



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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May 23, 2022

John W. Ewing, Jr.
Douglas County Treasurer
1819 Farnam Street H-02
Omaha, Nebraska 68183

Dear Mr. Ewing:

As you know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding the distribution of 5% Gross In-Lieu of taxes received from the Omaha Public Power District (OPPD). As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA requested specific financial records and other relevant documentation from your office. Based on the outcome of this preliminary planning work, including a review of the information obtained, the APA has determined that a separate financial audit or attestation by our office is unnecessary at this time.

Nevertheless, during the preliminary planning work, the APA noted a certain issue that merits corrective action, as presented below.

Background Information

Douglas County (County) is one of 93 counties in Nebraska and has a County seat located in Omaha. The County Treasurer is elected to a four-year term and is responsible for the collection and distribution of various types of local and State receipts.

Douglas County is the largest county by population in Nebraska, and the County Treasurer received over \$555 million in revenue and disbursed over \$515 million in the fiscal year ended June 30, 2021. Thus, it is imperative for the office to have appropriate policies, procedures, and internal controls in place to ensure that taxpayers' money is protected and accounted for properly.

The Douglas County Treasurer's office receives an annual payment from the OPPD as a payment in lieu of taxes. Neb. Rev. Stat. § 70-651.03 (Reissue 2018) states the following:

Beginning in 1960, every public corporation and political subdivision of the state, which is organized primarily to provide electricity or irrigation and electricity, and which sells electricity at retail within incorporated cities or villages, shall on or before April 1, of each year, pay to the county treasurer of the county in which any such incorporated city or village may be located, a sum equivalent to five percent of the gross revenue derived by it during the preceding calendar year from retail sales of electricity within such incorporated city or village, less an amount equivalent to the amount paid by such public corporation in lieu of taxes in the 1957 calendar year with respect to its properties in such city or village.

The payments received by counties from the public power districts are commonly referred to as "5% Gross In-Lieu" payments, and on April 1, 2021, the Douglas County Treasurer received \$26,342,312 from the OPPD for its 5% Gross In-Lieu payment.

The following comment and recommendation, which has been discussed with the appropriate members of the County and its management, is intended to improve internal control or result in other operating efficiencies.

Comment and Recommendation

5% Gross In-Lieu Distribution

During our testing of the Douglas County Treasurer's distribution of the April 2021 5% Gross In-Lieu payment received from the Omaha Public Power District (OPPD), we noted that multiple political subdivisions were either over- or underpaid.

The following table shows the total over- or underpayments noted for each entity:

Entity	Over/(Under) Payment
Omaha Public Schools	\$ 5,651,832
City of Omaha	\$ 4,371,097
Douglas County	\$ 2,695,763
Elkhorn Public Schools	\$ (4,191,613)
Ralston Public Schools	\$ (4,002,335)
Westside School District	\$ (3,705,283)
Millard Public Schools	\$ (818,516)
City of Ralston	\$ (945)
Net	\$ -

See **Exhibit A** herein for the errors noted by individual funds.

The over- and underpayments noted in the table above are due to the following errors:

- The Douglas County Treasurer failed to include the levies of all school districts within the City of Omaha, as required by Article VIII, § 11, of the Nebraska Constitution and Neb. Rev. Stat. § 70-651.04 (Reissue 2018), when calculating the distribution of the 5% Gross In-Lieu payment received from the OPPD.

Instead, the County Treasurer started the calculation by using only the Omaha Public School District levies to determine the amount to be disbursed to the five school districts within the City of Omaha. This incorrect amount was then divided among the five school districts based on the student census percentages that are also used for the distribution of city fines. As a result, multiple political subdivisions received the incorrect amount of 5% Gross In-Lieu.

It should be noted that the Douglas County Treasurer used a similar process for distributing the April 2020 in-lieu payment. The total amount received from the OPPD for April 2020 was \$26,957,456. The APA did not test that distribution, but errors similar to those noted in the table above would be expected.

- An incorrect levy was used for the Ralston Public School Voluntary Termination fund. The County Treasurer's calculation used \$0.03024 rather than the certified levy of \$0.00549. Per the Douglas County Treasurer's office, the prior year's levy was incorrectly used. This was the main reason the City of Ralston was underpaid by \$945, as shown in the above table.
- The County Treasurer's calculation used levies that were rounded to five decimal points rather than six decimal points. Because the certified levies are set to six decimal points, the failure to use the same number of decimal points in calculating the distribution resulted in small over- and underpayments for each political subdivision. The funds with only rounding errors are identified in **Exhibit A** herein.

It should be noted that the Omaha Public Schools, Millard Public Schools, and other Sarpy County school districts are named in a lawsuit filed against the Interim Sarpy County Treasurer for the underpayments noted in the Sarpy County Treasurer Attestation report (dated March 9, 2021) released by the APA. According to that report, the underpayments for the Omaha Public Schools and Millard Public Schools totaled \$1,437,684 and \$2,393,675, respectively. As of the date of this letter, the court case is still pending.

Article VIII, § 11, of the Nebraska Constitution states, in relevant part, the following:

The legislature may require each such public corporation to pay to the treasurer of any county in which may be located any incorporated city or village, within the limits of which such public corporation sells electricity at retail, a sum equivalent to five (5) per cent of the annual gross revenue of such public corporation derived from retail sales of electricity within such city or village, less an amount equivalent to the 1957 payments in lieu of taxes made by such public corporation with respect to property or operations in any such city or village. The payments in lieu of tax as made in 1957, together with any payments made as authorized in this section shall be in lieu of all other taxes, payments in lieu of taxes, franchise payments, occupation and excise taxes, but shall not be in lieu of motor vehicle licenses and wheel taxes, permit fees, gasoline tax and other such excise taxes or general sales taxes levied against the public generally.

So much of such five (5) per cent as is in excess of an amount equivalent to the amount paid by such public corporation in lieu of taxes in 1957 shall be distributed in each year to the city or village, the school districts located in such city or village, the county in which such city or village is located, and the State of Nebraska, in the proportion that their respective property tax mill levies in each such year bear to the total of such mill levies.

Section § 70-651.04 states the following:

All payments which are based on retail revenue from each incorporated city or village shall be divided and distributed by the county treasurer to that city or village, to the school districts located in that city or village, to any learning community located in that city or village for payments distributed prior to September 1, 2017, and to the county in which may be located any such incorporated city or village in the proportion that their respective property tax levies in the preceding year bore to the total of such levies, except that the only learning community levies to be included are the common levies for which the proceeds are distributed to member school districts pursuant to section 79-1073.

Additionally, good internal controls require procedures to ensure that the distribution of 5% Gross In-Lieu taxes is calculated in accordance with State statute by including the correct levies for all school districts located within each municipality. Those same procedures should ensure also that the levies used for calculating the distribution agree to the certified levies and are not improperly rounded but contain the same number of decimal points as those found in the certified levies.

Without such procedures, there is an increased risk of not only political subdivisions not receiving the appropriate amount of funding but also loss or misuse of funds.

We recommend the County Treasurer correct the erroneous distributions. Additionally, we recommend the County Treasurer implement procedures to ensure future distributions are calculated correctly and in compliance with the Nebraska Constitution and State statute.

Douglas County Treasurer's Response: The Douglas County Treasurer admits to mistakenly utilizing the Omaha Public Schools levy to determine the amount to be disbursed to the five school districts within the City of Omaha. The Douglas County Treasurer distributed the OPPD 5% Gross In-Lieu of taxes based on the number of students in each district. As one of the only county treasurers in Nebraska distributing 5% Gross In-Lieu to multiple school districts in the same city, we believe that a good faith mistake was made in interpreting the distribution to multiple school districts in the same city based on Neb. Rev. Stat. § 70-651.04. The Douglas County Treasurer had begun their own internal review of this distribution prior to the State Auditor's review.

The Treasurer has corrected its calculations and distributions for the 2022 5% Gross In-Lieu of taxes based on the APA's comment and recommendations.

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Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use the knowledge gained during the performance of our audit work to make comments and suggestions that we hope will be useful to the Douglas County Treasurer.

Draft copies of this letter were furnished to the Douglas County Treasurer's office to provide its management with an opportunity to review and to respond to the comment and recommendation contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time.

This communication is intended solely for the information and use of the Douglas County Treasurer, and it is not intended to be, and should not be, used by anyone other than these specified parties. However, this communication is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Audit Staff Working on this Examination:

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Sincerely,



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