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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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Mr. Henry M. Paulson, Jr.  
Secretary of the Treasury  
U. S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Dear Mr. Paulson:

The Domestic Policy Subcommittee of the Oversight and Government Reform Committee is writing regarding its continuing oversight of the U.S. Department of Treasury's (Treasury Department) and Internal Revenue Service's (IRS and, collectively, Treasury Department) regulation of the use of payments in lieu of taxes (PILOTs) in the financing of the construction of sports stadiums. In an earlier letter<sup>1</sup>, we requested that the Treasury Department clarify its testimony to this Subcommittee on the issue before finalizing its proposed new PILOT rule.<sup>2</sup> While we await the Treasury Department's response to this letter, we have learned that potential beneficiaries of lenient rules governing PILOTs have lobbied the Treasury Department to weaken the proposed PILOT rule. In this letter, we request that the Treasury Department provide documents to assist the Subcommittee's efforts to ensure that the Treasury Department's rulemaking is consistent with the Tax Reform Act of 1986, the statute governing the use of tax-exempt private activity bonds, and sound public policy.

In the previous letter, we made the following points regarding the Treasury Department's regulation of PILOTs: (1) Treasury Department officials' testimony to this Subcommittee that the Treasury Department was *compelled* by its own regulations to issue two Private Letter

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<sup>1</sup> Letter from Rep. Dennis J. Kucinich to Mr. Eric Solomon and Mr. Douglas Shuman (May 23, 2008) (online at [domesticpolicy.oversight.house.gov/documents/20080613171519.pdf](http://domesticpolicy.oversight.house.gov/documents/20080613171519.pdf)).

<sup>2</sup> Treatment of Payments in Lieu of Taxes Under Section 141, 71 Fed. Reg. 61693, 61694 (to be codified at 26 C.F.R. pt. 1) (proposed Oct. 19, 2006).

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Rulings (PLRs)<sup>3</sup> treating PILOTs made by the Yankees and Mets as permissible sources of financing for tax-exempt private activity bonds was misleading and inaccurate<sup>4</sup>; (2) the Treasury Department, at a minimum, maintains discretion under its regulations to prohibit the use of PILOTs in this context; (3) the Treasury Department's interpretation of its own regulations may be inconsistent with the intent in Congress as expressed in the Tax Reform Act of 1986<sup>5</sup> to the extent that it permits financing of tax-exempt private activity bonds by payments linked to private business use; and (4) far from solely closing a *loophole* in the existing regulations, the Treasury Department's proposed PILOT rule would likely place the use of PILOTs in financing sports stadium construction on firmer regulatory ground in one important respect by removing language that arguably expressly prohibits their use.

After writing our initial letter, we became aware that public and private interests have contacted the Treasury Department in an effort to weaken further the proposed PILOT rule. At a minimum, it appears that these interests seek to carve out an exception to the PILOT rule for two projects that together involve the issuance of over \$1 billion of tax-exempt stadium construction bonds financed by PILOTs.<sup>6</sup> These projects include: (1) \$350 million in additional tax-exempt bonds for construction of the new Yankee Stadium issued by the New York City Industrial Development Agency (NYCIDA), an affiliate of the New York City Economic Development

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<sup>3</sup> See PRIV. LTR. RUL. 200640001, 2006 WL 2848788 (July 11, 2006); PRIV. LTR. RUL. 200640002, 2006 WL 2925866 (July 19, 2006).

<sup>4</sup> Domestic Policy Subcommittee, House Committee on Oversight and Government Reform, Hearings on *Build It and They Will Come: Do Taxpayer-Financed Sports Stadiums, Convention Centers and Hotels Deliver as Promised for America's Cities?*, 110th Cong. (Mar. 29, 2007) (online at [frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_house\\_hearings&docid=f:38037.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:38037.pdf)) and *Professional Sports Stadiums: Do they Divert Public Funds from Critical Public Infrastructure?*, 110th Cong. (Oct. 10, 2007).

<sup>5</sup> See 26 U.S.C. § 141(b).

<sup>6</sup> See, e.g., Associated Press, *New York State Assembly Questions Yankee Stadium Funding*, New York Daily News (June 13, 2008) (online at [www.nydailynews.com/sports/baseball/yankees/2008/06/12/2008-06-12\\_new\\_york\\_state\\_assembly\\_questions\\_yankee.html](http://www.nydailynews.com/sports/baseball/yankees/2008/06/12/2008-06-12_new_york_state_assembly_questions_yankee.html)) (quoting NYCEDC President Mr. Seth Pinsky, "The city along with the state as well as others have been working in Washington to seek relief from the applicable IRS regulations."); *A Question Mark Looms Over 3 Expensive Projects*, New York Times (June 13, 2008) (online at [www.nytimes.com/2008/06/13/nyregion/13stadium.html](http://www.nytimes.com/2008/06/13/nyregion/13stadium.html)); *Taxpayer Cost of Yanks' Bond Demands: \$82.9 Million*, Village Voice (June 16, 2008) (online at [blogs.villagevoice.com/runninscared/archives/2008/06/taxpayer\\_cost\\_o.php](http://blogs.villagevoice.com/runninscared/archives/2008/06/taxpayer_cost_o.php)).

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Corporation (NYCEDC), a local public authority,<sup>7</sup> and (2) over \$800 million of PILOT-financed, tax-exempt bonds to be issued by the Empire State Development Corporation, a state public authority, to finance construction of the New Jersey Nets area, the centerpiece of the Atlantic Yards project in Brooklyn, New York. According to news reports, project proponents seek relief from the proposed PILOT rule's change in the requirement that PILOTs be "commensurate" with foregone tax payments.<sup>8</sup> The proposed change was designed to ensure the PILOTs would track the amount of foregone tax payments on tax-exempt bond financed properties instead of tracking the debt service on the tax-exempt bonds.<sup>9</sup> To be clear, we have criticized the Treasury Department's PLRs and its proposed PILOT rule for permitting *any* use of PILOTs for sports stadium financing. However, we are further concerned that a successful effort to vitiate the new definition of "commensurate" or weaken the requirements for PILOTs in any other manner may be inconsistent with the Tax Relief Act of 1986 and not serve the public interest.

In order to assist the Subcommittee with the exercise of its oversight authority, we request the following documents:

- (1) All comments received by the Treasury Department on the proposed PILOT rule, Treatment of Payments in Lieu of Taxes Under Section 141, 71 Fed. Reg. 61693, 61694, whether the comments were received within or outside the official comment period; and
- (2) All Treasury Department documents and communications relating to the drafting and finalization of the proposed PILOT rule, which address issues raised by state and local government entities, including authorities authorized under state and local law; private economic interests; and other non-governmental interests and advocacy groups.

The Oversight and Government Reform Committee is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X, including jurisdiction of the Treasury Department. An attachment to this letter provides information on how to respond to the Subcommittee's request.

We request that you provide these documents as soon as possible, but in no case later than **5:00 p.m. on Thursday, July 19, 2008.**

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<sup>7</sup> NYCIDA had previously issued over \$800 million of PILOT-financed, tax-exempt bonds for the new Yankee Stadium and over \$500 million for the new Mets stadium.

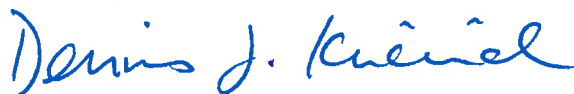
<sup>8</sup> See 71 Fed. Reg. at 61695 (proposing modifications to the PILOT rule to be codified at 26 C.F.R. § 1.141-4(e)(5)(A)(ii)).

<sup>9</sup> See 71 Fed. Reg. at 61694.

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If you have any questions regarding this request, Charles Honig, Counsel, at (202) 226-5299.

Sincerely,



Dennis J. Kucinich  
Chairman  
Domestic Policy Subcommittee

Enclosure

cc: Darrell Issa  
Ranking Minority Member

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### Domestic Policy Subcommittee Document Request Instruction Sheet

In responding to the document request from the Domestic Policy Subcommittee, Committee on Oversight and Government Reform, please apply the instructions and definitions set forth below.

#### Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Subcommittee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. When you produce documents, you should identify the paragraph or clause in the Subcommittee's request to which the documents respond.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Subcommittee staff to determine the appropriate format in which to produce the information.
10. The Committee accepts electronic documents in lieu of paper productions. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page TIF files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
11. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
12. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
13. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
14. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
15. All documents should be bates-stamped sequentially and produced sequentially. In the cover letter, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. For paper productions, four sets of documents should be delivered: two sets to the majority staff and two sets to the minority staff. For electronic productions, one dataset to the majority staff and one dataset to minority staff are sufficient. Productions should be delivered to the majority staff in B-349B Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building. You should consult with Subcommittee staff regarding the method of delivery prior to sending any materials.
17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Subcommittee or identified in a privilege log provided to the Subcommittee.

## Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “documents in your possession, custody, or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,



proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms “referring” or “relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.