

May 7, 2007

To the Honorable
Monroe County Legislature
39 West Main Street
Rochester, New York 14614

**Re: Honoring Sales Tax Revenue Sharing Agreements with Local Villages,
Towns, the City of Rochester and local School Districts by Agreeing Not to
Pursue Additional Sales Tax Intercept Litigation**

Honorable Legislators:

The County Administration's unfortunate decision to sue its sales tax sharing partners – villages, towns, the city and suburban school districts – was an attempt to determine if a sharing partner's sales tax revenues could be directed towards payment of the county's Medicaid bill. The litigation has been an expensive, disruptive and unproductive effort.

The New York State Department of Taxation and Finance recently issued a "Medicaid Factor" report that now settles the question of whether Monroe County can "intercept" funds that otherwise would go to its sharing partners. We now know, clearly, that it cannot. The April 30, 2007 Medicaid Factor notice presented by State Taxation and Finance Commissioner Barbara Billet to Monroe County is unambiguous: "A county which elects the sales tax option must still allocate sales and use tax revenues to localities or satisfy bond dedications or other obligations *as if it had not made the election*" (emphasis added).

The County Administration's decision to litigate has had an enormous financial impact on county taxpayers, and on the taxpayers of the entities that comprise our sharing partners. Not only have taxpayers had to bear the expense of litigation, but our sharing partners have had to develop contingency plans to prepare for the possibility that the county could be successful in an interpretation of the Sales Tax Intercept legislation that would be devastating to their own budgets. The county's mistaken interpretation has been an enormous distraction from the important budgeting work on which the county, and each of its sharing partners, need to focus.

To date, the county's ill founded lawsuit has been dismissed by the Appellate Division of the New York State Supreme Court. County taxpayers need to be assured that they will not be burdened with any more costly and unnecessary lawsuits. Now it is time to assure county taxpayers, and our sharing partners, that the county will not pursue additional litigation in connection with the Sales Tax Intercept program. The county needs to focus on how to best address its significant budget problems, and our sharing partners deserve to have the threat of the Intercept's potentially devastating financial

consequences removed from their own budget considerations. Additionally, the county needs to consider the real intercept program question: whether the existing Medicaid expense cap, or the alternative cap offered by participation in the Sales Tax Intercept program is the better option for Monroe County.

For all these reasons, the County Administration must not initiate additional intercept litigation. Therefore, in the event the Administration comes to believe that further litigation is necessary, it shall be required to come before the Monroe County Legislature to request approval to initiate said litigation, which approval will be granted only upon affirmative vote of not less than two-thirds of the County Legislature.

Implementation of this Referral will not have any impact on the revenues or expenditures of the 2007 Monroe County Budget.

Respectfully submitted,

Ted O'Brien