



3/28/24 9:13

COUNTY OF ERIE

MICHAEL P. KEARNS
COUNTY CLERK

March 28, 2024

The Honorable Erie County Legislature
92 Franklin Street – Fourth Floor
Buffalo, New York 14202

Re: Clerk's Office Supplemental Response to Mortgage Tax Audit

Dear Honorable Members:

The Erie County Clerk's Office ("Clerk's Office") has conducted a secondary analysis of the Mortgage Tax Audit released on February 5, 2024. This analysis was based on a meeting with the Erie County Comptroller's Office ("Comptroller's Office") auditing team on March 7, 2024, and the working papers provided by the Comptroller in full on March 11, 2024 in response to the Clerk's Office's FOIL request. The Clerk's Office again thanks the Comptroller's Office for the recommendations to improve government operations.

Conclusions

While explained in more detail below, these are the conclusions of the Clerk's Office analysis:

- There is no missing taxpayer money, only money that was not distributed to the tax districts due to a combination of clerical and technical error.
- Any money that was not distributed to municipalities and agencies is in the process of being redistributed.
- A review of the Basic Tax collection and distribution was performed by the Clerk's Office which shows substantial compliance over the past four (4) years.
- There are at least seven (7) false "Findings" in the Comptroller's Office Mortgage Tax Audit.
- Because of the significant errors and mischaracterizations in the Mortgage Tax Audit, the Comptroller's Office should remove it from its website and note it has been taken down pursuant to the Erie County Charter and Section 9.68 of the Generally Accepted Government Auditing Standards ("GAGAS").

2020 – 2024 Basic Tax Review

“Basic Tax” is the portion of the mortgage tax collected by the Clerk’s Office that is apportioned to the tax districts.

While the Mortgage Tax Audit reviewed a sample size of transactions and distributions from 2022, the Clerk’s Office endeavored to get a more complete picture of the Basic Tax collection and reviewed Basic Tax for 2020, 2021, 2022, 2023, and 2024. The analysis confirmed that the Clerk’s Office was substantially compliant in its distribution of Basic Tax since 2020, and was 100% accurate in 2023 and the first quarter of 2024. As a result of the analysis, certain municipalities will be receiving an additional distribution to correct any shortages from 2020-2022, which resulted from a combination of clerical and technical error. Letters to the municipalities regarding the additional distribution have already been sent.

Attached as **Exhibit A** are charts outlining the compliance of the Clerk’s Office for mortgage tax distribution for the years 2020-2024. Attached as **Exhibit B** is a table detailing the additional amounts to be distributed to the tax districts.

February 2024 Mortgage Tax Audit Inaccuracies:

- *Audit p.13, Finding #1: “Mortgage Tax Revenue Calculated on Five Transactions Did Not Reconcile to the Fees Established in NewVision.”*
 - False. The auditors concluded there were variances that did not reconcile because the mortgages tested were closed in other counties, not Erie. The auditors acknowledged at the March 7, 2024 meeting that they were not aware of these apportioned mortgages being in their sample that was tested. All amounts were properly distributed.
- *Audit p.15, Finding #1: “The MT-4 Reported Incorrect Amounts Totaling \$156,340.04.”*
 - False. 12 of the 14 cases cited are confirmed to have no variances or transaction issues at all. All payments were made properly, and a simple technical issue prevented these from being displayed on the MT-4, which is the form required by New York State for mortgages recorded.
- *Audit p.17, Finding #2: “A Variance of \$17,660.79 between the Hold Report and Release Report Indicates that the Variance Amount was Not Distributed.”*
 - False. All funds were properly distributed, despite any issue with reconciling reports. Issues in comparing reports alone does not indicate the presence of distribution errors to the tax districts and/or state agencies.

- *Audit p.18, Finding #3: “Seven Mortgages That Received State Determinations Were Incorrectly Reported on the MT-4 and Not Distributed to Tax Districts, SONYMA or NFTA.”*
 - False. All funds were properly distributed, despite any issue with reconciling reports. Issues in comparing reports alone does not indicate the presence of distribution errors to the tax districts and/or state agencies.

- *Audit p.19, Finding #4: “Five Mortgages Apportioned by New York State were Released and Distributed Incorrectly.”*
 - False. We confirmed based on our Basic Tax Summary-C reports that there were no double payments made. The auditors could have confirmed this with the raw data they had but failed to do so.

- *Audit p.21, Finding #6: “Mortgage Tax Revenue in the Amount of \$29,654.00 was Unaccounted For.”*
 - False. The mortgage in question was recorded on November 22, 2022. The Clerk’s Office received the State Apportionment on December 27, 2022, when Erie County was under a State of Emergency due to the blizzard. The mortgage was properly released on January 4, 2023. The auditors, through no fault of their own, did not have the correct Hold Report to reflect the mortgage was properly released, but the Finding is false regardless.

- *Audit, p.22, Finding #7: “Five Mortgages Apportioned by New York State Were Not Placed on Hold in NewVision.”*
 - False. All five mortgages were properly listed on their respective Hold Reports and were properly released. The auditors, through no fault of their own, did not have the correct Hold Report to reflect the mortgages were properly on hold, but the Finding is false regardless. As acknowledged in the Audit, there was no issue with the release and distribution of these mortgages.

Attached as **Exhibit C** is a summary of the most important improvements already implemented by the Clerk’s Office over the past year to policies and workflow.

Working Paper Access Delay and March 7, 2024 Audit Review Meeting:

- The March 7, 2024 meeting was requested by the Clerk’s Office to get clarity on the evidence used by the auditors to support the findings the Mortgage Tax Audit. The Clerk’s Office requested the working papers even before the release of the Mortgage Tax Audit, but had not yet received complete, legible copies.

- The Comptroller's Office auditors acknowledged at the March 7, 2024 meeting that the SharePoint file they sent to the Clerk's Office, purported to be the complete working papers and supporting documentation, could not be viewed properly or printed legibly. The auditors also acknowledged the file did not contain the source files of the documents used in arriving at the findings. Hence, their original claim that they sent the complete working papers was false because the file was incomplete and the Clerk's Office still could not verify their work. The Clerk's Office submitted a FOIL request for these papers, and they were received in full on March 11, 2024.
- The auditors acknowledged they received mortgage tax policies and documents from the administrator that they later accused of theft in their August 2023 Analysis of the Clerk's Office, and who was released for work performance issues and finally arrested on March 15, 2024. However, the auditors continued to rely on that documentation in performing their testing, which was received from someone they publicly accused of wrongdoing. The reports provided by the former administrator were not the correct reports needed for an accurate analysis of mortgage tax distribution.
- The auditors acknowledged at the March 7, 2024 meeting that some of the reports they were provided by the former administrator did not reconcile. The auditors acknowledged that the inability of the reports to reconcile, on its own, did not indicate that any money was missing or was not properly distributed.
- Both sides agreed the March 7, 2024 meeting was beneficial. However, the auditors suggested that this review should have occurred at the Exit Conference on January 31, 2024. In response, the Clerk's Office noted that the auditors made it clear that the Audit was being released with or without an Exit Conference occurring (in an email dated January 24, 2024). The time constraints placed on the Clerk's Office made it impossible to perform an in-depth analysis prior to the Exit Conference and the forced release of the Audit by the Comptroller's Office.

The Comptroller's Office Should Take Down The Mortgage Tax Audit Pursuant to The County Charter and GAGAS:

Section 1802(2) of the Erie County Charter starts the following under the "Powers and duties" of the Comptroller:

Section 1802. Powers and duties. The Comptroller shall:

- 2. Maintain the official accounting records for all receipts and disbursements of the County, including liabilities, fund balances, encumbrances, expenditures, appropriations, revenues and estimated revenues and prescribe approved methods of accounting for County officers and administrative units in accordance with standards and policies prescribed by the New York State Comptroller and the governmental accounting standards board.*

The Comptroller's Office attests in the Mortgage Tax Audit, published online on February 5, 2024, that it was conducted in accordance with Generally Accepted Government Auditing Standards ("GAGAS"), which is established by the Governmental Accounting Standards Board referenced in the Erie County Charter.

Section 9.68 of GAGAS states the following:

Requirement: Discovery of Insufficient Evidence after Report Release

9.68 If, after the report is issued, the auditors discover that they did not have sufficient, appropriate evidence to support the reported findings or conclusions, they should communicate in the same manner as that used to originally distribute the report to those charged with governance, the appropriate officials of the audited entity, the appropriate officials of the entities requiring or arranging for the audits, and other known users, so that they do not continue to rely on the findings or conclusions that were not supported. If the report was previously posted to the auditors' publicly accessible website, the auditors should remove the report and post a public notification that the report was removed. The auditors should then determine whether to perform the additional audit work necessary to either reissue the report, including any revised findings or conclusions, or repost the original report if the additional audit work does not result in a change in findings or conclusions.

As noted above, at least seven (7) findings of the Mortgage Tax Audit are false and/or significantly inaccurate.

In addition, when factoring in other findings that are moot and/or directed at the Comptroller's Office, 17 of the 30 total findings in the Mortgage Tax Audit are inaccurate and/or irrelevant.

Notably, and as has been widely publicized, one of the Mortgage Tax Audit findings related to an intercepted check to SONYMA that was stolen through no fault of the Erie County Clerk's Office. The Erie County Clerk's Office requested that the finding related to the intercepted check not be published due to there being an ongoing investigation. The funds from the intercepted check were in fact recovered in full by law enforcement in early March 2024.

Based on the numerous errors and misleading findings in the Mortgage Tax Audit, and in accordance with Section 9.68 of GAGAS and the Erie County Charter, the Comptroller's Office should take down the Mortgage Tax Audit from its website and publish a notification that the Mortgage Tax Audit has been removed.

Very truly yours,



MICHAEL P. KEARNS
Erie County Clerk

MPK/wal

Encl.

Cc: Hon. Kevin R. Hardwick – Erie County Comptroller

Exhibit A

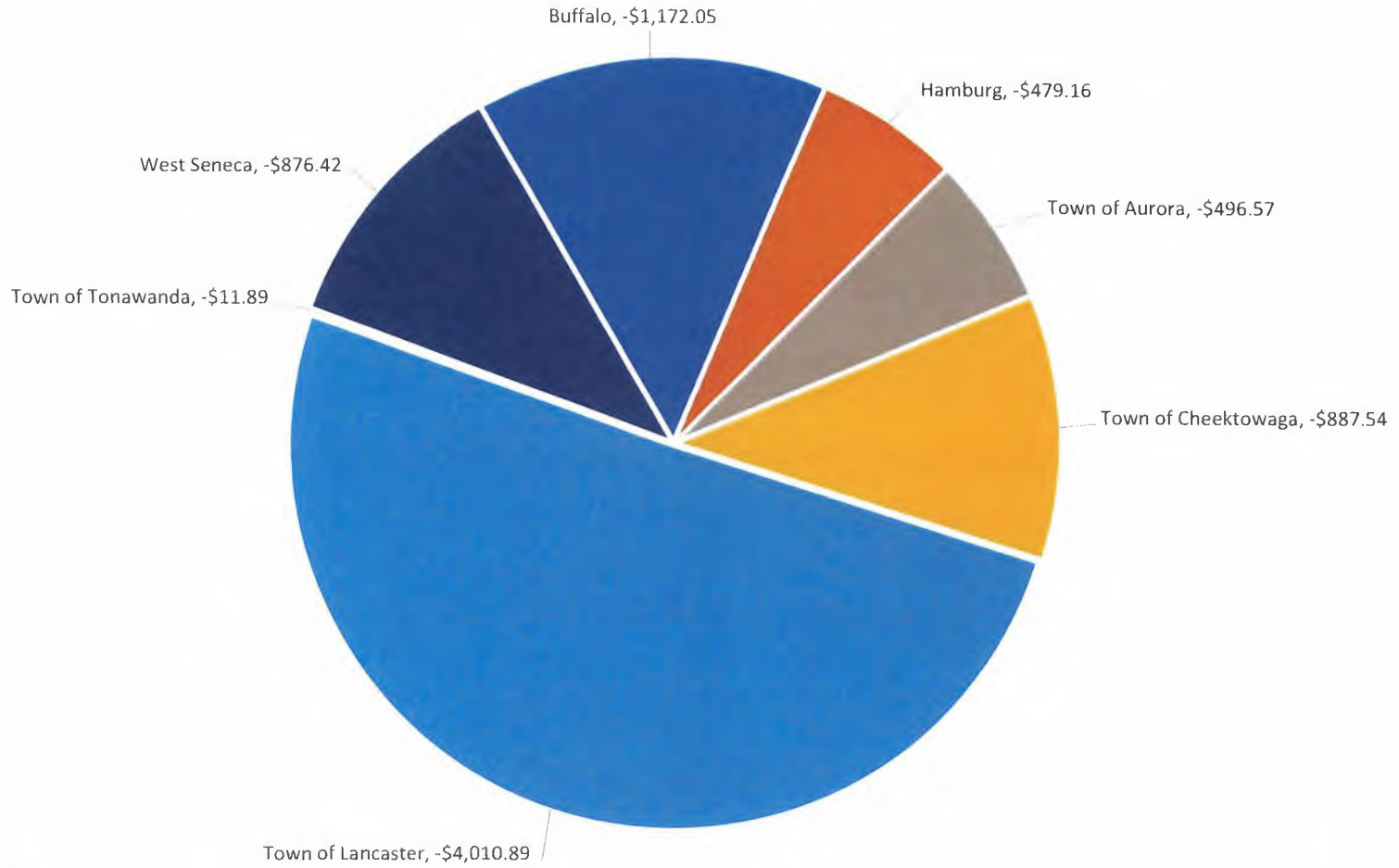
SUPPLEMENTAL RESPONSE
TO MORTGAGE TAX AUDIT

HON. MICHAEL P. KEARNS
ERIE COUNTY CLERK'S OFFICE



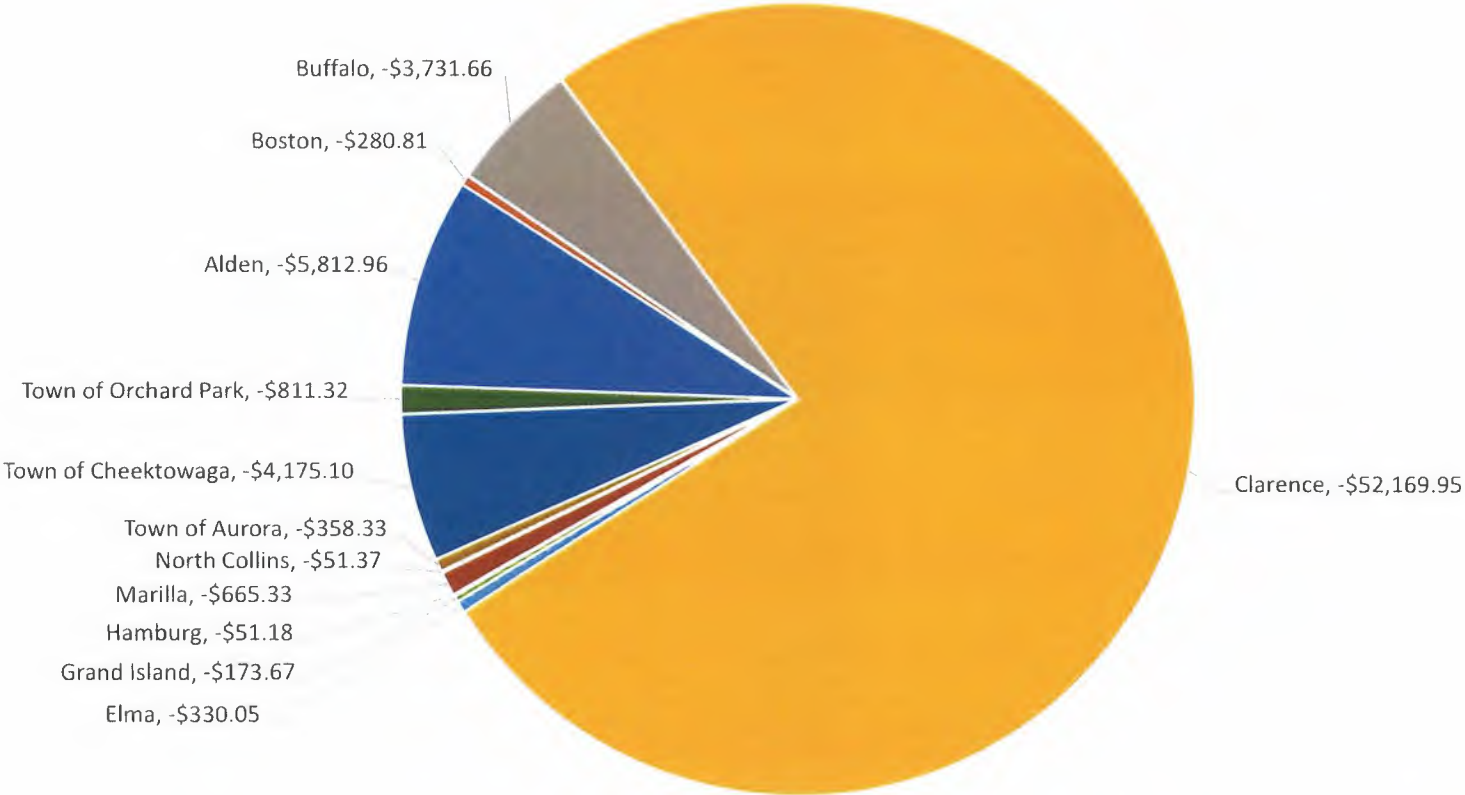
	Year	2024 YTD	2023	2022	2021	2020
Mortgage Tax Collected		\$6,430,065.29	\$37,740,756.54	\$54,178,041.32	\$59,659,482.90	\$47,302,807.75
Mortgages Recorded		3,690	20,119	27,464	33,921	27,724
Clerical/Technical Errors		0	0	14	8	6
Margin of Error		0.000%	0.000%	0.051%	0.024%	0.022%
Undistributed Tax Dollars (Tax Districts & Agencies)		\$0.00	\$0.00	\$36,701.41	\$130,701.48	\$13,515.46

MONEY OWED TO TAX DISTRICTS 2020: \$7,934.52



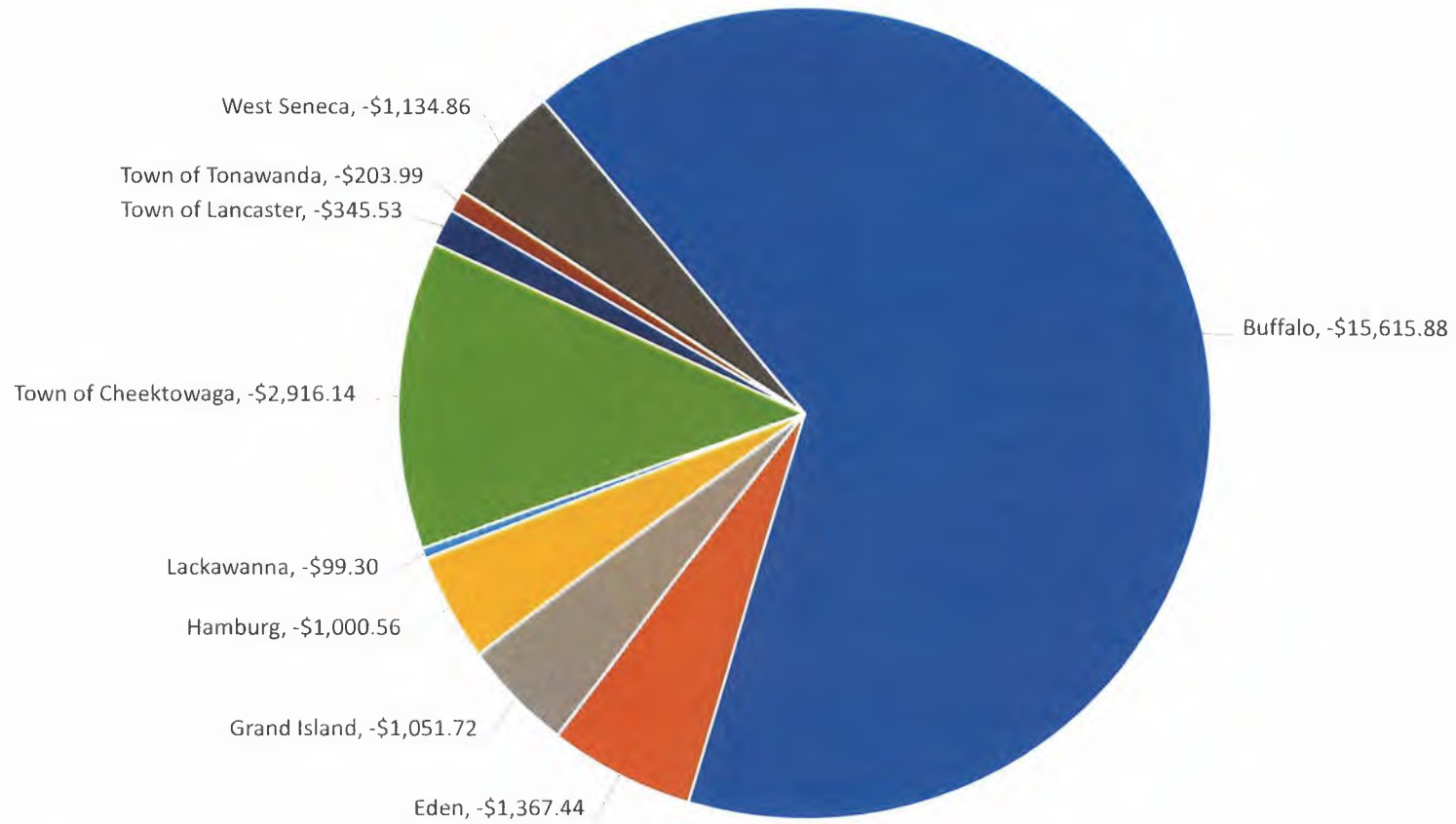
■ Buffalo ■ Hamburg ■ Town of Aurora ■ Town of Cheektowaga ■ Town of Lancaster ■ Town of Tonawanda ■ West Seneca

MONEY OWED TO TAX DISTRICTS 2021: \$68,611.73



- Alden
- Boston
- Buffalo
- Clarence
- Elma
- Grand Island
- Hamburg
- Marilla
- North Collins
- Town of Aurora
- Town of Cheektowaga
- Town of Orchard Park

MONEY OWED TO TAX DISTRICTS 2022: \$23,735.42

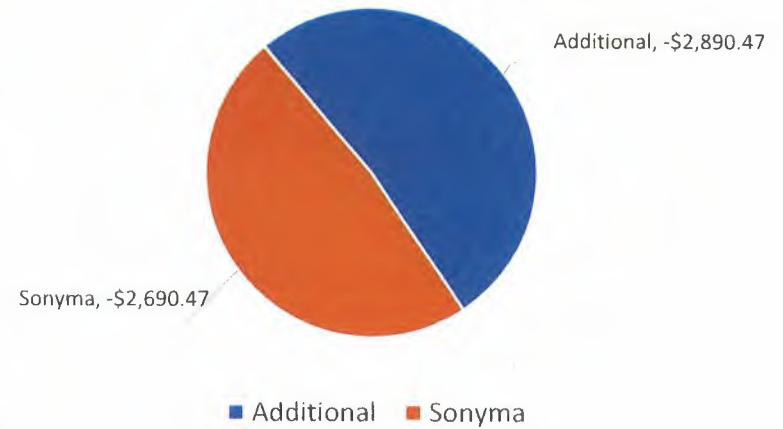


■ Buffalo ■ Eden ■ Grand Island ■ Hamburg ■ Lackawanna ■ Town of Cheektowaga ■ Town of Lancaster ■ Town of Tonawanda ■ West Seneca

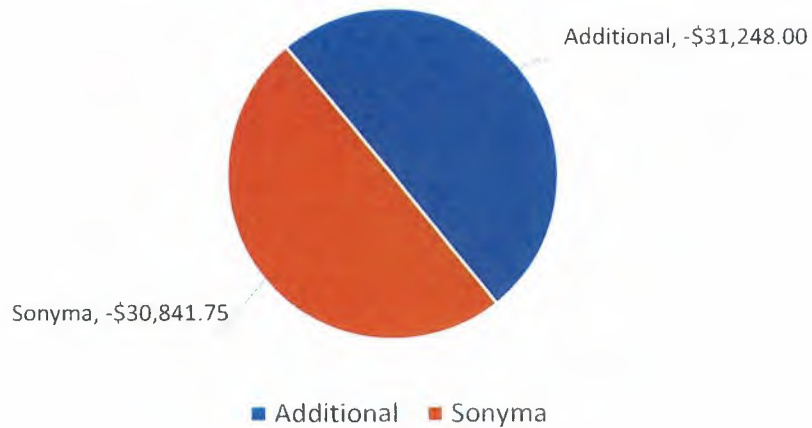
OTHER AGENCY TOTALS

Districts	2020	2021	2022	Grand Total
Additional (NFTA)	-\$2,890.47	-\$31,248.00	-\$6,655.75	(\$40,794.22)
Sonyma	-\$2,690.47	-\$30,841.75	-\$5,444.74	(\$38,976.96)
Special Assist (NFTA)	\$0.00	\$0.00	-\$865.50	(\$865.50)
Grand Total	-\$5,580.94	-\$62,089.75	-\$12,965.99	(\$80,636.68)

2020 Total \$5,580.94



2021 Total \$62,089.75



2022 Total \$12,965.99

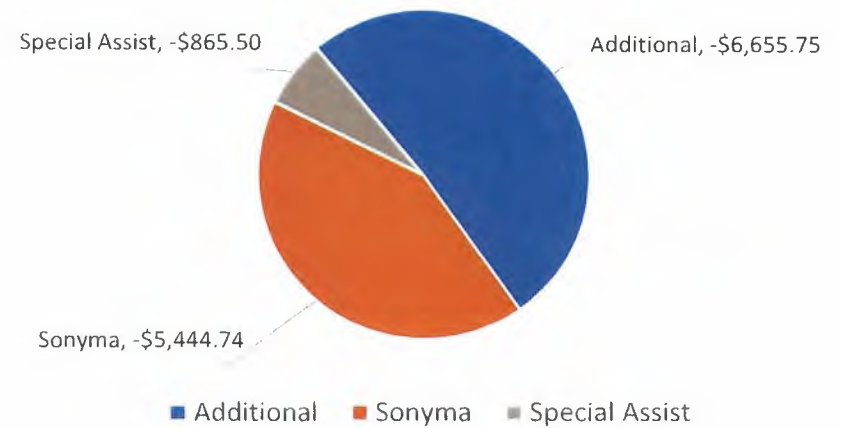


Exhibit B

Exhibit "B": Mortgage Tax Distribution Shortage By District, 2020-2024

Districts	2020	2021	2022	2023	2024	Grand Total
Alden	\$0	\$5,812.96	\$0	\$0	\$0	\$5,812.96
Boston	\$0	\$280.81	\$0	\$0	\$0	\$280.81
Buffalo	\$1,172.05	\$3,731.66	\$15,615.88	\$0	\$0	\$20,519.59
Clarence	\$0	\$52,169.95	\$0	\$0	\$0	\$52,169.95
Eden	\$0	\$0	\$1,367.44	\$0	\$0	\$1,367.44
Elma	\$0	\$330.05	\$0	\$0	\$0	\$330.05
Grand Island	\$0	\$173.67	\$1,051.72	\$0	\$0	\$1,051.72
Hamburg	\$479.16	\$51.18	\$1,000.56	\$0	\$0	\$1,530.90
Lackawanna	\$0	\$0	\$99.30	\$0	\$0	\$99.30
Marilla	\$0	\$665.33	\$0	\$0	\$0	\$665.33
North Collins	\$0	\$51.37	\$0	\$0	\$0	\$51.37
Town of Aurora	\$496.57	\$358.33	\$0	\$0	\$0	\$854.90
Town of Cheektowaga	\$887.54	\$4,175.10	\$2,916.14	\$0	\$0	\$7,978.78
Town of Lancaster	\$4,010.89	\$0	\$345.53	\$0	\$0	\$4,356.42
Town of Orchard Park	\$0	\$811.32	\$0	\$0	\$0	\$811.32
Town of Tonawanda	\$11.89	\$0	\$203.99	\$0	\$0	\$215.88
West Seneca	\$876.42	\$0	\$1,134.86	\$0	\$0	\$2,011.28
Grand Total	\$7,934.52	\$68,611.73	\$23,735.42	\$0	\$0	\$100,281.67

Exhibit C

Exhibit “C”: Enhancements to Clerk’s Office Policies and Workflow

- A new Deputy County Clerk – Finance has been hired with a CPA and extensive experience in forensic accounting.
- Two new financial department employees have been hired to assist the Deputy County Clerk – Finance.
- The Deputy County Clerk – Finance is no longer the sole individual who prepares monthly payments and reports.
- At least two individuals in management must verify all payments that are sent out.
- Copies of all checks received by the Clerk’s Office are made by cashiers and included in the daily deposit reporting.
- Fees collected for recording documents and other services offered by the Clerk’s Office have been verified with statutory authority, including the New York Civil Practice Law and Rules (“CPLR”) and assembled in the Clerk’s Office Schedule of Fees.
- Refunds for Court filings have been streamlined and given increased oversight with the use of the Converge software system.
- Escrow agreements are in the process of being dismantled in favor of a cart-based online image-purchasing system.
- Updated written procedures for financial duties and payment distribution.
- Regarding issuance of payments, the Clerk’s Office now:
 - views images of all checks paid out of Clerk’s Office bank accounts;
 - requires “return receipts” on large checks sent through the mail when possible;
 - requests the ability to perform wire transfers in lieu of sending paper checks; and
 - reviews images of all cashed checks in the online bank statements.
- Regarding mortgage tax accounting, the Clerk’s Office has now:
 - Added nightly automation to prevent possible mortgage recording errors;
 - Improved procedure to track apportionments made to other counties;
 - Updated the Basic Tax Summary-C report to alert managers of possible recording errors;
 - Updated Release Report to display additional information so all tax apportionments can be more easily identified;
 - Made procedural changes to the apportionment hold & release processes that include multiple reports and multiple levels of oversight;
 - Additional training provided to administration, finance department, and clerical staff for better understanding of the mortgage tax process and
 - Created scripts to audit Taxes Collected vs. Taxes Apportioned to identify any variances.

Finally, with the conclusion of the second audit, the Clerk’s Office will be issuing a Request for Proposals (“RFP”) for new recordkeeping software.