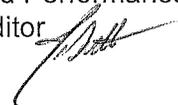




MIAMIBEACH

BUDGET AND PERFORMANCE IMPROVEMENT
Internal Audit Division

INTERNAL AUDIT REPORT

TO: Jorge M. Gonzalez, City Manager
VIA: Kathie G. Brooks, Budget and Performance Improvement Director 
FROM: James J. Sutter, Internal Auditor 

DATE: October 31, 2011
AUDIT: State Beachfront Management Agreement (#3595) Operational Review
PERIOD: October 1, 2009 through September 30, 2010

This report is the result of a regularly scheduled audit of the operational controls surrounding the City's managing of the State Beachfront Management Agreement No. 750-0006 dated February 3, 1982 (later reassigned No. 3595 by the State's Department of Natural Resources) and the corresponding amendment extending its terms through February 7, 2032. A separate audit report focusing on our financial review was issued to the State of Florida in accordance with the agreement.

INTRODUCTION

State Beachfront Management Agreement No. 3595 requires the City of Miami Beach to remit 25% ("sand tax") of any and all monies collected from private concessionaires or other private concerns for the use of State beachfront property to the Florida Department of Environmental Protection. Also, in accordance with state statutes, the City collects 7% sales tax along with the beachfront rental revenue, and remits same to the State's Department of Revenue.

There are three categories of beachfront property users:

- Operators of beachfront concessions seaward of Lummus Park, Ocean Terrace, North Shore Open Space Park, Pier Park and 21st Street (Boucher Brothers and Penrod Brothers) who pay for the use of the beachfront as per their respective contractual agreements with the City.
- Miami Beach hoteliers and condominium associations, which pay beach upland fees to the City annually based on the number of rooms, at the same time that they pay their business tax receipt fees.
- Members of the public who run organized, usually one time only, events on the beach, such as weddings, volleyball tournaments and corporate affairs. These are called special events, and payments are remitted to the City's Tourism and Cultural Development Department.

The following table lists the amount of sand tax paid by the City to the State of Florida for the use of their beachfront property during the past three fiscal years:

Category	FY 2007/08	FY 2008/09	FY 2009/10	Total
Beachfront Concessions	\$195,596	\$186,406	\$184,372	\$566,374
Hoteliers and Condo Associations	\$39,018	\$55,143	\$64,177	\$158,338
Special Events	\$38,741	\$20,853	\$32,273	\$91,867
Subtotal	\$273,355	\$262,402	\$280,822	\$816,579
Adjustments *	\$0	(\$10,238)	(\$249)	(\$10,487)
Total	\$273,355	\$252,164	\$280,574	\$806,092

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- * The adjustments represent the Finance Department's corrections of previous sand tax payments made on beach concession fees, inaccurate calculations, prior audit results, etc. and are listed separately as it affects different customers within the designated categories.

OVERALL OPINION

Miscellaneous Cash Receipts and Payment Vouchers were accurately calculated and consistently separated into the appropriate general ledger accounts. Furthermore, this data along with upland fee revenues was properly entered into the City's Financial System and the Special Events Fee Log. Despite these positive findings, the following shortcomings were noted and are in need of improvement:

- The City inadvertently underpaid the State of Florida by \$140.19 due to the duplication of a prior year sand tax adjustment that has not been corrected to date by the Finance Department.
- Six different hotels and condos are identified whereby their billed upland and/or beach concession fees on their annual business tax receipts were incorrect resulting in the City not charging and collecting a total of \$24,013.
- The City did not receive \$3,320 due as the Eden System inaccurately billed seven hotels/condos 2010/11 fiscal year beach concession fees for food, equipment, etc.
- Sand tax was not computed on vehicle beach access fees.

PURPOSE

The purpose of this audit is to determine whether the City complied with State Beachfront Management Agreement No. 3595 by accurately calculating, timely remitting and properly recording sand tax monies to the Florida Department of Environmental Protection equal to 25% of any and all revenues collected from private concerns for the use of State beachfront property.

SCOPE

1. Confirm that State Management Agreement #3595 is valid and its terms complied with.
2. Confirm that updated City policies and procedures exist, are known and followed by personnel.
3. Confirm that the supporting documentation maintained is organized, sufficient and complete.
4. Confirm that the Finance Department's quarterly sand tax payments are properly calculated and are remitted to the State of Florida within twenty days following the end of the quarter.
5. Confirm that tested sand tax transactions are complete, accurately calculated and properly recorded in the City's Financial System.

PROCESS DESCRIPTION

The City's Finance Department mailed its business tax receipts in August 2009 requesting payment for the 2009/10 fiscal year. In addition to other annual charges, any hotel/condo that collects money from equipment rentals and/or food and beverage sales occurring on the beach should be billed upland fees at a rate of \$18 per unit/room per City Ordinance No. 2003-3420.

A maximum charge of \$10,000 per upland property is required for each concession location, plus any applicable taxes. Therefore, hotels/condos such as the Loews, Fontainebleau, Eden Roc and Decoplage with more than 555 rooms ($556 \times \$18 > \$10,000$) would only be charged the maximum of \$10,000 in upland fees during the 2009/10 fiscal year.

Payment in full was due by October 1st or the customer is subject to Code Compliance citations and penalties. All payments received are to be processed by the City's Central Cashier and distributed to the corresponding general ledger accounts pre-programmed into the Eden System's Cashiering Module.

In addition, beach concessionaires (Boucher Brothers and Penrods) remit payments based on their agreements with the City. For example, Penrods remits monthly payments whereas Boucher Brothers pays an upfront minimum guarantee and then a true-up at year end whereby any calculated overages are due by December 31st.

The Finance Department receives these payments and prepares a Payment Voucher form to distribute the monies among the applicable general ledger accounts. Once completed, the form and payment are submitted to the Central Cashier for processing (similar to the business tax receipt payment process mentioned earlier).

Lastly, the Tourism & Cultural Development Department is responsible for approving and monitoring special events occurring in the City. The event promoter has to meet specified criteria and remit various fees to stage the event based on a number of factors. Examples may include but are not limited to the submittal of site plans and insurance; the existence of off-duty police and/or fire personnel; the payment of application fees, permit fees, security deposits; etc.

Pre-numbered Miscellaneous Cash Receipt forms or MCRs are used to process any monies received from the event promoters by the Tourism & Cultural Development Department. The MCRs provide such pertinent information as the payer's name, address, reason for paying and total paid; the general ledger account number distribution for these monies; as well as the preparer's relevant information. This form accompanied by the payment is then brought to the Central Cashier for processing.

FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

1. Finding: *\$140.19 in Sand Tax Identified in Last Year's Audit is Still Owed to the State of Florida*
All sand tax payments received during the 2009/10 fiscal year were tested to confirm that the City's four quarterly payments to the State of Florida were correct. Testing found that all were correct except the following:

- The Michael Alan Group hosted a special event on the beach that was subject to

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sand tax. However, the corresponding calculations made to separate the monies into the applicable general ledger accounts was incorrect as it did not include \$600 in vehicle beach access fees so an adjusting journal entry was made in the 2007/08 fiscal year. The sand tax adjustment was inadvertently duplicated thereby effectively reducing the State of Florida's remittance by \$140.19 more than applicable. This overage was identified in last year's audit but has not been corrected to date by the City's Finance Department.

The schedule located on pages 8 and 9 of this audit report compares the amount of sand tax due for each applicable beachfront property user with the corresponding amounts actually paid to the State of Florida.

Recommendation(s):

The City should increase its next quarterly sand tax payment by the \$140.19 identified above. In the future, all agreed upon incorrect payments discovered during the annual audit should be timely corrected in the next quarterly sand tax payment to avoid potential confusion.

Management Response (Finance):

The City will increase its next quarterly sand tax payment by the \$140.19 identified by Internal Audit staff. This will bring the total tax remitted to the State of Florida for the period audited to the adjusted amount of \$280,714.22, instead of the initial remittance of \$280,574.04.

2. Finding: *Incorrect Upland and Beach Concession Fee Billings Resulted in \$24,013 Due Not Being Collected by the City*

The Eden System's Licensing Module calculates the amount due for an entity's business tax receipt for the fiscal year based on the data received and entered. If the data is incorrect and goes undetected, then the entity will be billed incorrectly. Testing conducted on hotels/condos discovered the following upland and beach concession fees' billing errors whereby the City was underpaid by \$24,013:

- The Raleigh Hotel located at 1775 Collins Avenue was not charged upland and beach concession fees of \$7,484 during the 2009/10 and 2010/11 fiscal years. Yet, the Office of Asset Management stated that the hotel's beach concession operations remained operational throughout this period.
- The Caribbean Condominium Association, Inc. located at 3737 Collins Ave was charged \$1,872 in upland fees during the 2010/11 fiscal year despite being exempt as it is a non-commercial entity per the Office of Asset Management.
- The Crown Hotel located at 4041 Collins Avenue was not billed upland and beach concession fees totaling \$4,460 for the 2010/11 fiscal year.
- Katrina's/The Bath Club located at 5937 Collins Avenue was billed upland fees based on 200 rooms annually when the correct count is 114. Consequently, the entity paid \$6,020 in upland fees more than needed for the 2007/08 through 2010/11 fiscal years.
- Canyon Ranches includes three separate buildings located at 6799, 6801 and 6899 Collins Avenue that are subject to upland and beach concession fees. Per Internal Audit's request, Code Compliance officers visited the property and determined that annual upland fees should be based on 580 rooms and not the 139 currently being billed. Consequently, Canyon Ranches owes the City \$19,961 in upland and beach

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concession fees for the 2008/09, 2009/10 and 2010/11 fiscal years.

These amounts are not included in finding #1 because the State of Florida properly received 25% of all upland fees collected by the City in accordance with State Beachfront Management Agreement No. 3595. As additional upland fee monies are paid or refunded/credited to the hotels and condominiums identified above, the City's sand tax payments to the State of Florida will be adjusted accordingly.

Recommendation(s):

The corresponding owners identified above should be sent updated business tax receipt invoices explaining the reasons for the difference with a time frame upon which payment is due. Any credits should either be applied against any outstanding amounts or carried forward to offset any amounts owed for future business tax receipts.

Management Response (Finance):

The corresponding businesses identified above will be sent an updated business tax receipt. Any credits will be applied against any outstanding amounts or carried forward to offset any amounts owed for future business tax receipts.

3. Finding: *Beach Concession Fees Were Not Properly Charged*

Hotels and condos subject to upland fees will also owe some combination of beach concession fees for each type applicable (food, equipment, etc.). The Office of Asset Management recently reviewed the hotels and condos.

The Office of Asset Management's review of the 2010/11 business tax receipts billed to hoteliers and condos discovered that \$3,320 in beach concession fees were not received by the City because of the following reasons:

- The Blue and Green Diamond Condominiums located at 4777 Collins Avenue are a non-commercial entity as addressed in finding #1 and are therefore exempt from having to pay beach concession and upland fees. Although they were correctly not charged upland fees, they were charged and paid \$664 in beach concession equipment fees which needs to be either credited or refunded.
- Six hotels/condos named Westgate Resort; Royal Palm Hotel; Vendome Place Condo; King Richard Condominium; Beta Epsilon/Cadillac LLC; and New National LLC were each incorrectly not charged \$664 in beach concession equipment fees for the 2010/11 fiscal year. As a result, the City did not collect \$3,984 (\$664 x 6) in beach concession fees that it was entitled to receive.

Recommendation(s):

The Finance Department's Licensing Section should adjust the aforementioned seven hotels/condos current fiscal year business tax receipts accordingly so that the City can bill and receive the \$3,320 outstanding balance. Also, the beach concession fees' billing process should be reviewed to determine the reasons for the differences so that they can be prevented going forward.

Management Response (Finance):

The Finance Department has provided this information to the City's Code Compliance Division and Asset Management Division in order to notice and inspect the seven sites, and issue violations if necessary for the businesses to come in and amend their applications.

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Amendments to increase Business Tax Receipt and Certificate of Use items are application driven and require a formal review of an application by the Finance Department, Planning Department, Building Department and Fire Department.

4. Finding: 25% Sand Tax Not Being Paid on Vehicle Beach Access Fees
State Beachfront Management Agreement No. 3595 states "*The CITY agrees to remit to the Department of Natural Resources 25% of any and all monies the CITY collects from private concessionaires or other private concerns for the use of the State property.*" Currently, the Tourism & Cultural Development Department omits the \$250 permit fee, \$250 application fee and \$150 per vehicle beach access fee from those monies received for special events subject to the sand tax.

Internal Audit opines that the permit and application fees are due for each event regardless of their location and are therefore correctly excluded from sand tax calculations. However, the vehicle beach access fee can be directly attributed to the usage of State property so that 25% sand tax is due on all corresponding amounts collected.

Recommendation(s):

Going forward, the Tourism & Cultural Development Department should remit \$37.50 in sand tax or 25% of each \$150 vehicle beach access fee paid by special event promoters.

Management Response (Tourism & Cultural Development):

Effective for FY 2010/11, the City included vehicle beach access fees in the calculation of sand tax due to the State. The 25% portion has been remitted to the State.

EXIT CONFERENCE

An exit conference was held with Anna Parekh (Director, Office of Real Estate, Housing & Community Development), Robert Reboso (Redevelopment Specialist), Georgina Echert (Assistant Finance Director) Manny Marquez (Revenue Manager), James Sutter (Internal Auditor) and Mark Coolidge (Senior Auditor). Management responses were solicited and included above. All parties were in agreement as to the contents of this report.

JJS:MC:mc

Audit performed by Mark Coolidge

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cc: Hilda Fernandez, Assistance City Manager
Patricia Walker, Chief Financial Officer
Georgina Echert, Assistant Finance Director
Max Sklar, Cultural Arts and Tourism Development Director
Anna Parekh, Director, Office of Real Estate, Housing & Community Development

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SCHEDULE OF FEES COLLECTED
 BEACHFRONT MANAGEMENT AGREEMENT
 FISCAL YEAR 09/10

<u>CONCESSIONAIRE</u>	<u>TOTAL FEES *</u>	<u>75% OF TOTAL</u>	<u>25% DUE STATE</u>	<u>REMITTED TO STATE</u>	<u>DIFFERENCE</u>
1500 Ocean Drive Associates	\$1,322.76	\$992.07	\$330.69	\$330.69	\$0.00
2201 Collins Avenue, LLC	\$6,372.00	\$4,779.00	\$1,593.00	\$1,593.00	\$0.00
3B Productions LLC	\$700.92	\$525.69	\$175.23	\$175.23	\$0.00
AGT Crunch Acquisition LLC	\$93.44	\$70.08	\$23.36	\$23.36	\$0.00
Alexander Hotel	\$4,140.00	\$3,105.00	\$1,035.00	\$1,035.00	\$0.00
Beta Epsilon/Cadillac LLC	\$4,734.00	\$3,550.50	\$1,183.50	\$1,183.50	\$0.00
Betsy Ross Owner LLC	\$638.76	\$479.07	\$159.69	\$159.69	\$0.00
BGW Design Limited Inc.	\$3,364.48	\$2,523.36	\$841.12	\$841.12	\$0.00
Boucher Brothers	\$710,973.32	\$533,229.99	\$177,743.33	\$177,743.33	\$0.00
Caribbean Condominium Association	\$1,872.00	\$1,404.00	\$468.00	\$468.00	\$0.00
Continuum on So. Beach	\$5,604.98	\$4,203.74	\$1,401.25	\$1,401.25	\$0.00
CR Miami LLC	\$5,004.00	\$3,753.00	\$1,251.00	\$1,251.00	\$0.00
Crown	\$3,132.00	\$2,349.00	\$783.00	\$783.00	\$0.00
Crystal Beach Development	\$1,512.00	\$1,134.00	\$378.00	\$378.00	\$0.00
Dade Community Foundation	\$9,710.28	\$7,282.71	\$2,427.57	\$2,427.57	\$0.00
Damien J. Gallo & Associates	\$337.88	\$253.41	\$84.47	\$84.47	\$0.00
Days Inn Art Deco	\$2,628.00	\$1,971.00	\$657.00	\$657.00	\$0.00
Days Inn Oceanside	\$2,394.00	\$1,795.50	\$598.50	\$598.50	\$0.00
Decoplage Condo Assn.	\$18,496.00	\$13,872.00	\$4,624.00	\$4,624.00	\$0.00
Delano Hotel	\$42.00	\$31.50	\$10.50	\$10.50	\$0.00
Dental Productions Event Co.	\$360.76	\$270.57	\$90.19	\$90.19	\$0.00
Destination South Florida/USA LLC	\$700.92	\$525.69	\$175.23	\$175.23	\$0.00
Exclusive Sports Marketing	\$1,740.64	\$1,305.48	\$435.16	\$435.16	\$0.00
Fontainebleau Hotel	\$20,000.00	\$15,000.00	\$5,000.00	\$5,000.00	\$0.00
Four Points By ITT Sheraton	\$3,510.00	\$2,632.50	\$877.50	\$877.50	\$0.00
Gansevoort	\$22,020.00	\$16,515.00	\$5,505.00	\$5,505.00	\$0.00
George A. Skestos	\$584.12	\$438.09	\$146.03	\$146.03	\$0.00
Grand Beach Hotel	\$15,498.00	\$11,623.50	\$3,874.50	\$3,874.50	\$0.00
Hello Florida Inc.	\$1,812.12	\$1,359.09	\$453.03	\$453.03	\$0.00
Holiday Inn Miami Beach	\$4,428.00	\$3,321.00	\$1,107.00	\$1,107.00	\$0.00
Il Villaggio Condo Assn.	\$2,286.00	\$1,714.50	\$571.50	\$571.50	\$0.00
IMG Worldwide Inc. Operator	\$4,105.12	\$3,078.84	\$1,026.28	\$1,026.28	\$0.00
Katrina's/The Bath Club	\$3,600.00	\$2,700.00	\$900.00	\$900.00	\$0.00
King Richard Condominium	\$2,132.75	\$1,599.56	\$533.19	\$533.19	\$0.00
Leader Enterprise Inc.	\$18,950.48	\$14,212.86	\$4,737.62	\$4,737.62	\$0.00
Live Nation	\$31,343.44	\$23,507.58	\$7,835.86	\$7,835.86	\$0.00
Loews	\$20,000.00	\$15,000.00	\$5,000.00	\$5,000.00	\$0.00
Marriott Fairfield Inn	\$3,672.00	\$2,754.00	\$918.00	\$918.00	\$0.00
Marseille Hotel	\$2,034.00	\$1,525.50	\$508.50	\$508.50	\$0.00
Miami Beach Marriott	\$8,496.00	\$6,372.00	\$2,124.00	\$2,124.00	\$0.00
Michael Epstein Sports Productions LLC	\$2,913.56	\$2,185.17	\$728.39	\$728.39	\$0.00
Michael J. Male & Lauren R. Male	\$272.84	\$204.63	\$68.21	\$68.21	\$0.00
Mosaic On Miami Beach	\$1,548.00	\$1,161.00	\$387.00	\$387.00	\$0.00
NASCAR	\$1,133.16	\$849.87	\$283.29	\$283.29	\$0.00
Nautilus Club	\$4,518.00	\$3,388.50	\$1,129.50	\$1,129.50	\$0.00
Palms South Beach	\$4,428.00	\$3,321.00	\$1,107.00	\$1,107.00	\$0.00
Penrod Brothers (Beach Concessions)	\$26,514.12	\$19,885.59	\$6,628.53	\$6,628.53	\$0.00

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Penrod Brothers (Special Events)	\$21,000.00	\$15,750.00	\$5,250.00	\$5,250.00	\$0.00
Quality Inn	\$3,960.00	\$2,970.00	\$990.00	\$990.00	\$0.00
Radisson Deauville	\$8,604.00	\$6,453.00	\$2,151.00	\$2,151.00	\$0.00
Revolution	\$6,682.24	\$5,011.68	\$1,670.56	\$1,670.56	\$0.00
Richmond Hotel	\$1,926.00	\$1,444.50	\$481.50	\$481.50	\$0.00
Ritz Carlton	\$6,768.00	\$5,076.00	\$1,692.00	\$1,692.00	\$0.00
Ritz Plaza	\$2,376.00	\$1,782.00	\$594.00	\$594.00	\$0.00
Riutel Florida	\$5,112.00	\$3,834.00	\$1,278.00	\$1,278.00	\$0.00
Royal Palm	\$14,595.00	\$10,946.25	\$3,648.75	\$3,648.75	\$0.00
Sagamore Hotel	\$3,312.00	\$2,484.00	\$828.00	\$828.00	\$0.00
Shelborne Beach Resort	\$4,572.00	\$3,429.00	\$1,143.00	\$1,143.00	\$0.00
SI Inc. LLC	\$12,482.48	\$9,361.86	\$3,120.62	\$3,120.62	\$0.00
So Be Fit Inc.	\$724.28	\$543.21	\$181.07	\$181.07	\$0.00
South of Fifth Condo Association	\$504.00	\$378.00	\$126.00	\$126.00	\$0.00
South Seas Hotel	\$2,106.00	\$1,579.50	\$526.50	\$526.50	\$0.00
Sports Mark	\$6,915.88	\$5,186.91	\$1,728.97	\$1,728.97	\$0.00
Starwood Hotel & Resorts	\$1,275.72	\$956.79	\$318.93	\$318.93	\$0.00
Sunshine Restaurant Merger	(\$994.32)	(\$745.74)	(248.58)	(248.58)	\$0.00
The Bentley Beach	\$1,962.00	\$1,471.50	\$490.50	\$490.50	\$0.00
The Michael Alan Group	\$560.76	\$420.57	140.19	0.00	\$140.19
The National Hotel (Special Events)	\$408.88	\$306.66	\$102.22	\$102.22	\$0.00
The National Hotel (Upland Fees)	\$5,760.00	\$4,320.00	\$1,440.00	\$1,440.00	\$0.00
The Savoy on South Beach	\$2,412.00	\$1,809.00	\$603.00	\$603.00	\$0.00
The Shore Club Hotel	\$5,850.00	\$4,387.50	\$1,462.50	\$1,462.50	\$0.00
U.S. Road Sports & Entertainment of Florida	\$841.12	\$630.84	\$210.28	\$210.28	\$0.00
Vendome Place Condo	\$2,916.00	\$2,187.00	\$729.00	\$729.00	\$0.00
Westgate Resort	\$828.00	\$621.00	\$207.00	\$207.00	\$0.00
Wyndham Miami Beach Resort	\$7,722.00	\$5,791.50	\$1,930.50	\$1,930.50	\$0.00
Total	\$1,122,856.89	\$842,142.67	\$280,714.22	\$280,574.04	\$140.19

*Excludes sales tax