Audit of the Everglades Agricultural Privilege Tax

Audit #98-11

Prepared by
Office of Inspector General

Allen Vann, Inspector General
Dan Sooker, Senior Auditor

MGT 08-06F

November 9, 1998

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Re: Final Report –
Audit of Everglades
Agricultural Privilege
Tax
Audit # 98-11

This audit was performed pursuant to the Inspector General's authority set forth in Chapter 20.055, F.S. The audit focused on evaluating the methodology used for making assessments including the calculation of tax credits. This report was prepared by Dan Sooker.

Sincerely,

Allen Vann
Inspector General

AV/ds
Enclosure

c: Samuel E. Poole III
Michael Slayton

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Introduction

The State of Florida enacted the Everglades Forever Act (the Act), which imposes an annual tax for conducting an agricultural trade in the Everglades Agricultural Area (EAA) and C-139 Basin. The tax, known as the Everglades agricultural privilege tax and the C-139 agricultural privilege tax, are levied on all real property within the EAA and C-139 Basin, as identified in the Act, that are classified as agricultural. The agricultural acreage subject to the privilege tax is approximately 500,000 and 150,000 acres in the EAA and C-139 Basin, respectively. The per acre tax levies on agricultural land in the EAA for the period 1994 through 2014 and thereafter is as follows:

Periods	Per Acre Tax
1994 - 1997	$24.89
1998 - 2001	$27.00
2002 - 2005	$31.00
2006 - 2013	$35.00
2014 and thereafter	$10.00

Although the per acre tax escalates to the year 2013, the Act offers EAA landowners an opportunity to decrease their annual tax liability by providing incentive credits for reductions of phosphorus load discharging from the EAA. After 1997, these credits can be used to reduce the per acre tax levy to the minimum tax of $24.89 per acre. Notwithstanding, incentive credits cannot reduce the tax below this minimum. Unused or excess credits may be carried forward and applied in subsequent years until November 2013 when they expire.

The area-wide and individual incentive credits are determined based on criteria established in the Florida Administrative Code, Chapter 40E-63 (the Rule). The area-wide credit, which is available to all landowners in the EAA, is determined by comparing the actual measured phosphorous load attributable to the EAA[1] to the total estimated phosphorous load that would have occurred during the base period 1979 – 1988. The area-wide incentive credits are only available if the phosphorus load reduction exceeds 25 percent for the EAA as defined by the Rule.

[1] The Act's definition of the EAA includes an area in the northern boundary of the EAA bordering Lake Okeechobee that is not included in the Rule. This area is subject to the Everglades Agricultural Privilege tax and earns area wide credits. However, these landowners are not eligible for credits earned for individual on-farm phosphorus reductions or attaining a phosphorus reduction of 50 parts per billion. See BMP and Water Quality Monitoring Effort finding on page 9 for discussion of the EAA definition.

Individual credits are earned for reductions of phosphorus discharging from structures serving the individual's parcel of property. EAA landowners must meet phosphorus reduction standards established by the Act in order to be eligible for these credits.

EAA landowners have a third opportunity to decrease their agricultural privilege tax liability to the minimum per acre assessment. Landowners pay the minimum tax of $24.89 for achieving an annual phosphorus concentrate level of 50 parts per billion discharging from their individual farm. Unlike the area-wide and individual credits, there are no carry forward credits offered to landowners for attaining a discharge phosphorous level of 50 parts per billion.

Acreage used in the production of vegetables is not entitled to incentive credits but the Act stipulates that vegetable acreage is subject to the minimum tax.

For water years 1995 through 1997, the number of sub-basins earning the three types of credits offered by the Act is as follows:

Water year	Total Sub-basins [2] in EAA	Sub-basins Eligible for On-farm Credits	Sub-basins Achieving 50 ppb of Phosphorus*
1995	218	81	9
1996	219	129	14
1997	221	127	19

* This data is presented for informational purposes only. Although landowners achieved an annual 50 parts per billion phosphorus concentrate for water year 1995 through 1997, there was no tax reduction earned, as the Everglades agricultural tax rate was at the minimum of $24.89 for this period.

The C-139 basin agricultural privilege tax is determined by dividing $654,656 by the number of acres included in the C-139 basin tax roll of such year for the period November 1994 through 2013. Thereafter the tax is $1.80 per acre. Incentive credits are not available to landowners in the C-139 basin.

The Act requires landowners to obtain a permit in accordance with the Rule to farm in the EAA. Conditions of the Rule require the landowner to develop a Best Management Practices Plan (BMP), which includes fertilizer, and water

[2] Sub-basins are defined as hydrologic drainage areas within the EAA. These sub-basins are permitted and may include multiple farms. The number of sub-basins presented in the table are based on the Rule defined EAA and therefore does not include the sub-basins in the northern part of the EAA. However, all sub-basins including those in the northern boundary of the EAA earned area-wide credits. See BMP and Water Quality Monitoring Effort finding on page 9 for discussion of the EAA definition.

management plans for each crop and a monitoring program. The goal of the plan is to achieve a 25 percent reduction in phosphorus for the Rule defined EAA basin. In the event that the 25% reduction is not achieved, farm sub-basins are monitored to identify non-compliance and the property is targeted for implementation of additional BMP's.

The most widely used BMP categories are fertilizer application controls, water detention and sediment controls. Points are assigned to BMP categories; landowners are required to implement BMP's valued at a minimum of 25 points. For example, a landowner would receive 10 points for detaining 1 inch of rainfall before pumping.

According to the Everglades Best Management Practice report for the period May 1, 1996 through April 30, 1997, phosphorus load in runoff from the EAA to the Everglades has shown a three-year trend reduction of 51%. Area-wide incentive credits earned from this reduction are sufficient to lower the privilege tax to the annual minimum rate until the year 2007.

The tax is expected to generate $245 million over the next 20 years or approximately $12.4 million annually for Everglades Restoration. Tax revenue collected is recorded in the District's Capital Project Fund- Everglades Trust Fund.

Implementation of the Act is a coordinated effort among the District's Office of Financial Management, the Department of Regulation and the Department of Water Resources Evaluation (WRE). Budget personnel are responsible for the tax rolls. The Regulation Department in conjunction with Budget developed and maintains the tax billing system. Regulation also monitors BMP compliance and measures the phosphorus load reductions for determination of the incentive tax credits earned. The Department of Water Resources Evaluation is responsible for collecting and analyzing water samples for phosphorus content obtained from the twelve designated sites in the EAA. In addition, the Department of Construction and Land Management's Division of Survey and Mapping initially mapped the entire EAA to identify landowners and farm acreage.

By September 15 of each year, the Governing Board certifies by resolution the Everglades agricultural privilege tax roll for each county in which the EAA is located and credits earned.

Objectives, Scope and Methodology

The purpose of our audit was to determine whether controls are in place, which provide reasonable assurance that revenues collected under the Everglades Agriculture Privilege Tax comply with applicable sections of the Everglades Forever Act. In evaluating the integrity of the system used to assess and collect the tax, we evaluated the methodology used by the District to identify parcels subject to the Everglades Agricultural Privilege Tax and verified the accuracy of tax calculations, particularly the calculation and accumulation of incentive credits. We also determined whether lands owned within the EAA and C-139 basin were properly classified as to usage and that acreage used for the production of vegetables is properly identified for purposes of assessing the tax.

Methodology included

- Review of the calculation to determine incentive credits earned and used.
- Review of Palm Beach and Hendry County's tax rolls.
- Review of District databases to determine that the proper information was recorded.
- Review of the lab certifications and processes for calculating phosphorous loading.
- Accompany District staff on basin and on-farm inspections.

Our audit was performed in accordance with generally accepted government auditing standards.

Findings and Recommendations

Summary

We found parcels, classified as agricultural, located in the EAA that were not levied an Everglades Agricultural Privilege Tax. The current year tax and arrearages totaled $191,067. Had these parcels not been identified, we estimate that the District could have lost approximately $1.5 million in tax revenue over the period 1998 through 2013. More importantly, the District and the Palm Beach County Appraiser's Office have implemented procedures to prevent the reoccurrence of parcel omissions from the Agricultural Privilege tax rolls.

During the course of our audit, the following concerns were brought to our attention. Apparently, the Act and the Rule did not contemplate all the issues concerning the EAA that have arisen. Actions taken by management to address these issues were based on interpretations of the regulations without the benefit of a formal public review or adoption process commensurate with a rule making process. Based upon our testing, we confirmed management's concern that measuring on-farm phosphorus reductions is problematic. We recommend that management review the issues and make recommendations to the Governing Board as to how each issue should be resolved.

Our review of post-permit compliance and other aspects of the regulatory program indicated that the Everglades Regulation Division is staying on top of issues and fulfilling its responsibility under the Rule.

We noted that WRE's lab does not update the database used to calculate EAA phosphorus reductions until all phosphorus and other constituent testing is completed for individual samples. This resulted in a 1% restatement of EAA phosphorus reduction for water year 1997. WRE is in the process of reconfiguring the lab database so all phosphorus testing results are uploaded to the database used to calculate the phosphorus load reduction when completed. In addition, we recommend that the District consider reducing the testing of other constituents in the EAA that are not mandated by the settlement agreement.

Improvements Needed In Processing Palm Beach County's Everglades Agricultural Privilege Tax

We found parcels, classified as agricultural, located in the EAA that were not levied an Everglades Agricultural Privilege Tax. The current year tax and arrearages totaled $191,067. Had these parcels not been identified, we estimate that the District could have lost approximately $1.5 million in tax revenue over the period 1998 through 2013. More importantly, the District and the Palm Beach County Appraiser's Office have implemented procedures to prevent the reoccurrence of parcel omissions from the Agricultural Privilege tax rolls.

We evaluated the District's system and methodology for assessing and collecting the Everglades Agricultural Privilege tax. Our focus was to ensure that a system of controls is in place, which provides reasonable assurance that the tax rolls are accurate and complete. As such, we examined the adequacy of District developed processes and procedures used to initially identify and update all agricultural acreage in the EAA subject to the agricultural privilege tax. Although tax roll processing is a joint effort between the District and Palm Beach County, the District has the ultimate responsibility for certifying the tax roll and attesting to its accuracy and completeness. The Act requires the District to verify that the tax rolls are free of errors and omissions.

By statute, counties are required to send tax roll data to the District by June 1, of each year. This provides the District with about a three-month window to process and certify the tax rolls. Sometimes the time frame is even less, as counties are late sending the tax roll. Only one District employee in the Office of Financial Management and another in the Regulation Department are fully knowledgeable in processing the tax roll. Although our examination of the system, procedures and processes indicates improvement from year to year, the initial systems as well as enhancements have not been reduced to a written procedures manual. Because of the tight time frame, it would be prudent to cross-train additional personnel and prepare written procedures to ensure all procedures are performed and timely tax roll processing is complete.

The District's primary responsibility is to calculate the Everglades Agricultural Privilege tax for all parcels in the EAA and load the data onto the tax roll database provided by Palm Beach County. The District also performs due diligence procedures to ensure tax data (i.e. EAA acres) is correct. Such

procedures include comparing the prior and current year tax rolls for changes and reviewing for other unusual changes.

Although these procedures provide a considerable level of confidence that the tax rolls are correct, the District places a significant amount of reliance in the County to provide accurate tax rolls. The County is responsible for adjusting the current year tax roll for changes in EAA land usage. From year to year, changes in parcel usage and agricultural acreage can be numerous. The District relies on the County to process these changes and provide an accurate and complete current year tax roll. District staff in performance of their due diligence are only in a position to recommend tax roll adjustments. The County maintains all the originating documentation and has the final approval for District recommended tax roll adjustments.

We selected a sample of 90 EAA parcels from reports provided by the Palm Beach County Property Appraiser's Office and traced them into the Everglades Agricultural Privilege Tax database to determine whether the processes and system of controls generate accurate tax rolls. As a result of our tests, we concluded that two parcels in the EAA, one 65 acres and the other 160 acres, were omitted from the tax roll. Further inquiry revealed that both should have been subject to tax in accordance with the Act. Both parcels were assigned new parcel ID numbers. In processing this change, the keypuncher at the County omitted the agricultural designation of the new parcels causing it to be left off the tax rolls.

We brought this to the attention of the Palm Beach County Appraiser's Office. Further examination of this matter by the County uncovered a consistent pattern of omitting the agricultural designation for "parent – child" parcel splits. A parent-child split is defined as simply a division of a larger parcel. The County created a special report to isolate the parcels that have undergone similar changes. During the examination process, the County also identified parcels in the north end of the EAA approximating 702 acres that were omitted from the tax rolls. Section 193.092 F.S. permits the District to go back a maximum of three years to collect unlevied taxes.

District staff, in cooperation with county personnel, researched these parcels to determine whether they are subject to the privilege tax. The results are as follows:

Year	# of Parcels not included in tax roll	Acres	Tax Amount
1994	11	863	$ 21,468
1995	11	863	21,468
1996	11	863	21,468
1997	13	955	23,772
1998	30	4,133	102,891
Total			$191,067

The omission is less than 1% of the tax proceeds received to date. However, projecting the impact of the omissions over the period 1998 through 2013 indicates that the error represents approximately $1,543,000. Going forward, this type of omission should not occur; the County Appraiser's Office has agreed to run reports annually that identify parent-child and other parcel changes and examine supporting documentation as necessary. District staff has committed to reviewing the work of the County to better ensure accurate and complete tax rolls.

District management will have to file certificates of correction for each parcel omitted from the tax roll. The Governing Board must approve all certificates. The recertified tax roll will accurately state current year taxes due and calculate arrearages from prior years.

Recommendations

1. **Correct tax rolls for current tax due and arrearages from prior years. Annually, District staff should review the County Appraiser's report to ensure accuracy and completeness of the tax roll.**

   Management Response:

   Certificates of Correction will be submitted at the November 1998 Governing Board meeting to process tax roll changes through the Palm Beach County Tax Collector.

   Responsible Department: Office of Financial Management

   Estimated Completion Date: November 30, 1998

2. **Develop a procedures manual that outlines the tax data processing.**

Management Response:

The Office of Financial Management will develop a procedures manual.

Responsible Department: Office of Financial Management

Estimated Completion Date: November 30, 1998

3. **Cross-train other employees to process the tax data.**

Management Response:

The Office will cross-train a back-up person to process the tax rolls.

Responsible Department: Office of Financial Management

Estimated Completion Date: September 30, 1999

BMP and Water Quality Monitoring Effort

During the course of our audit, the following concerns were brought to our attention. Apparently, the Act and the Rule did not foresee all the issues concerning the EAA that have arisen. Actions taken by management to address these issues were based on interpretations of the regulations without the benefit of a formal public review or adoption process commensurate with a rule making process. Based upon our testing, we confirmed management's concern that measuring on-farm phosphorus reductions is problematic.

The EAA- Act Vs. Rule

The EAA is defined in the Act as an area approximately 20% larger than the EAA defined in the Rule. The difference being that land located in the northern boundaries of the EAA bordering Lake Okeechobee is included in the Act's EAA boundaries but not in the Rule because the northern land does not discharge south to the Everglades. As a result, the land is subject to the Everglades Agricultural Privilege tax but not the Rule's regulatory program.

The Act specifically mandates that area wide credits be calculated based on procedures adopted in the Rule. The Act also states that the area wide credits are to be applied equally to all land in the EAA. The resulting effect is that landowners earning area wide credits for phosphorus reductions related to implementing BMP's in 80% of the EAA is applied equally to 100% of the Act defined EAA. Accordingly, landowners farming in the northern boundaries of the EAA receive area wide credits without having to implement BMP's or a water quality-monitoring program. However, these landowners are not eligible for credits earned for individual on-farm phosphorus reductions or attaining a phosphorus reduction of 50 parts per billion.

These farms currently discharge water north to Lake Okeechobee. However, construction of a diversion project, as part of the Everglades Construction Project, to discharge the water south is expected to start in 1999. Considering that the intention of the Act and the Rule is to improve the quality of water flowing south to the Everglades, this diversion may necessitate implementation of BMP's and water quality monitoring for land located in the northern boundaries of the EAA which could require a formal process. Although implementation of BMP's and a water quality monitoring program could have a positive effect on water quality discharging south, the area wide phosphorus reduction measurements will still be calculated on the Rule defined EAA. The reason for this is that the 1979 – 1988 monitoring data (base period) is not available for the northern land. Currently, Regulation staff does not monitor BMPs or water quality monitoring as they do in other parts of the EAA.

Measuring On-Farm Phosphorus Reductions

The Act also states that on-farm credits are to be calculated in accordance with procedures specified in the Rule. The Rule provides a specific methodology for only landowners who voluntarily selected a permit type called the "Early Baseline Option". Approximately 40% of the land within the Rule defined EAA boundary is early baseline option type permits. The remaining 60% of farms in the Rule defined EAA chose not to participate in the early baseline option. The Rule does not establish criteria for calculating on-farm credits on the remaining 60% of farms in the EAA. District staff, developed what they believe to be a technically sound method to allow for the calculation of on-farm credits on these farms. While this methodology may be entirely reasonable, it has no basis in the existing legislation and the Rule. This methodology has never been subject to a formal public review and approval process.

In addition, the Division established other criteria for calculating the on-farm credits. District staff developed a 25% maximum allowable missing data criterion, which disallows on-farm credits for phosphorus reductions in cases where water quality monitoring data is not 75% complete. As with the methodology described above, this criterion has never been subject to a formal public review and approval process.

On-Farm Pumps

Landowners achieving certain phosphorus reductions earn credits, which in turn reduces their agricultural privilege tax liability. The two components for determining phosphorus load are phosphorus concentrate and water flow. Inaccurate phosphorus or flow data will cause phosphorus load reductions to be misstated.

Many landowners reported inaccurate flow data resulting in a restatement of phosphorus loads discharging from on-farm structures (i.e. pumps). We reviewed eleven post-permit files for compliance with BMP and water quality monitoring programs. Our review indicated that site verifications performed by the Everglades Regulation Division identified five farms in which pumps did not accurately measure flow. Landowners in the EAA frequently recondition, move or replace pumps, which has a direct effect on the phosphorous load calculation. However, they do not always inform the District of these changes. During site verifications and other analytical reviews, Everglades Regulation staff is finding that inaccurate recording of pumping data and calibrations are a persistent problem.

Although a registered Florida Professional Engineer has calibrated all pumps, as the Rule requires, Division staff has initiated an extensive and time consuming flow measurement verification process over the past year. As a result, if the Division identifies flow data from on-farm structures that was measured inaccurately, a resubmittal of corrected flow data is required. This puts a considerable burden on the Division's staff.

The Rule assigns the District post-permit compliance responsibility. Procedures performed by Everglades Regulation staff include site inspection for BMP implementation, pump calibrations and RPM testing and examination of water samplers. Staff from the Everglades Regulation Division conduct BMP site verifications on an eighteen-month rotational basis to document landowner compliance with BMP specifications. In addition to BMP's,

landowners are required to conduct water quality monitoring. Permitees submit water quality data to the District on a monthly basis. This data along with water flow information is used to determine the phosphorus load of farm water discharging, either directly or indirectly, into District canals.

In all other respects than those mentioned above, we did not find any significant BMP noncompliance. Division staff followed up on areas identified as needing improvement. Our review of post-permit compliance and other aspects of the regulatory program indicated that the Everglades Regulation Division is staying on top of issues and making a diligent effort to fulfill its responsibilities under the Rule. In addition, we traced entries from the Palm Beach County tax data to the District's permit database to test the completeness of the permit database. No exceptions were noted.

Recommendations

4. Management should review the issues and make recommendations to the Governing Board as to how each issue should be resolved:

- **Determine whether the EAA regulatory program will apply to the northern part of the EAA after the diversion project is complete.**
- **Determine criteria for all farm-level credit calculations and how best to measure for non-early baseline landowners.**
- **Determine what revisions may be necessary to all on-farm credits earned to date.**

Management Response:

Staff will review the issues identified in the recommendation and will provide recommendations to the Governing Board prior to the start of the new water year in May 1999.

Responsible Departments:	Office of Financial Management Department of Regulation Office of Counsel
Estimated Completion Date:	May 1999

Analysis of Phosphorus and Other Parameters in the EAA

Water year 1997 published phosphorus reduction of 50% was restated to 49% after a complete analysis of the data was performed. Although the change might not be considered material, it could create a negative perception of District systems and abilities. Changes in lab procedures could reduce or eliminate the need for restating phosphorus results.

The Water Resources Evaluation Department samples and analyzes water quality in the Everglades Agricultural Area in accordance with the Rule. The Water Resources Evaluation's lab analyzes water samples from the twelve designated water monitoring sites in the Everglades Agricultural Area to determine phosphorus concentrate. To maximize District resources, WRE also conducts water quality monitoring for other parameters at the same sites to comply with mandates in the settlement agreement between the State of Florida, the Federal Government, and the District.

The lab is certified with the State of Florida to perform water quality monitoring, a requirement under the Rule. Annually the DEP audits the lab and examines the processes and procedures for handling samples. The certification is dependent on continuing to meet the standards established by the state.

In addition to phosphorus, the lab analyzes nitrogen on a bi-weekly basis if there is flow and analyzes the grab as well as the automatic sample. A less frequent or elimination of nitrogen testing could result in savings of $3,000 annually.

The lab maintains an in-house database, Laboratory Information Management System, (LIMS) in which all water quality sampling is recorded. The sampling data from LIMS is uploaded into the WRE database, WQDORAX that is available for public consumption. Analysis of phosphorus content in samples must be completed within 28 days. Time limits for other constituents vary from 48 hours for nitrogen to 6 months for most metals. The WQDORAX database is used to calculate the EAA phosphorus reductions.

A limitation of the LIMS database is that it will not upload phosphorus data to the WQDORAX database until all other parameters are completed. The District has recently contracted with a consultant to reconfigure the database so partial data (phosphorus) can be uploaded in the WQDORAX database. Until such time as the reconfiguration is complete, the lab maintains an EXCEL

spreadsheet that compares water sample analysis included in the LIMS and WQDORAX databases and reconciles the two databases.

Recommendations

5. Review the necessity of testing and the frequency of testing other parameters not mandated under the settlement agreement.

Management Response:

The WRE will review the necessity and frequency of testing and discontinue or reduce analysis of other parameters as deemed appropriate.

Responsible Department: Water Resources Evaluation

Estimated Completion Date: June 1999

6. Continue effort to reconfigure the lab's LIMS database to enable a download of phosphorus data to the WQDORAX database.

Management Response:

The LIMS reconfiguration upgrade is in process.

Responsible Department: Water Resources Evaluation

Estimated Completion Date: June 1999

District Compliance with Requirements of Chapter 40E-63 F.A.C.

For water years 1996 and 1997, the District, as a landowner in the EAA, is not in compliance with its water quality-monitoring plan. As a result, the total phosphorus reduction could not be calculated. According to the Everglades Best Management Practice Program for water years 1996 and 1997, the water flow was incorrectly measured. The District permitted a landowner to the south of District property to operate pumps on the property. The landowner neither maintained logs nor took water quality samples while pumping. The Rule does not exempt the District from complying with BMP and water quality monitoring requirements.

Recommendation

7. The District should comply with the requirements of the Rule.

Management Response:

The District purchased 7,065 acres known as Multi-Turf and held the property as an inactive farm. The adjacent landowner complained of high water impact to his property and the District entered an agreement allowing him to operate the Multi-Turf pump. However, the landowner did not maintain adequate records. On June 1, 1998, the District acquired the land from the adjacent landowner and thereby terminated the adjacent landowner's option to operate the pump on the Multi-Turf property. The District installed an automatic monitoring system and executed a contract for the data collection and submission. The District is making a diligent effort to be in compliance with the rule for water year 1999.

`Responsible Department:	Construction and Land Management
Estimated Completion Date:	April 30, 1999

Schedule of Tax Assessments and Collections

In the EAA and C-139 Basins
For the period 1995 through 1998
Palm Beach County

Year	Acres	Tax Assessments	Tax Collections
1998	453,226	11,369,459	10,518,565
1997	452,843	10,886,000	11,040,169
1996	461,759	11,493,191	11,066,300
1995	461,770	11,493,461	11,100,870

Hendry County

Year	Acres	Tax Assessments	Tax Collections
1998	48,661	1,211,175	1,021,759
1997	53,513	1,331,994	1,190,709
1996	54,118	1,347,016	1,197,495
1995	54,138	1,347,514	1,280,149

Palm Beach and Hendry Counties

Year	Acres	Tax Assessments	Tax Collections
1998	501,887	12,580,634	11,540,324
1997	506,356	12,217,994	12,230,878
1996	515,877	12,840,207	12,263,795
1995	515,908	12,840,975	12,381,019

C-139 Basin

Year	Acres	Tax Assessments	Tax Collections
1998	149,134	653,205	622,646
1997	149,200	653,500	628,893
1996	148,929	653,800	626,618
1995	152,235	651,968	633,407