Agenda Item No. 1I1

April 8, 2008

Memorandum

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To: The Honorable Carlos Alvarez, Mayor, Miami-Dade County

The Honorable Chairman Bruno A. Barreiro and
Members, Board of County Commissioners, Miami-Dade County

From: Christopher Mazzella, Inspector General

Date: April 7, 2008

Subject: OIG Assessment of Prior Audits, Inspections and Reviews of the County's Documentary Stamp Surtax Fund, Ref. IG07-84

By way of a motion introduced during the March 18, 2008, Board of County Commissioners' (BCC) regular meeting, and in conjunction with the discussion on Agenda Item Number 11A4 *Resolution Urging the Florida Legislature To Pass SB 1492 or Similar Legislation Repealing the 2011 Sunset of the Miami-Dade Affordable Housing Surtax Program*,[1] the BCC requested that the Miami-Dade County Office of the Inspector General (OIG) assess all previous audits conducted on the County's Documentary Stamp Surtax Program, report the findings of this assessment, and make any recommendations, including whether an additional audit is necessary.

Framed in the context of the BCC's discussion, questions were raised as to the "uses" of the Surtax funds that were "loaned" to the Miami-Dade Housing Agency (MDHA). In the opinion of the County Attorney's Office's, Surtax funds could be used to rehabilitate affordable housing owned by a public housing agency. The federal authorities have opined that such MDHA "uses" violate state law. The County Manager stated that a recommendation to forgive the loans of Surtax funds made to MDHA would be forthcoming. It was also clarified by the maker of the motion that the motion [request to the Inspector General] should be a precondition for the forgiveness of any Surtax loans.

In the OIG's overall assessment, collectively, the audits, inspections and reviews of Surtax funds have not adequately addressed the question of what MDHA actually used the "borrowed" funds for that were transferred to the agency. On face value, lists and tables of the transfers from the Surtax fund to MDHA contain descriptions of what the funds were needed for and/or used for; however, the audits, especially of MDHA's overall financial condition, give rise to questions of whether the funds supplemented the federal program

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[1] See Legislative Item Number 080451. Adopted, R-296-08.

budgets due to a shortage of federal dollars or whether the budgets were short for other reasons, such as out-of-control spending.

As was the subject in the OIG's earlier memorandum of January 30, 2008, there remains an outstanding liability owed to the Surtax fund of approximately $12.7 million. That amount is only the amount that remains on the "books." Based on the County administration's previous correspondences and attachments, over $35 million has been transferred to MDHA over the past several years. In some cases funds were repaid; in other cases adjustments were made to reverse the loans and/or re-book the transfer to another entity.[2] Additionally, the OIG has observed that other budgeted uses of Surtax funds may be disproportional to the associated level of Surtax activity. For example, based upon funding summaries prepared by the MDHA Management Assistance Team (MAT), Surtax dollars funded 31.75% of the Applicant Leasing Center, whose total proposed budget for FY 2006-07 was $2,384,000.[3] While there are other uses of Surtax funds for MDHA activities that fall outside of MDHA's Development and Loan Administration Division and may require looking beyond the $12.7 million liability, the OIG brings these matters to the BCC's attention nonetheless.

As to whether an additional audit is necessary, that is up to the BCC's determination of what level of proof it needs on the question of "what the Surtax funds were actually used for?" Of the $12.7 million liability, based upon the transfers' accompanying written descriptions, $1,675,000 was used for activities associated with the Private Rental program (Section 8).[4] State law does not allow Surtax funds to be used for rent subsidies or grants. Of the remaining amounts, the written descriptions were "public housing vacancy reduction." Again, the OIG raises the question of whether the funds were actually used to rehabilitate public housing or were the funds needed because of shortfalls in the public housing budget that were caused by other reasons, such as overspending?[5]

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[2] This was the case of the $5 million for the Hometown Station MDHA offices project.

[3] MAT Preliminary Report, July 18, 2006, pages 35-37. This document may also be found on handwritten pages 174-176 of the County Manager's February 19, 2008 memorandum to the BCC entitled *Miami-Dade Housing Agency Use of Surtax Funds*. This memorandum included 647 pages of hand-numbered attachments. For the purposes of this OIG memorandum, the OIG will include, wherever possible, the corresponding handwritten page number for the referenced document based on the February 19, 2008 memorandum and its accompanying attachments.

[4] The figure is comprised of $900,000 of the June 2004 $3 million Surtax loan and $775,000 of the September 2004 Surtax advance for Private Rental's indirect cost payments.

[5] Both federal audits reviewed by the OIG answer this question in the affirmative. Deloitte's report, through an examination of voucher payments and interviews of MDHA staff, found overspending of the Owned Rental Fund (a.k.a. public housing). US HUD's April 2007 report, prepared by the Office of Public and Indian Housing and the Real Estate Assessment Center, found that this Fund was used as a "paymaster" for other programs, and that direct and indirect costs of other programs were incorrectly charged to the public housing account, thus leaving it with deficits. However, both reports lack a level of specificity that would show what deficits the Surtax funds covered.

Based upon our review, it is the OIG's recommendation that the BCC should not forgive any portion of the outstanding $12.7 million in Surtax loans made to MDHA without an audit of the justification for, and uses of those monies. Should the BCC find it necessary to expand the audit scope, the OIG would be happy to direct any audit and we believe we could do so in a cost effective manner.

OIG Assessment of Prior Audits, Inspections and Reviews

The BCC requested that the OIG look at all previous audits of the Surtax program. The OIG assessed all known, recent[6] audits, inspections, and reviews, including management advisory reviews and the like that, at a minimum, examined or inspected some portion of the County's Documentary Stamp Surtax Program. Table 1 depicts this compilation.[7]

TABLE 1 Prior Audits, Inspections and Reviews of Surtax Funds

Date	Internal	External
2002, 2003, 2004, and 2005		Annual Audited Financial Statements The OIG concurs with HUD's assessment that "The audits themselves pose significant issues. MDHA's auditor found no material weakness or reportable conditions over financial reporting, which in light of what is known now about MDHA's lack of financial controls, is a remarkable omission." [Taken from the Exec. Summary, pg. 1 of HUD's 4/27/07 Final Report]
4/12/2004	AMS Audit – *Metro Miami Action Plan (MMAP) Surtax Loan Funding*[8]	

[6] It appears that there were two audit reports of the Surtax Program in 1999 and 1994, according to a list compiled by the Housing Management Advisory Team (MAT). The list notates that they were unable to determine who conducted the audit due to records being in remote storage. See MAT *Progress Report* of September 15, 2006, Attachment FA5, pgs. 1-4. See also handwritten pages 284-287 of the County Manager's February 19, 2008 memorandum.

[7] Table 1 may not list every known written document, record, memorandum, progress report or communication that mentions Surtax funds.

[8] The subject audit covered loan funding from October 1998 through September 2003, during which time MMAP received $7.8 million in Surtax funds and granted approx. $5.7 million in loans to qualified homebuyers. The Audit and Management Services Department (AMS) found that Surtax loan activity was not timely or correctly processed in FAMIS and updated in MMAP records. AMS noted that Surtax loan files did not always contain all required documents, such as promissory notes, settlement statements and evidence of current homeowners insurance. As the subject matter of this report does not fit within the context of the Surtax question at issue, this audit report is not discussed further in this memorandum.

Date	Internal	External
2006		*2006 Financial Statement is being re-audited in accordance with the HUD Settlement Agreement & Work Plan – completed audit is pending.*
7/11/2006	County Manager's *REVISED Report on Uses of Documentary Stamp Surtax Outside of the Request for Application (RFA) Process*	
7/18/2006	MDHA Management Assistance Team (MAT), ***Preliminary*** Progress Report	
9/15/2006	MDHA Management Assistance Team (MAT), Progress Report	
12/12/06		KPMG Report, *MDHA Analysis of Building Loans from Surtax Funds – Final Report* (consultant retained by Miami-Dade County)
1/29/2007		Deloitte Report, *MDHA – Forensic Review and Advisory Services* (consultant retained by US HUD)
4/24/2007		US HUD *Review of the Miami-Dade Housing Agency's Administration of the Public Housing and Housing Choice Voucher Programs - Final Report*, Prepared by the Office of Indian Housing and Real Estate Assessment Center
6/29/2007	AMS Audit - *MDHA Development Corporation*[9]	

As a starting point, there is a County Manager's *REVISED Report on Uses of Documentary Stamp Surtax Outside of the Request for Application (RFA) Process*, dated July 11, 2006.

[9] This audit examined MDHA Development Corporation's (MDHADC) overall compliance with County grant agreements for developing affordable housing projects. AMS' findings detail problematic issues related to specified MDHADC internal operating practices and named development projects. AMS noted that MDHADC awarded $30.7 million of Surtax funds but only advanced $16 million of these funds to the various projects. Of the $16 million advanced, over $10.6 million was expended, leaving about $5.3 million advanced but not expended. AMS found that some Surtax funds were released in advance of receiving proof of expenditure, which is contrary to the contract terms, and that other Surtax funds were released to MDHADC without accompanying contracts and other requisite documents. Among AMS' recommendations were that all Surtax awards should be terminated for lack of performance and that misspent funds should be recovered. As the subject matter of this report does not fit within the context of the Surtax question at issue, this audit report is not discussed further in this memorandum.

While this report is not an audit, inspection or review of Surtax funds, but is more of a compilation and listing of transfers, it does provide a starting point in determining how much Surtax funds were used for MDHA activities. Attachment 2 titled *Non RFA Surtax Funding Usage Housing Agency Activities* totals the disbursed funds to be $35,610,142 (the allocated amount was only $36,440,142).[10] The Attachment lists the organization receiving the funds, activity name, authorization, etc. Most importantly, it provides a one-line statement of what the money was used for and/or why it was needed.[11]

Clearly, these management representations purporting to show what the transfers were for, and/or to which program the liabilities were booked to, do not show whether, in fact, the funds were used for their stated purpose and/or why the funds were truly needed.

Next in chronological order, the OIG provides its assessment of the MDHA Management Assistant Team's (MAT) *Preliminary Report* of July 2006. This report takes a look at each of the major divisions of MDHA: Finance & Administration (F&A), Development and Loan Administration (DLAD), Private Rental Housing, Infill Housing, and Scott/Carter Homes/HOPE VI.

Discussion of Surtax funds is limited to the reporting capabilities of the FAMIS system (discussed under the F&A section of the report) and the use of Surtax funds as "2nd mortgages to private and non-for-profit developers of affordable single family and multi family housing. This includes both units intended for sale and for rental."[12] Both discussions centered on management's ability to report cash balances and outstanding Surtax commitments. Specific to DLAD, Surtax findings focused on the fragmentation of information, again highlighting management's inability to generate useful reports to show a complete picture of outstanding commitments and forecasted revenues. It was also expressed that a significant amount of funds were allocated outside of the RFA process. Reference is made in this report to Appendix D, which happens to be the July 11, 2006 *Revised Report* with its Attachments, that the OIG described above.

Because it relies on the July 11, 2006 County Manager's *Revised Report* that the OIG addressed earlier (referring to Attachment 2 of the report), and because the discussion essentially centers on the reporting capabilities of the current financial systems (cash

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[10] In the earlier cited OIG memorandum on the Surtax funds loaned by MDHA, the OIG determined that the remaining liability amount is $12,760,245. This liability amount is essentially made up of three of the line items listed in the Attachment 2 described above.

[11] See also handwritten page 182 of the County Manager's February 19, 2008 memorandum to the BCC entitled *Miami-Dade Housing Agency Use of Surtax Funds*.

[12] MDHA MAT *Preliminary Report*, page 14. See also handwritten page 153 to the County Manager's February 19, 2008 memorandum entitled *Miami-Dade Housing Agency Use of Surtax Funds*.

balances and commitments), we did not find this report useful in determining what Surtax funds were actually used for.

The MAT in this July 18, 2006 *Preliminary Report*, however, did make the poignant observation that "No in-depth audit specific to Surtax has been conducted in over five years."[13] The preliminary report recommends that "A Surtax-specific review is necessary. The scope and terms of an agreed-upon procedures engagement have been finalized, and work will begin in mid-July. An independent review should be conducted on an annual basis going forward."[14]

A much more comprehensive follow-up to the MAT *Preliminary Report* of July 11, 2006 was finalized and presented on September 15, 2006. This report, referenced as a *Progress Report*, addresses many of the same Surtax-related matters as in the July *Preliminary Report*. The MAT addressed many of the organizational deficiencies in DLAD and its administration of Surtax loans, and described on-going reorganization efforts and the implementation of new internal controls. However, significant to the observation noted in the July 18, 2006 report about the lack of "an in-depth compliance audit specific to Surtax [which] has not been conducted in over five years," the MAT announced that "[f]inal negotiations with KPMG have concluded and a forensic review of Surtax funds began on September 13, 2006."[15]

Next, the OIG reviewed the Final Report prepared by KPMG LLP, *Analysis of Building Loans from Surtax Funds,* dated December 12, 2006. KPMG was engaged by the County administration on or about September 7, 2006. This report was briefly mentioned during the March 18th BCC meeting and it was described as a forensic audit of the Surtax Program but limited to the financing/funding of private development projects.

KPMG's express objective "was to assess the policies and procedures utilized to disburse and manage [MDHA] Surtax funds."[16] The objective focused on reviewing the disbursement of Surtax funds as building loans to determine whether MDHA complied with corresponding policies and procedures governing the disbursement of funds.

The report reviews the Request for Application (RFA) process, RFA selection criteria, documentation and approval process, due diligence checks, file maintenance, loan monitoring, etc. Numerous findings were made with respect to MHDA having done a poor job in the above-listed areas. Corresponding recommendations for improvement in these areas were made. Twelve site visits were conducted, primarily to assess the building project's status and to compare that with project paperwork submitted to MDHA for

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[13] *Id.* at p. 15. See also handwritten page 154 of the February 19, 2008 memorandum.
[14] *Id.* at p. 16. See also handwritten page 155 of the February 19, 2008 memorandum.
[15] MAT *Progress Report*, September 15, 2006, page iii of the Executive Summary.
[16] KPMG Report at page 2.

construction draws and supporting the project's percentage of completion. The report does not examine uses of Surtax funds by the MDHA or the $36 million listed in Attachment 2 of the July 11, 2006 County Manager's memorandum.

Next in chronological order is Deloitte's Final Report, *Miami-Dade Housing Agency – Forensic Review and Advisory Services*, dated January 29, 2007. The Project Team consisting of Deloitte & Touche LLP, Deloitte Financial Advisory Services LLP, Reed & Associates, CPAs, and Booth Management LLP was retained by the United States Department of Housing and Urban Development, Office of Public and Indian Housing (US HUD) to assist it in its investigation of MDHA. The Final Report summarizes the investigation from August 15, 2006, when the Project Team was first on-site at the MDHA, through January 25, 2007, just prior to release of the report.

The Project Team's engagement consisted of three tasks, which were:[17]

1) Ascertain whether the MDHA accounting systems, documentation and personnel are reliable sources of information to determine if HUD funds received by the MDHA have been properly recorded for and accounted for during the review period.

2) Track HUD-provided housing development funds disbursed to the MDHA between FY 1998 and July 2006 and confirm utilization of identified funds was consistent with MDHA representations and in conformance with applicable HUD rules and regulations.

3) Track HUD provided non-development funds disbursed to the MDHA from FY 1998 through July 2006 and confirm utilization of identified funds was consistent with MDHA representations and in conformance with applicable rules and regulations.

While clearly not the focus of the investigation, the Project Team does report findings specific to the County's Surtax Program. These findings are reported under the *Financial Management Issues* section of the written report. The Surtax findings are presented in conjunction with MDHA's deficits in its federal program funds. The findings clearly state that the Surtax funds were used to cover overspending in the federal programs and that MDHA was routinely deficit spending.

These reported findings were specific to the "Owned Rental Fund" (aka public housing). Project Team interviews with MDHA staff revealed that the housing agency routinely overspent (i.e. made purchases that were not budgeted) and routinely borrowed funds from the Owned Rental Fund for other projects not associated with public housing, and then when

[17] Deloitte Report at page 5.

this fund experienced a deficit, that deficit was covered by the infusion of Surtax funds. Project Team interviews also revealed that several of the initial transfers of $5 million, $5 million, and $3 million were not really considered loans, but "increases in working capital." However, the February 2006 transfer of $9.6 million was considered a "loan."

In the County's initial response to the redacted report, the County agreed that Surtax funds were used to cover shortfalls in both the federal Public Housing and Private Rental Housing (Section 8) Programs. The County points to decreasing federal funding for the shortfalls.

In the OIG's assessment, at issue here is the County's explanation of decreasing federal funding versus the Project Team's assessment (through voucher examinations and interviews) that deficits were due to overspending and a lack of restraint.

The OIG reviewed US HUD's Review *of the Miami-Dade Housing Agency's Administration of the Public Housing and Housing Choice Voucher Programs - Final Report*, April 24, 2007, prepared by the Office of Indian Housing and Real Estate Assessment Center. There were four components of the review: Assessment of Financial Condition, Quality Assurance Limited Review of Financial Records, Limited Quality Assurance Inspections of the Public Housing Program, and Limited Section 8 Management Review.

The report analyzed the financial condition of MDHA's federal programs. It finds that through several years of improper cost allocations, certain programs seem to be performing better than expected, while the Low Rent Public Housing program appears to be performing worse than expected.[18] The report explains that the Public Housing Fund is being used as a "paymaster" to cover many of MDHA's direct and indirect cost obligations. "For example, MDHA did not charge any salary expense to the HOPE VI program for fiscal years 2003, 2004, 2005 and 2006. For that matter, the Agency did not charge any operating costs to that program for those reporting periods."[19]

The report goes on to reiterate the findings made in the Deloitte Report: "MDHA has received $28.375 million from the Surtax program, of which $18.795 million was used to cover the costs of MDHA's overruns in federal programs. No loan terms exist."[20] While there has been acknowledgment that Surtax funds were used to cover shortfalls in MDHA's

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[18] *Review of the Miami-Dade Housing Agency's Administration of the Public Housing and Housing Choice Voucher Programs, Final Report*, prepared by the Office of Public and Indian Housing and the Real Estate Assessment Center, April 24, 2007, Assessment of Financial Condition section, page 12.
[19] *Id.*
[20] *Id.* Executive Summary section, page 4.

Public Housing program, the report also states that Surtax funds were used to subsidize the Section 8 program.[21] Finally, it concludes that:

> If MDHA does not intend to repay—or cannot repay—the advances identified in the Deloitte report, those advances are, in fact, grants [which are not allowed under state law]. In addition, the advances made by MDHA to subsidize those programs may have been in violation of Florida law.[22]

In the OIG's assessment, this report finds that because of improper cost allocations, in particular to the Public Housing program, Surtax funds were used to cover the shortfalls. This explanation needs to be compared against the County's explanation that Surtax funds were needed to cover shortfalls due to decreasing federal funding.

OIG Review of Miscellaneous Correspondences

The OIG came across email correspondences which shed more light on MDHA's financial condition and the transfer of Surtax funds. Email communications between MDHA staff originating during the same time as many of the Surtax transfers were obtained by the OIG. In one email discussing the use of Surtax funds to pay back $5 million to Fannie Mae, it was stated by a MDHA official: "The only source we have is Surtax and we have an agreement with downtown to borrow funds when we go below a 0 balance. We have to repay Fannie May[sic]."[23]

In another email dated June 1, 2004 discussing the $3 million loan, MDHA staff is instructed by the Finance Department to submit a new letter requesting the $3 million wire transfer (the transfer had been postponed due to limited Surtax funds at that time).[24] A MDHA official asks the other MDHA official "Are you willing to take this chance to get some extra cash now?" The reply was:

> No. Why put ourselves in this thin ice skating situation when we don't have to. We just have to bite the bullet and cut costs wherever we can over here, including our earlier discussion about New

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[21] *Id.* In one bullet finding under the Housing Choice Voucher Program (HCV) section of the Executive Summary, the report finds that "Because MDHA accepted other revenue of $6.7 million from the County's Surtax Fund, these funds distort the financial condition of the HCV program."
[22] *Id.* Assessment of Financial Condition section, page 21.
[23] Email dated December 8, 2003, between MDHA staff (John Topinka, Cassandra Ojomo, and Sonia Vargas).
[24] Email dated June 1, 2004, between Finance staff and MDHA staff (Juan Llansa, John Topinka, Graciela Cespedes, and Blanca Padron).

> Markets, Compliance, and CFP. We should wait on proceeds from the sale of the Surtax Mortgage portfolio.
>
> It helps to know that today we received $13,401,233 for June's Section 8 subsidy, compared to an average of $10.5 million received monthly for October 2003-May 2004. The 1st check run for June totaled 10,619,621.[25]

Eight days later, on June 9, 2004, $3 million in Surtax funds were transferred to MDHA; $2.1 million was recorded in the Owned Rental Fund (public housing) and $900,000 was recorded for Private Rental (Section 8).

Lastly, the OIG came across a memorandum written by former MDHA Director Kris Warren that assesses the historical cash position of the Agency from fiscal years 1999 to 2006 and notes:

> As you can see, the positive cash position of MDHA quickly eroded from $11.7 million in FY2001 to a negative cash position of $11.7 million in FY2006. Our review of the external audit reports and the Management and Discussion Analysis (MDA) from this same period reflects no mention of a declining cash balance for the Agency. . .
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> As of June 15, 2007, there are more than 700,000 checks that need to be cleared through the system. The failure to clear checks not only prevents us from determining if checks/payments have "cleared" the bank, but has also resulted in the bank accounts never having been completely reconciled.
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> There is no mention in audit reports of either the lack of full bank reconciliation, the failure to collect more than $3 million in funds owed from other housing agencies for Section 8 portable vouchers, $1.6 million due from landlords, or more than $7.8 million in Public Housing tenant accounts receivable (rents).
>
> We have been in contact with the Finance Department to initiate the process of collecting these outstanding due payments. Although we need to make every effort to collect these monies, the collection rate for the public housing accounts will not be as strong as the other receivables, as the income level of these individuals may be limited.

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[25] Email dated June 1, 2004, between MDHA staff (John Topinka, Cassandra Ojomo, and Sonia Vargas).

> I know you share my grave concern of what appears to be a previous lack of fiscal management of the Agency. As such, I am respectfully requesting an in-depth audit of the decline of cash at MDHA by other fiscal experts, to include the County's Finance Department and other financial experts in the County.

This memorandum was apparently circulated via email on or about June 22, 2007.[26] Clearly, this correspondence confirms our opinion that additional financial reviews to determine "what happened" are in order. We believe that the decline in cash is relevant to the question of whether Surtax funds were used to cover shortfalls resulting from a decrease in federal funding and whether the funds were actually used to rehabilitate public housing, or whether the Surtax funds were needed due to overspending and a lack of fiscal restraint.

cc: Robert A. Cuevas, Jr., County Attorney
Charles Anderson, Commission Auditor
George M. Burgess, County Manger
Denis Morales, Mayor's Chief of Staff

Clerk of the Board (copy filed)

[26] Email circulated between MDHA and CMO staff (from Kris Warren to Mario F. Morlote and Cynthia Curry, copied to Glenda Blasko and Dale Poster-Ellis).