



TOWN OF MILTON, VERMONT

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March 20, 2013

The Honorable Douglas R. Hoffer, State Auditor of Accounts
Office of the State Auditor
132 State Street
Montpelier, Vermont 05633

RE: Your Letter to Secretary Spaulding Dated March 18, 2013

Dear Mr. Hoffer,

The Town has reviewed your letter to Secretary Spaulding concerning Governor Shumlin's proposed legislation regarding the tax increment financing statutes. First let me say that the Town respects the Office of the Auditor and the important function that the Office of State Auditor plays. The Town thinks as you do that State tax dollars, including incremental education property tax dollars, should be spent efficiently and effectively. Notwithstanding the state audit report of Milton's Catamount Husky Tax Increment Financing District (after thirteen years of activity in the District) the Town of Milton has fulfilled its responsibilities to administer these funds in compliance with the law and has gone beyond the requirements to do so in ways that saved education increment tax dollars and created hundreds of jobs in the process, all in consultation and partnership with the State of Vermont.

The Town continues to take exception to the findings of the audit report completed for Milton and by extension to the related findings in the capstone report completed by your predecessor State Auditor Tom Salmon and his Chief Auditor Tanya Morehouse.

While the Town finds merit in the Governor's proposal to the extent that it provides leadership on an issue that has been unduly scandalized under your predecessor's supervision, it continues to disagree that any "blanket amnesty" as referenced in your letter, is needed. Amnesty is pre-conditioned on a finding that the Town has actually violated some provision of the law. That has not happened and the Town will argue efforts by anyone to prove that it has violated the law. Further, the Office of the Auditor, under the supervision of your predecessor, has failed to respond to written requests for public information that would enlighten the Town and the public as to how the Chief Auditor came to her conclusions. The Town has had to incur expenses of its own to try to make sense of the arithmetic and reasoning in the audit Tanya Morehouse completed, but has been unsuccessful so far because of the denial of work papers and correspondence relied on by Tanya Morehouse and her staff.

Letter to the Douglas R. Hoffer dated March 20, 2013 p2

The Town continues to be disappointed that the Office of the State Auditor cannot, as a courtesy, provide the Town of Milton with a copy of your correspondence concerning Milton. Instead the Town has had to receive a copy of this letter third hand – this seems to be in line with the way your predecessor and Tanya Morehouse deliberately decided not to share a copy of the draft capstone report. Despite being asked to share a draft on multiple occasions by multiple parties, the Town never saw it before the Office of the Auditor issued the final capstone report to the legislature and the media.

The Town trusts that in future correspondence when referring to errors which you believe Milton has made that you would take the time to address the particulars of what you think is in error with the Town rather than generically referring to “other errors” valued at \$1.3 million after agreeing to “forgive” \$2.8 million. In total the Milton audit only identified a little over \$3 million (including the \$2.8 million) in specific concerns. We respectfully ask that you represent the position of the Town accurately and completely as we work through these challenging circumstances.

Our elected officials and I are proud of our community and proud of the success that the Milton Tax Increment Financing District has been for our community, the region, and the State. The Town’s Counsel even hired a peer auditor to review Milton’s administration of the Tax Increment Financing District and the State Auditor’s report; that review failed to find any mis-administration of municipal or education increment funds. Not only does the Milton audit ignore the obvious success of the Tax Increment District but it ignores the role of the State of Vermont in establishing and administering this District.

Last year the Town tried to reach further agreement and understanding with the State Auditor concerning the Milton audit when the Town’s Counsel hired a peer Auditor to review the Milton audit. These efforts were stymied by the denial of the request for work papers and correspondence relied upon in compiling the Milton audit. Should you decide to reconsider your predecessor’s opinions and methods of operation, I would be happy to make our Counsel and Auditor available to consult with you directly on matters concerning the Milton audit and the findings of your predecessor.

Sincerely,


Brian M. Palaia
Town Manager
Town of Milton

Cc: Janet Ancel, Chair, House Committee on Ways and Means
Tim Ashe, Chair, Senate Committee on Finance
Jeb Spaulding, Secretary of Administration
Fred Kenny, Executive Director, Vermont Economic Progress Council



STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

March 18, 2013

Jeb Spaulding
Secretary of Administration
109 State Street
Montpelier, Vermont 05609

Dear Secretary Spaulding,

Thank you for providing the State Auditor's Office (SAO) with a summary of Governor Shumlin's proposal to amend the tax increment financing (TIF) statutes. We are pleased to see that many of the proposed changes are consistent with the recommendations that we made in our TIF Capstone report.

The Governor's proposal also includes blanket amnesty for the towns that the SAO determined collectively owe \$6 million to the state education fund. The State Auditor's Office does not agree with total forgiveness of the amounts owed.

First, we believe that this would set a bad precedent and send the message that municipal errors that affect state funding have no consequence.

Second, news reports and statements by administration officials have suggested that forgiveness is the proper course because the municipalities were confused by inconsistent and ambiguous statutory provisions. **However, none of the findings reported by the SAO relative to the amounts owed by municipalities were the result of inconsistent or ambiguous statutory provisions. Furthermore, during the conduct of our audits, if there were inconsistent or ambiguous provisions, the SAO concluded that there was merit in a municipality's position and did not report a finding.**

Third, the Governor's proposal states that forgiveness applies to "all issues...identified in the audit reports," which seems to treat all types of non-compliance as one-time events and does not recognize that some of the noncompliance has continuing effects. Some of the errors identified in the reports will persist for the life of the TIF districts and additional monies will be withheld from the education fund unless corrective action is taken. For example,

- The TIF statute restricts the use of incremental property tax revenue to repaying or prefunding debt issued within 10 years following creation of a TIF district to finance improvements of the TIF district.
 - Burlington used \$1 million of incremental education property tax revenue to repay debt associated with property acquired more than four years prior to creation of the TIF

district. This is a clear violation of the TIF statutory provisions which require that the issuance of the debt and TIF district improvements occur subsequent to the creation of the district. Forgiveness of “all issues” seems to allow Burlington to continue its use of education tax increment to repay this debt, which will result in an additional \$1 million withheld from the state education fund through 2018 (payoff date for 1999 certificates of participation used to refinance Urban Reserve debt).

- Winooski is using incremental property tax revenue to repay a \$25.9 million bond. However, some of the proceeds from the bond were incorrectly used to pay for activities that do not constitute TIF district improvements. The SAO determined that Winooski used \$250,675 for city administrative costs that are not TIF district improvements. The SAO also concluded that bond proceeds were used for construction project costs unrelated to the TIF district and outside the TIF district boundaries. Because the city’s records were insufficient, the SAO was unable to definitively quantify these costs but we estimate that it could be \$1.1 million. If Winooski is allowed to continue to use tax increment to repay all of the bond proceeds, the SAO estimates that this could result in an additional \$1.3 million withheld from the state education fund through 2024.

While we do not believe that blanket amnesty for the amounts owed by the municipalities is appropriate, we do believe that it would be reasonable to consider a more limited forgiveness criterion. We suggest that if the law was changed subsequent to when the error was committed and if the law had been applied retroactively it would cause the municipality to be in compliance, then forgiveness could be granted. For example,

- During the period that Milton was able to issue debt, it was restricted to general obligation or revenue bonds. Rather than issue bonds, Milton used an inter-fund loan and repaid the loan with \$2.8 of incremental property tax revenue. Subsequently, statute was amended and allowed for the use of inter-fund loans. It seems reasonable to forgive Milton’s non-compliance given that the financing mechanism they used, although not allowed during the time Milton was making improvements in the TIF district, is now allowed. However, this partial forgiveness would mean that Milton would still owe \$1.3 million to the education fund related to other errors.

We would be pleased to meet with you, or other officials within the administration, should you care to review the data or discuss our concerns.

Best regards,

Doug Hoffer

Cc: Janet Ancel, Chair, House Committee on Ways & Means
Tim Ashe, Chair, Senate Committee on Finance