound prosperity.

Formed in 1973 through state legislation, the Agency provided a tremendous boost to a region struggling to adapt to the postwar economy on Long Island. Throughout its history, the Agency

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has attracted new businesses, supported local enterprises, and spurred innovation. The Agency helped transform Babylon Town into a model suburban community that balances industrial heritage with modern development by fostering a dynamic economic environment.

Today, the Town of Babylon is one of the more culturally diverse municipalities on Long Island and continues to carry with it a blue-collar, working-class mentality. The Agency, and our partners in town government, continue to work towards our number one goal: creating and retaining good paying jobs for residents. Time and time again, our town has stood with organized labor to make this a reality. According to a recent report by the New York State Comptroller, the Agency's efforts have recently retained seven thousand one hundred and fifty-six (7,156) jobs while adding more than sixty-two hundred (6,200) positions.

This Agency stands as a testament to what an organization like ours can achieve, showcasing successful suburban revitalization, sustainable economic growth, and workforce development. The Town of Babylon's Wyandanch Rising initiative is an example of an Agency project that has yielded local economic prosperity. Wyandanch Rising saved over thirty-five million dollars ($35 million) through Agency benefits to revitalize a previously blighted downtown area. Without the Agency's support, this area may have remained in the same condition it was fifteen years ago.

The Agency is concerned about any mandated changes to evaluation methods that have made such progress possible. The implementation of a "one size fits all" approach across the state may adversely affect both these ongoing efforts and future projects. Our calculation of PILOT benefits is tailored to our region's unique characteristics and upholds the quality of life of our residents and neighbors. The Agency's approach includes:

1. **Estimated Assessed Value:** Derived from the Town of Babylon Assessor's Office for the property post-project completion.
2. **Percent of Taxes Paid:** Typically, a straight-line increase each year.
3. **Future Tax Rate Forecast:** Increased by two percent (2%) annually.
4. **Benefit Calculation:** Savings are calculated as the difference between PILOT and full taxes, where full taxes would be a one hundred percent (100%) tax payment rate.

This calculation method is estimated using real-world data, recent tax information, and our understanding of local property assessments and tax calculations from the time the parties made an agreement. The Agency believes our method provides consistency and stability over the agreement's duration. This approach also considers the diverse conditions within our region, balancing these with broader economic development goals.

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During our evaluation process, the Agency utilizes analysis from Grow America, formerly the National Development Council (NDC), to review applications submitted by developers looking to obtain financial incentives. In their analysis, Grow America considers a project's expenses and revenues in determining whether a project would be feasible without Agency assistance. In this analysis, Grow America makes great efforts to look at whether a developer would be unjustly enriched in receiving the incentives. We believe that this is an essential component of our fiduciary responsibility. The Agency is concerned that a mandated calculation model could substantially impact these feasibility studies and create an unnecessary barrier to economic development in our area.

New York State's vast and diverse landscape includes numerous IDAs with varying operational environments and project needs. Applying a uniform calculation statewide could fail to address the vast differences in needs of IDAs across New York and undermine the stability of funding and hinder further development efforts. While we all share common objectives, the specific challenges and opportunities can differ significantly between regions, especially when compared to New York City. The Agency acknowledges and appreciates the approach taken by their IDA, though the Agency recognizes what works for New York City may not be directly applicable elsewhere due to differing operational conditions and unique regional features.

Over the past five years, the Agency has completed various critical housing and industrial projects vital to the Long Island economy. To explore the differences between calculations, the Agency analyzed two comparable housing projects and reviewed how their benefits would differ when using an NPV calculation compared to the Agency's standard method. Additionally, the Agency studied two other pieces of data: changes in local tax rates since 2013 and the number of Agency projects that ran behind schedule or increased their budget. A summary of our analysis can be found in Appendix B.

Should the Public Subsidy Board calculate PILOT agreements using present value, there are several factors that can vary significantly by project. One such factor is the risk-free rate chosen for the present value calculation. Typically, the rate of the United States 10-Year Treasury rate is used. It is worth noting that a rate like this can fluctuate between the time the project is first analyzed by our office and the date the project closes. The Agency found that if the approximate rate at the time of this letter was used, four percent (4%), instead of the rate during analysis last month, four and twenty-eight hundredths percent, (4.28%), the total PILOT benefit for one particular project would increase by over one hundred and fifty thousand dollars ($150,000). If a three-month treasury rate was used instead, this difference would be approximately two hundred

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and sixty-four thousand dollars ($264,000). If used, agencies such as ours would need additional guidance to determine what the proper rate should be and when it should be used.

Another factor that would have a significant impact on any PILOT benefit calculations by the Board is the determination of which tax rate to use to estimate the yearly increase in taxes. The Agency's calculation assumes property tax rates increase by two percent (2%) a year, an approximation of the state comptroller's allowable levy growth factor. However, the Agency recognizes the actual tax cap calculation is far more complicated than this and considers several factors such as PILOTs receivable and court orders. Additionally, the actual rate that tax rates go up over time can vary even within the Town of Babylon's own borders. For example, the mean annualized growth rate for taxes paid by a project in the Half Hollow Hills School District was two and eighty-three hundredths percent (2.83%) over the last eleven (11) years. That same project in the Wyandanch School District, located just five miles away, is one and sixty-seven hundredths percent (1.67%). A uniform calculation method may disregard these differences within our region and may disproportionally affect PILOT benefits under our purview.

With that, attached you will find three appendices: one containing our response to the Board's specific questions, another with supporting figures, and another with a news article demonstrating two recent recaptures of benefits that the Agency successfully pursued.

The Agency kindly urges the Public Subsidy Board to proceed cautiously and consider the ramifications for economic development across our state. Maintaining a stable, consistent approach will better support economic development efforts and ensure that incentives are effectively applied to benefit our communities.

Thank you for your consideration in this matter. A careful and nuanced approach to evaluating tax savings will enhance our ability to foster economic development across New York State and protect the wages of workers throughout the state.

Sincerely,

Thomas E. Dolan

Thomas E. Dolan
Chief Executive Officer

Attached:

Appendix A – Responses to Specific Questions from the Board
Appendix B – Supporting Figures
Appendix C – Example of PILOT Recapture by the Agency

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Appendix A

Responses to Specific Questions from the Board

1. What conditions must be met and maintained to satisfy a PILOT agreement for the various types of projects, manufacturing facility, warehouse, retail development, housing development, and mixed-use development?

To satisfy a PILOT (Payment in Lieu of Taxes) agreement, specific conditions must be met and maintained based on the type of project:

1. Manufacturing and Warehouse Facilities:
The Agency evaluates several factors, including total investment, construction costs, land and equipment acquisition costs, and the total number of employees. The applicant must meet the metrics represented to the Agency during the PILOT's term. If the applicant falls below these thresholds, the PILOT agreement can be terminated. Additionally, if the shortfall occurs within a certain timeframe after closing, a claw back provision may be initiated to recapture benefits.

2. Retail Projects:
The Agency is generally prohibited from incentivizing retail projects unless they fall within specific exemptions. These exemptions are narrowly defined, and each project must be carefully evaluated to determine eligibility.

3. Housing Development and Mixed-Use Projects:
The Agency seeks to support housing development, particularly those aligned with the Town of Babylon's revitalization efforts. Similar to manufacturing and warehouse projects, we assess total investment, construction costs, land and equipment acquisition costs, and the number of employees. Additionally, our affordable housing guidelines require a certain percentage of the housing units to be developed at affordable levels to ensure broader community benefits.

In all cases, compliance with the stated project scope and represented metrics is critical. Failure to meet these conditions can result in termination of the PILOT agreement and potential recapture if within the specified period post-closing. The Agency's goal is to ensure that the economic benefits projected during the application process are realized and maintained throughout the PILOT term.

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2. Under what circumstances are PILOT agreements rescinded and can you point to any examples where this occurred?

Please see the below examples, which detail the event of default and resulting recapture. In addition, Appendix C contains an article that appeared in the press earlier this year detailing the claw back process for two of the businesses mentioned here.

MC Packaging Corp. / Marc-Robert Industrial LLC

Terminate Date	January 25, 2023 (PILOT year 6 of 15)
Event of Default	In the first and second quarters of 2022, the company reported seventy-nine (79) employees. In the third and fourth quarters of 2022, the company reported four (4) employees. The Agency had also received a notice under the Worker Adjustment and Retraining Notification (WARN) Act, dated March 31, 2022, which stated "the business will be permanently closing June 30, 2022 affecting 88 employees." Pursuant to the company's lease and project agreement with the Agency, the company was required to maintain, at a minimum, one hundred and six (106) full-time equivalent employees throughout the term of the lease. The low employment numbers of the year constituted a default of the lease, and the Agency sought to terminate the agreement.
Recapture of Benefits and Settlement	Under the lease agreement, the Agency sought to recapture 75% of benefits given to the company, totaling \$953,327.95. This recapture would have included \$805,390.45 from the PILOT and \$147,937.50 from the Mortgage Recording Tax Exemption. The Agency and the company entered into a settlement agreement instead, where the Agency received a sum of \$700,000, equal to an approximately 55% recapture of benefits. This sum includes \$591,374.00 from the PILOT and \$108,626 from the Mortgage Recording Tax Exemption.

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Kelvin L.P. / Hadar Real Estate Co., LLC

Terminate Date	October 20, 2023 (PILOT year 8 of 12)
Event of Default	In 2023, the company was looking to reduce operating costs by securing a tenant to sublease a portion of the facility. This event would constitute a default under the lease and project agreement, however, the company and the Agency agreed to settle.
Recapture of Benefits	The Agency recaptured 60% of benefits given to the company, totaling $87,218.71 This recapture includes $80,714.41 from the PILOT, $6,120.00 from the Mortgage Recording Tax Exemption, and $384.30 from the Sales and Use Tax Exemption.

Planterworx, Inc. / 590 Oak Family Limited Partnership

Terminate Date	February 15, 2023 (PILOT year 4 of 12)
Event of Default	The Agency found 1) the company failed to file ST-340 forms with New York State in 2020 and 2021, 2) the company employed only 17full-time employees in 2020, which was 20 employees less than the minimum required by the lease and project agreement, 3) the employment reported in 2021 was inconsistent with employment figures listed in the quarterly NYS-45 reports, and 4) the company failed to sign and notarize Annual Employment Reports.
Recapture of Benefits	Under the lease agreement, the Agency recaptured 100% of benefits given to the company, totaling $254,877.13. This recapture includes $117,664.11 from the PILOT, $17,531.00 from the Mortgage Recording Tax Exemption, and $119,682.02 from the Sales and Use Tax Exemption.

3. Are there any Land Value Tax jurisdictions in New York State and if so, are PILOT agreements different in those jurisdictions?

To the best of my knowledge, there are no jurisdictions in New York State that use a Land Value Tax exclusively. New York State, including the Town of Babylon, operates under an ad valorem taxation system, which considers the full market value of a property, including both the land and any improvements on it.

Historically, during colonial times, property taxes in New York were effectively a form of land value taxation because most property consisted primarily of land. As property types were physically developed over time, the tax system evolved to include the value of improvements as well.

Hypothetically, if the Town of Babylon were to adopt a sole land value tax system, it could lead to a greater mix of property uses, potentially increasing development density and all the related consequences that come with it. Under this system, PILOT agreements would likely be based on the sole value of the land, rather than the value of land and improvements. Businesses or developers entering into a PILOT agreement would make payments based on the assessed land value, regardless of any buildings or developments made on the property. Incentives would most likely shift toward encouraging the development of underutilized or vacant land, potentially leading to more intensive land use and a denser landscape.

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Appendix B

Supporting Figures

Comparison of Babylon IDA Projects Using Present Value

The table below shows two anonymized projects and illustrates how different rates assumed in the present value calculation can affect the overall PILOT benefit.

Project A

A 90+ unit affordable senior housing development with a total project budget of $40,500,000. PILOT benefit assumes tax rates increase 3% each year.

Rate 1 = 1.73% – The 10-Year Treasury rate at the time the project closed.
Rate 2 = 4.00% – The approximate 10-Year Treasury rate at the beginning of August 2024.

		Difference Compared to Rate 1
PILOT Benefit as is:	$11,288,392	+$2,863,49 (+7% of project budget)
PILOT Benefit present value, assuming Rate 1:	$8,424,643	-
PILOT Benefit present value, assuming Rate 2:	$5,970,508	-$2,454,134 (-6% of project budget)

Project B

An 81-unit affordable housing development with a total project budget of $50,740,534 which has not yet closed. PILOT benefit assumes tax rates increase 2% each year.

Rate 1 = 4.28% – The 10-Year Treasury rate of July 24, 2024.
Rate 2 = 4.00% – The approximate 10-Year Treasury rate at the beginning of August 2024.
Rate 3 = 3.80% – The approximate 3-Year Treasury rate at the beginning of August 2024.

		Difference Compared to Rate 1
PILOT Benefit as is:	$7,611,550	+$3,678,823 (+7.25% of project budget)
PILOT Benefit present value, assuming Rate 1	$3,932,727	-
PILOT Benefit present value, assuming Rate 2	$4,083,512	+$150,784

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PILOT Benefit present value, assuming Rate 3	$4,196,647	+$263,920

Comparison of Tax Rate Increases of Babylon IDA Projects

The table below shows three projects near the expiration of their PILOT. Each project received their first real estate tax abatement in the 2013-14 tax year and will conclude following the 2024-25 tax year. The average annualized growth rate was measured for each, representing the equivalent annual increase in real estate tax rates over the duration of the PILOT.

Project	School/Library District	Net Change in Tax Rate Since PILOT Start in 2013-14 (%)	Average Annualized Growth Rate (%)
1	Half Hollow Hills	35.91	2.83
2	East Farmingdale	23.95	1.97
3	Wyandanch	19.96	1.67

Projects Deviating from Original Time and Budget Estimates

The table below outlines Agency projects that ran behind schedule or over budget over a two-year period.

Year Closed	Total Number of Projects	Number of Projects Delayed	Number of Projects Exceeding Original Budget
2020	8	0	0
2021	11	3	1

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Appendix C:

Example of PILOT Recapture by the Agency

Below is a recent example of the Agency seeking to recapture benefits from two companies that did not maintain their commitments under their PILOT agreement. This article appeared in the print edition of Newsday (Long Island Edition) on Wednesday, February 7, 2024. A digital version of the article is available at this link: https://www.newsday.com/long-island/towns/babylon-industrial-development-agency-uo6zy260.

BABYLON TOWN

IDA sues two firms to get back tax breaks

BY DENISE M. BONILLA
denise.bonilla@newsday.com

The Babylon Industrial Development Agency is suing two companies to try to recover more than $1.2 million in tax breaks after the businesses failed to meet their end of the deals, according to agency officials.

The cases are the first time in five years the agency has sued to try to recapture tax benefits, according to IDA spokesman Greg Gordon.

Agreements between the IDA and companies include a clause that spells out how much of the benefits must be returned if the company doesn't fulfill its promises.

The IDA is suing Marc-Robert Industrial LLC/MC Packaging Corp. Facility for $953,327.

MC Packaging Corp. Facility, a box manufacturer, previously filed paperwork with the state saying it would close its doors for good at the end of June 2022, Newsday reported.

Separately, the IDA also is suing R.R. 590 Oak Family Limited Partnership, a manufacturer of outdoor planters, for $254,877. The agency filed both cases last year in state Supreme Court in Suffolk County.

Documents the IDA provided show the box manufacturer signed a payment in lieu of taxes, or PILOT, deal in October 2017, agreeing to a 15-year property tax abatement starting at 40% of the estimated taxes and increasing by 4% each year.

The company promised to hire 106 full-time employees at its East Farmingdale building, according to Gordon. The IDA estimated the company's tax savings at more than $1 million.

IDA CEO Tom Dolan said the agency found out in an April 2022 Newsday article that the box manufacturer would be closing within months and terminating 88 jobs.

"We tried to work with them but it became evident we needed to terminate the deal for the taxpayers of the town to make sure we were living up to our fiduciary responsibility," Dolan said.

Attorney Ken Silverman, who represents the company's interests, didn't immediately comment when reached.

The outdoor planter company signed a 12-year payment in lieu of taxes deal with the IDA in September 2018, with a break starting at 40% of the estimated property taxes and increasing by 5% per year.

IDA officials said the company, which does business as Planterworx, is still believed to be operating out of its Copiague building. The estimated tax savings for the company, which promised to hire at least 31 full-time employees, was $394,781.

The company didn't file annual employee and state tax forms in 2020 and 2021, and 2022 filings showed they were short on employment numbers, Dolan said.

Planterworx CEO Randy Rollner didn't return requests for comment and court records don't show an attorney for the company.

Dolan said the agency works with companies who are struggling to avoid recapture and it rarely leads to a courtroom.

But Richard Kessel, former head of the Nassau County Industrial Development Agency, said such lawsuits occasionally are necessary.

"A lot of people view the IDAs as just giving away money," he said. "The IDA has to protect its integrity. Otherwise it's got problems with its own taxpayers."

newsday.com NEWSDAY, WEDNESDAY, FEBRUARY 7, 2024

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Draft Response to Public Subsidy Board

On May 20, 2024, the New York State Public Subsidy Board held a public hearing and received witness testimony on the topics of Calculating Tax Savings and Calculating Other Funds. The Board, which is tasked with determining if a private construction project is covered by prevailing wage requirements pursuant to NYS Labor Law 224-a, is seeking further information regarding the following sub-topics:

- When and how to use Present Discounted Value in Calculating Future Tax Savings.

Projects requesting tax incentive are presented to the ECIDA in the pre-construction phase of the project. The request for tax incentives contains details of the project including a description of the improvements (new construction, renovation, expansion), the location of the project, the construction cost estimates and planned use of the space along with other data. ECIDA staff estimates the post construction assessment value to the best of their ability based upon the limited data available. ECIDA staff will utilize various methods to determine a pre-construction assessment value that includes but is not limited to: contacting the local assessor, reviewing comparable properties. It is important to note that the assessment value and thus the PILOT value are estimates and cannot be accurately determined until the project construction is completed and the local assessor finalized the assessed value of the improvement. While the IDA does its best to estimate the PILOT values, the actual PILOT bills and savings can and do vary once the project is completed and assessed by the local assessor. The future property taxes owed under the PILOT term are calculated using: 1) the estimated post construction assessment value, 2) the current tax rates for the location, and 3) the yearly PILOT payment abatement % which decreases over the term of the PILOT. A Present Discounted Value (PDV) of the future property taxes owed over the term of the PILOT is calculated using a Cost Benefit calculator produced by the MRB Group. The present value discount factor is 2%. https://mrbgroup.com/resources/cba/

- The average annual increase in property taxes in New York City vs. New York State.

To calculate the increase in property taxes a further study of individual property tax bills would need to be undertaken, as many communities undertake re-valuation which can greatly impact tax rates and skew analysis of tax rate data. We did attempt to provide some insight into the data by looking at a snapshot of tax rates. The following findings may indicate general trends in the tax rates, but to accurately determine the increases or decreases in property tax payments, a further analysis of the tax levy and bills would need to be undertaken.

Analysis of the last 3 to 5 years of tax rate data and generally found the following.

Across Town, School, City, Village and County Tax rates, the rates have not dramatically increased year over year. Most of the tax rates have been relatively flat with some minor decreases year over year on average decreases were typically around 1% or less. Some taxing jurisdictions tax rates exhibited minor increases, on average year over year ranging from a high of 4% to increases of less than 1% in the rates.

Overall tax rate data seemed to indicate minor fluctuations year over year, but on average demonstrated relatively small increases.

- How to Calculate the Value of Tax Savings from PILOT Programs.

At the time of an IDA incentives approval, construction has not commenced so there is no improved structure to assess. IDAs use their best efforts to establish a reasonable assessment - see question & answer above re: When and how to use Present Discounted Values in calculating future tax savings. Note that post construction, an Assessor, certified by the NYS Office of Real Estate Property Tax Services determines the final assessment which is then used by the taxing jurisdiction to calculate and bill the actual PILOT payments. Also note there are many as-of-right- real property tax abatements (see Sections 485 and 487 of the New York Real Property Tax Law, New York City ICAP abatement program) providing real property tax abatements over up to a 30-year benefit period that come under Section 224-a of the New York Labor Law. These are not PILOT programs and do not entail any discretionary consideration with respect to approval of same, and these abatement programs face the same challenges with respect to determining an assessed value, future tax rates, and discount rates, as IDAs face. It is unclear what the provider of these abatement programs uses to make their tax savings calculations. All these abatement incentives share one common element, in that the value of real property tax savings cannot be accurately calculated at the time the construction work is to be performed.

Furthermore, the Board identified some specific questions:

1. What conditions must be met and maintained to satisfy a PILOT agreement for the various types of projects, manufacturing facility, warehouse, retail development, housing development, and mixed-use development?

Typically, IDA incentivized projects (unlike the as-of-right abatements as referenced above) are required to meet and comply with the agreed-upon goals identified as Material Factors by an IDA board. The ECIDA Board, by way of example, requires that projects meet certain investment criteria, employment retention and creation commitments, adhere to a Local Labor Construction Workforce Certification Policy, a Pay Equity Policy, and an Unpaid Real Property Tax Policy.

2. Under what circumstances are PILOT agreements rescinded and can you point to any examples where this occurred?

Failure to comply with these Material Factors may result in the termination and or recapture penalty of a PILOT agreement.

To confirm and verify compliance with employment commitment, the Agency requires projects to submit employment data quarterly. Additionally, during the construction period, projects must provide quarterly local labor reports to demonstrate adherence to the Local Labor Workforce Certification Policy.

If a project falls short of its job creation or retention commitments, the ECIDA staff notifies the ECIDA President/CEO, the Chair of the ECIDA, and the Chair of the ECIDA Policy Committee, providing the project with an opportunity to respond. The Chair of the ECIDA will then determine to initiate a proceeding to determine whether to terminate, modify, or recapture ECIDA benefits. After a decision is made, the project is notified and given the chance to be heard and appeal the determination.

In 2023, a PILOT agreement was terminated due to a project's tenant declaring bankruptcy and closing its business. Another PILOT was terminated because the project failed to meet the required job creation and retention goals outlined in the approved ECIDA benefits. Additionally several projects paid recapture penalties as a result of employment shortfalls.

In addition, failure to make PILOT payments is a default and results in the termination of a PILOT agreement.

3. Are there any Land Value Tax jurisdictions in New York State and if so, are PILOT agreements different in those jurisdictions? –

Erie County, NY is the geographic territory serviced by the ECIDA. Within Erie County, property contains 2 assessment components: a "land" value and an "improvements" value. The PILOT impacts the increase to the improvements component of the assessment brought about by the project investment. No discount / abatement is given to the land value or to the various special district taxes included in the property tax bill calculations.

September 18, 2024

Rebecca Reardon, Chair
Public Subsidy Board
New York State Department of Labor
Via email

RE: Comments on Calculating PILOT payments and related PILOT questions

Dear Chairwoman Reardon:

Thank you for the opportunity to comment directly to the Public Subsidy Board regarding PILOT projections and related requirements. The Tompkins County Industrial Development Agency (IDA) delivers economic incentives to business and industry to diversify and strengthen Tompkins County's tax base and enhance community vitality, by supporting job creation, business and industrial development, and community revitalization.

Calculating Future Tax Savings

In Tompkins County, the IDA offers standard 7- and 10-year PILOT schedules to eligible projects as outlined in its Uniform Tax Exemption Policy. The PILOT schedule abates a percentage of taxes that declines in equal increments over the term of the incentive. The calculation of future tax savings is largely based on two variables: the tax rate and the value of the improvement each year. The IDA uses an estimated percentage increase in tax rate and value each year to project future payments and corresponding savings that is based on historical increases in both tax rates and values that staff review periodically and adjust as necessary. Staff also periodically compare actual tax payments to those projected at time of application and generally, the two data points are very similar. This process acts as a check and balance to ensure that the assumptions that are being used to project future payments are in line with the actual payments over time. If the projected and actual payments start to diverge, staff can assess and adjust the assumptions for future projects. At any time during the term of a project, staff can calculate how much has cumulatively been paid and abated. If we were to use a net present value calculation it would ultimately limit our ability to aggregate actual savings across projects that each have different streams of payments, start dates, and end dates.

The average annual Increase In property taxes In New York City vs. New York State

The average annual increase in property tax rates varies widely across the many taxing jurisdictions in Tompkins County. As an example, the tax rate in the City of Ithaca declined 8.6% over the past ten years, while the tax rate in the outlying Town of Enfield declined 47% over the same term. The other variable in calculating tax payments is the taxable value. Housing values have increased much more rapidly in the City of Ithaca than the outlying towns and villages. Commercial and industrial values have remained somewhat steady throughout the county. IDA's, serving their local communities are best equipped to track tax rate and taxable value changes and adjust their projections accordingly.

What conditions must be met and maintained to satisfy a PILOT agreement for the various types of projects, manufacturing facility, warehouse, retail development, housing development, and mixed-use development?

All projects must be completed as outlined in the application and the project agreement including the legal certifications on the applications, comply with the IDA's Local Construction Labor Policy, and comply with annual reporting requirements. Industrial projects must meet job creation and retention goals as well as comply with the IDA's Diversity and Inclusion Policy. Housing projects must comply with the Workforce Housing Policy either providing 20% affordable units on site or pay a per unit fee into a local housing development fund to support affordable housing. Mixed-Use projects that receive an enhanced incentive must comply with the IDA's Enhanced Energy Incentive Policy, ensuring new construction projects are significantly more energy efficient than required by local building codes.

Under what circumstances are PILOT agreements rescinded and can you point to any examples where this occurred?

Pursuant to Section 874 (10)-(12) of the General Municipal Law, the Tompkins County IDA has an adopted Project Recapture and Termination Policy. The policy lays out a process for reviewing projects each year and making determinizations for the terminations and/or recapture of incentives for failure to achieve any requirements or metrics set forth in the application and the approval documents is subject to terminations. The IDA generally considers extenuating circumstances when making determinations. For example, if an industrial applicant fell $1 million short of a $38 million expansion and created 5 less jobs than the 300 projected as a result the disruption in supply chain during COVID, the IDA may, at its discretion, provide additional time to meet stated goals. However, that applicant scaled the project back from $38 million to $5 million and only created 10 of the projected 300 jobs, the IDA would absolutely move to terminate and recapture.

There have been two instances of project termination and recapture at the Tompkins IDA in the last twelve years. The first, a multinational manufacturer decided to close its facility just three years after the granting of an incentive for a major investment and expansion. The IDA terminated the incentive and sent a request for recapture plus interest. Within 30 days the full incentive was returned and distributed to taxing jurisdictions as proscribed by State law. The second was a local food distribution company that expanded into a new state of the art facility and soon after lost key contracts that forced the business into insolvency. The business closed. The incentive was terminated, but there were no funds available to recapture.

Are there any Land Value Tax jurisdictions in New York State and if so, are PILOT agreements different in those jurisdictions?

Tompkins County assesses land and improvements separately. The Tompkins IDA requires full taxes paid on land values. PILOTS phase in the new taxes associated with the improvement value.

Additional Comments

IDA's are powerful local tools to support development. They are highly regulated by New York State which sets the overall guidelines, standards and policies under which we all operate. Every community has different economies, needs, plans, strategies and goals. A little flexibility to serve those varying needs is critical to ensure relevant community benefits in our diverse communities.

In closing, the Tompkins County IDA has delivered incentives to 39 projects over the last five years that leveraged $861.7 million in private investment, added 2,619 square feet of new space, supported 1,835 new units of housing of which 31% of are affordable to households earning less than 80% of median income, and added 25 megawatts of renewable energy. Those projects will provide a projected $56.9 million in new property tax payments over the term of their incentives.

If I can provide any additional information, please do not hesitate to contact me directly at HeatherM@IthacaAreaED.org or (607) 273-0005.

Sincerely,

Heather D. McDaniel, CEcD, AICP, EDFP
President, Ithaca Area Economic Development
Administrative Director, Tompkins County IDA

Cc: Ryan Silva, New York State Economic Development Council

September 20, 2024

Dear Commissioner Reardon, Public Subsidy Board Members, and New York State Department of Labor Staff,

Thank you very much for reaching out to me. On September 10th, I received an email from Commissioner Reardon seeking further information on the following topics.

- When and how to use Present Discounted Value in Calculating Future Tax Savings.
- The average annual increase in property taxes in New York City vs. New York State.
- How to Calculate the Value of Tax Savings from PILOT Programs.

The Board also identified three specific questions.

1. What conditions must be met and maintained to satisfy a PILOT agreement for the various types of projects, manufacturing facility, warehouse, retail development, housing development, and mixed-use development?
2. Under what circumstances are PILOT agreements rescinded and can you point to any examples where this occurred?
3. Are there any Land Value Tax jurisdictions in New York State and if so, are PILOT agreements different in those jurisdictions?

On behalf of the New York State Economic Development Council (NYSEDC) and our nearly 1000 members, we appreciate your questions and will do our best to provide the proper context in providing our responses.

When and how to use Present Discounted Value in Calculating Future Tax Savings.
Prior to providing any abatement, Industrial Development Agencies (IDAs) are required by law to submit a Benefit Cost Analysis (BCA) on any project that comes before them seeking support. There are several different tools that exist to analyze projects. Some IDAs have their own in-house calculator they use. Many use either Camoin Associates or MRB Group, two nationally recognized economic development consulting firms, to run their BCA.

There are several factors to take into consideration around when and how to use present discounted value. New York City has a unique model that works for New York City. Geography, cost of capital, local tax rates, and other factors vary from one region to another, even one municipality to another in the same region. Given the wide range of factors and specificity for each unique project, we would defer to models used by Camoin or MRB Group on when and how to use present discounted value since the present discounted value will vary greatly from region to region, project to project. It The subsidy board should show deference to and recognize the models utilized by local IDAs.

The average annual increase in property taxes in New York City vs. New York State.
These numbers again will vary city by city, town by town, village by village, county by county, and region by region. This is information that is likely available through public reporting data done by the NYS Office of State Comptroller. We recommend soliciting a data request from the OSC to ascertain the average annual increase in property taxes by locality, county, and region. Most communities in NYS have stayed within the 2% tax cap annually.

How to Calculate the Value of Tax Savings from PILOT Programs.
At the time an IDA reviews a project for a tax abatement, construction has not begun so there is no improved structure to assess. IDAs use their best efforts to estimate a reasonable assessment (often undertaken as part of the BCA as outlined in a previous response). ***After project construction*** is completed, the local assessor will come in and determine

the final assessment. At this time, it is possible to determine the value of the tax abatement for the current year and estimated remaining years on the PILOT (if we assume an average annual tax increase of 2%).

IDAs are already required by law to calculate the value of the savings (estimate) when running a cost benefit analysis. Again, this is where we would defer to each local IDA on how they calculate this value since they know their communities best. Tools utilized Camoin and MRB to calculate the value are very effective.

QUESTIONS

1. **What conditions must be met and maintained to satisfy a PILOT agreement for the various types of projects, manufacturing facility, warehouse, retail development, housing development, and mixed-use development?**

Each project that receives IDA abatements is required to have a signed agreement where the project applicant agrees to certain criteria including but limited to:

- capital expenditure
- jobs created and/or retained for the duration of the agreement
- amount of renewable energy generated
- number of housing units created or retained
- local labor policy
- a pay equity policy
- and/or an unpaid real property tax policy

Again, these terms will vary project by project. some newer metrics are now included as projects evolve to focus on the state's clean energy goals and community revitalization efforts. (housing starts and renewable energy generated).

2. **Under what circumstances are PILOT agreements rescinded and can you point to any examples where this occurred?**

Every IDA is required to have a "clawback policy". Any failure to comply with terms agreed to in the contract may result in the termination of a pilot and/or recapture of already received benefits.

To maintain compliance with the agreements, IDAs work closely with each project applicant to accurately ascertain employment data, capital expenditure data, number of housing units, and/or renewable energy generated. For example, In Erie County.

If a project falls short of its job creation or retention commitments, the IDA staff notifies the IDA Executive Director, the Chair of the IDA Board, and the Chair of the IDA Policy Committee, providing the project with an opportunity to respond. The Chair of the IDA will then determine to initiate a proceeding to determine whether to terminate, modify, or recapture IDA benefits. After a decision is made, the project is notified and given the chance to be heard and appeal the determination.

There are numerous examples of IDAs clawing back benefits or terminating PILOT agreements. Here is a small sample.

https://rcbizjournal.com/2023/07/28/rockland-ida-terminates-avon-pilot-ramapo-and-suffern-file-notice-of-claims-against-ida-for-waiving-recapture-rights/
https://www.newsday.com/business/amazon-tax-breaks-warehouse-jobs-g4vu3ulw
https://www.newsday.com/business/pall-job-cuts-ida-tax-breaks-vk86dl10
https://www.dailyfreeman.com/2023/02/20/ulster-county-ida-seeks-clawback-bill-for-golden-hill-nursing-home-in-kingston/
https://buffalonews.com/buffalo-next-a-not-so-cryptic-clawback/article_dc5a6b0e-d01b-11ee-b77b-8fda4b66ece6.html
https://buffalonews.com/news/cheektowaga-s-api-heat-transfer-facing-clawbacks-from-erie-county-industrial-development-agency/article_89e19c67-a6f7-5433-8d50-643233fabe7f.html

3. **Are there any Land Value Tax jurisdictions in New York State and if so, are PILOT agreements different in those jurisdictions?**

Property taxes in New York State usually contain 2 assessment components: a “land” value and an “improvements” value. The PILOT impacts the increase to the improvements component of the assessment brought about by the project investment. No abatement is given to the land value or to the various special district taxes included in most communities.

Thank you for your time and consideration.

Sincerely,

Ryan M Silva
Executive Director
New York State Economic Development Council (NYSEDC)

September 16, 2024

Ms. Roberta Reardon, Commissioner
New York State Department of Labor
Harriman State Office Campus
Building 12, Room 500, Albany NY 12226

c/o Shaun McCready, Secretary to the Board
New York State Public Subsidy Board
Via email: Shaun.McCready@labor.ny.gov

Re: Witness Testimony – Calculating Tax Savings and Calculating Other Funds

Dear Commissioner Rearson,

Thank you for your invitation to submit expert witness testimony to the NYS Public Subsidy Board (the "Board"). Please accept this letter as my testimony with respect to the following sub-topic areas:

- When and how to use Present Discounted Value in Calculating Future Tax Savings.
- How to Calculate the Value of Tax Savings from PILOT Programs.

What follows is a brief summary of my qualifications to provide testimony, the problem statement for context, a discussion, and my conclusion.

QUALIFICATIONS TO PROVIDE TESTIMONY

MRB Group is a trusted advisor to public sector clients across New York State. Michael N'dolo, our Director of Economic Development, is a nationally recognized expert in economic and fiscal impact analysis and is regularly invited to speak on the topic. He has provided expert witness testimony on such matters for Administrative Law proceedings with the NYS Department of Environmental Conservation, to the Massachusetts Gaming Commission, and in matters related to civil proceedings. He has been engaged multiple times by Empire State Development to provide expert professional services, including comprehensive analyses of the economic and fiscal impacts of major state programs/projects including an evaluation of the New York State Film Production Tax Credit and the efforts of the State to encourage Craft Beverage production. He has completed over two hundred economic and fiscal impact analyses for a multitude of project and program types, including: industrial, institutional, residential, commercial, transportation, logistics, tourism-destination, policy analysis, etc.

PROBLEM STATEMENT

The Board is required to determine if a private construction project is covered by prevailing wage requirements pursuant to NYS Labor Law 224-a. One of the tests (the "Public Funds Test") to determine whether a project is covered by the law is:

> "[…] where the amount of all such public funds, when aggregated, is at least thirty percent of the total construction project costs […]" (para 1.)

And included in the definition of public funds is:

> "The savings achieved from […] tax abatements, tax exemptions or tax increment financing; savings from payments in lieu of taxes; and any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the public entity." (para 2.b.)

The problem statement that is the subject of this testimony is therefore:

> ***What is the methodology the Board should use to value the presumed <u>future</u> savings to a private sponsor, pursuant to a tax abatement, exemption or PILOT agreement?***

DISCUSSION

The first issue to address in this problem statement is the definition of "savings" in any given year of a tax abatement, tax exemption or PILOT (the "Abatement"). Simply put, the savings is the difference between:

(1) the amount of tax the project sponsor (the "Sponsor") would pay without the Abatement (the "Without Abatement" case), and

(2) the amount of tax the Sponsor would pay with the Abatement (the "With Abatement" case).

While this may appear to be a simple calculation, several critical assumptions are required to do this calculation. For clarity and simplicity, I will use the example of a hypothetical PILOT real property tax abatement hereafter. The amount of the Without Abatement case is the amount of real property tax that would be paid by the Sponsor in a given year if the real estate development project (the "Project") were to occur without the Abatement. This is calculated by multiplying the assumed future assessed value of the real property in a given year times the then-applicable tax rate. What are those two values (assessed value and tax rate) in any given future year?

The commonly accepted methodology here is to start with the taxable assessed value (TAV) of the property as if the Project were complete today times the total of all current real property tax rates today, times an assumed **annual escalation rate**. Given the implications of the New York State Real Property Tax Cap legislation, which generally caps growth in the tax levy for each municipality by 2% per year, the assumed annual escalation rate for the Without Abatement case would typically be 2%. For the With Abatement case, the commonly accepted methodology is to calculate the amount of the abated real property taxes using the same process: take the assumed TAV if the Project were complete today, subtract out the abated portion thereof, multiply by the tax rate, and escalate that amount by 2% to the given year[1]. The tax savings in that given year would be the difference between the Without Abatement amount and the With Abatement amount. This will yield a nominal tax savings value for each and every year of the Abatement.

It would not be accepted practice to then just sum up all the individual years to arrive at a presumed total tax savings due to the Abatement. This is because many of the other types of “public funds” stipulated in NYS Labor Law 224-a monetize immediately (ex. A cash grant paid to a project Sponsor.) whereas PILOT savings might occur 5, 10, 20 or even 40 years into the future. A dollar saved by a Sponsor via an abated tax bill 40 years into the future is worth nowhere near what a dollar of “public funds” received today is worth in the form of a cash grant.

Therefore, the second issue to address is the way we value “public funds” received in the future, particularly far into the future. The accepted methodology here is to discount the value of future benefits to the present using an annual discount rate applied to that value. The critical factor that needs to be identified at this step is the assumed **discount rate** to apply. Here again, there is a layer of complexity that needs to be unpacked. That future value that a Sponsor might receive is diminished by the cost to the Sponsor of having to ‘wait around’ to receive the nominal value.

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[1] Please note that PILOTs can be constructed in a variety of ways. The example provided here is the most typical way a PILOT is structured, whereby the TAV and tax rate float each year. However, some PILOTs might fix the TAV for the entire duration of the abatement, some PILOTs might fix the tax rate for the entire duration of the abatement, and some PILOTs might stipulate the fixed value of the payment the Sponsor must make in each and every year of the abatement. Therefore, this suggested methodology would need to be adapted to those cases.

What is the cost of 'waiting around' to the Sponsor? The technical answer to this question is the Sponsor's "Weighted Average Cost of Capital" (WACC). This is a blended rate of the cost of the Sponsor's sources of capital, namely the Sponsor's cost of debt and cost of equity. The cost of the debt is the interest rate paid on the debt's principal and the cost of the equity is the required return-on-equity an investor must receive to invest in the Project. However, this is a complex methodology that would be difficult for the Board to implement in a systematic way, since the Board will not know the Sponsor's cost of debt and cost of equity, the appropriate weighting, and the fact that those costs are constantly changing. Therefore, the generally accepted methodology is to instead use a **market-based, implied discount rate**. This is an implied average discount rate present in the marketplace based on the historical data of recent deals completed. In effect, it is the best estimate we have of the WACC across known real estate deals. There are several publicly available data sources that provide reliable, market-data-based implied discount rates[2]. The Board could use those data sources to publish, on an annual basis, one or more presumed discount rates that it will use to make its determination of value.

Why do we say "one or more" discount rates? The simplest methodology the Board could employ would be to use a single discount rate for all projects in a given year and to update that one rate annually. The problem is that there is variation, and sometimes wide variation, on the implied discount rate depending on the project type. The average implied discount rate today, for example, on a market rate, multi-family project (around 9.5%) is much lower than the average implied discount rate on a golf course development (around 12.5%). This is because the apartment project is considered relatively safe and thus would have lower borrowing / equity costs, whereas a golf course development is considered relatively risky with higher borrowing rates / equity rates. The more accurate and fair method would be to have project-specific implied discount rates, and this adds only a small amount of complexity to the calculation.

CONCLUSION

For all "public funds" received by a Sponsor in years following the year that the underlying Project is placed into service, including but not limited to a tax abatement, tax exemption or PILOT, the generally accepted methodology for calculating the value of such "public funds" at the point that the Board must complete its Public Funds Test is:

[2] One we use, for example, is RealtyRates.com's "Investor Survey".

(1) For each individual year the "public funds" are received, first calculate the difference between the cost of the tax without the Abatement, minus the cost of the tax with the Abatement. Both 'with' and 'without' values should be escalated from the current year at 2% per year.

(2) For each of those individual yearly values, use a discount rate to discount those values to the present day. The discount rate used should be a market-based, implied discount rate, derived from publicly available, implied discount rates from similar project-types. If applied today, the appropriate discount rate would be between 9.5% and 12.5%, depending on the project type.

(3) Then sum the discounted yearly values to arrive at the total value of the "public funds" related to the abatement/exemption/PILOT.

Thank you again for the opportunity to provide witness testimony on this matter.

Sincerely,

R. Michael N'dolo, CEcD
Director / Practice Lead – Economic Development
(518) 301-5428
mndolo@mrbgroup.com