



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: February 6, 2009
AUDIT: Audit of Business Tax and Fees Charged Concurrently with Business Tax
PERIOD: October 1, 2007 through June 30, 2008

This report is the result of a regularly scheduled audit of the fee revenues charged and collected by the City's Finance Department for business taxes, certificates of use, and fire safety inspections. The audit period was selected due to the Finance Department's conversion from Permits Plus to the Eden System's Licensing Module for the 2007/08 fiscal year. Finally, this audit focused primarily on the financial aspects as the overall business tax and certificate of use process is currently being reviewed and revised by the City's Business Tax Working Group comprised of the Finance, Planning, Building, Code Compliance, and Fire Departments as well as the Office of Budget and Performance Improvement.

INTRODUCTION

Pursuant to Florida State Statute 205.042, the City is authorized to levy, by appropriate resolution or ordinance, a business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. Consequently, the City implemented a business tax (formerly known as an occupational license) which remained relatively unchanged throughout the years (excluding fees).

The name was changed to business tax in January 2007 when House Bill 1269 was approved by the governor to better protect local residents from consumer fraud. In the past, unscrupulous persons presented a local occupational license to consumers as proof of competency to perform various repairs and services and local consumers are victimized by these representations. Changing the name of the item issued by local governments from occupational license tax to local business tax was intended to eliminate some fraudulent misrepresentation.

As described in Section 102 of the Miami Beach Code, the City Commission levies a business tax for the privilege of engaging in or managing any business, profession or occupation within the City's jurisdiction. Each business tax receipt is valid for one year, from October 1st through September 30th of the following year, and it must be posted in or about the place of business where it may be seen upon inspection by any official of the City. City Code Section 102-379 lists the schedule of taxes for the various businesses, occupations and professions. The City shall endeavor to notify all receipt holders that their receipts are due for renewal; however, they are responsible for renewing the receipt prior to October 1 even if a renewal notification has not been received.

Meanwhile, City Code Section 14-66(3) addresses the need to obtain certificates of use before new buildings, excluding one and two family residences, can be occupied. Certificate of use shall not be issued until the premises have been inspected and found to be in compliance to the City Code. Certificate of use fees are intended to defray the costs of all the original inspections and an annual

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renewal fee shall be paid to cover the costs of these annual inspections necessary to determine compliance. All existing industrial, office and commercial buildings must acquire certificates of use annually beginning on October 1st. The fee structures for certificates of use are specified in Exhibit A of the City Code. This section of the City Code is based on City Ordinance Nos. 92-2796, 92-2797 and 2003-3425.

City Code Section 50-5 requires persons applying for a new certificate of use to apply concurrently for a fire safety permit to the fire department. Upon payment of fee and issuance of the certificate of use, the fire department issues the fire safety permit which shall be renewed annually. All premises shall be inspected from time to time to determine whether they comply with provisions of applicable ordinances and regulations.

Penalties for failure to display the receipt, for operating without the business tax receipt or for failing to timely renew the receipt are assessed accordingly. Enforcement and collection procedures may consist of prosecution before the City's Special Master, suspension/revocation proceedings, suit for injunctive relief to enjoin operation of the business, imposition of a special assessment lien, or possible imprisonment and imposition of a fine not to exceed \$500.

The Finance Department is responsible for the issuance, administration and collection of the 7,507 business tax receipts issued and 5,468 certificates of use fees paid during the 2007/08 fiscal year. Enforcement duties are handled by the Code Compliance Department who monitors residential and commercial districts for potential violations of the City Code and helps ensure compliance.

Other City departments may also become involved in the process depending upon the business type and its location. For example, the Building Department will check if there is a valid certificate of occupancy (a change in the classification of the business establishment or use of the space) for the building and if there is a change of occupancy based on the Building Code for the proposed use. Similarly, staff in the Fire Department Plan Review Section will check if there is a change of occupancy based on the Fire Code for the proposed use. The Planning Department will ensure that the type of business proposed is permissible in the chosen location. Transportation and Concurrency Management will check to determine if the proposed project will increase the site's demand on roads, water, drainage, sewer, parks, and other City services and facilities. The Office of Asset Management must be involved if the business is a beachfront concession. The review of these processes was not a part of the scope of this audit.

In addition, Miami-Dade County Code Section 8A-174 provides that the City receive a portion of general County-wide business tax fees collected by the County. The City is paid a percentage of total collections based on Miami Beach's respective population ratio to Miami-Dade County's population. The term population means the latest official state estimate of population certified under Florida Statutes 186.901 whereby the Office of Economic and Demographic Research annually provides to the Executive Office of the Governor population estimates of local governmental units as of April 1 of each year, utilizing accepted statistical practices. The revenues are to be sent to the City within fifteen days following the month of receipt.

Also, some business types and occupations have additional requirements that must be met prior to the issuance of the initial business tax receipt. Examples include but are not limited to the following:

- A State License (if five or more units) from the Florida Department of Business and Professional Regulation must be submitted at the time of application for a Miami Beach business tax receipt.

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- Escort services and employment agencies must provide a \$5,000 indemnity bond through an insurance agency.
- Sellers of travel, tour agencies and travel bureaus must submit a State Certificate from the Florida Department of Agriculture and Consumer Services.
- Condominiums must submit a letter from the developer stating that all the units have been sold, a copy of the letter from the State of Florida declaring it as a condominium and a copy of the recorded condominium documents.

These requirements are currently under review by the City's Business Working Group. However applicable requirements as noted were checked against the business tax applications in our selected sample.

In addition, a valid resort tax registration number must be furnished and taxes remitted either monthly, quarterly or annually as determined by the Finance Department's Resort Tax Division. Applicable entities include any hotel, motel, rooming house or apartment house with four or more units available for rent (3% of taxable revenues), and a 2% tax levied on the total sales price of all food, beverages, alcoholic beverages (including beer and wine) sold in any restaurant, bar or nightclub.

A summary of the revenues for the past three fiscal years collected by the City from business taxes and fees charged concurrently with business taxes is as follows:

FEE SOURCE	FY 05/06	FY 06/07	FY 07/08 (1)
Business Taxes – City (2)	\$3,494,706	\$3,487,418	\$3,163,419
Business Taxes – County (3)	\$185,266	\$175,378	\$158,390
Certificates of Use (2)	\$405,253	\$398,272	\$369,840
Fire Safety (4)	\$352,386	\$34,397	\$296,096
Total	\$4,437,611	\$4,095,465	\$3,987,745

Notes:

- (1) FY 07/08 reported revenue collections as of 06/30/08 or through the end of the audit period were \$3,247,070 (Business Taxes – City); \$68,177 (Business Taxes – County); \$345,274 (certificates of use) and \$279,246 (Fire Safety).
- (2) As a result of the financial crisis and economic downturn in our community, the City has seen an average decline of 38.7% for the past two years in prepaid business tax receipts, which are business taxes, paid in the prior fiscal year in which they are due. Similarly, the amount of annual business tax and certificates of use revenues collected by the City have also been adversely affected as this is the second consecutive year in which revenues are down.
- (3) Miami-Dade County explained on 11/12/08 that the reason for the declining revenues sent to the City is that pursuant to Florida State Statute Chapter 205 and Miami-Dade County Code Section 8A-174, municipalities in the County participate in a percentage based revenue sharing of total County Business Tax Revenue collections. The allocation method for revenue sharing is based on county-wide population statistics. While the City's population has remained approximately consistent throughout the years, other municipalities throughout the County have seen in an increase in their population figures. Added to this, there have been a number of new incorporated municipalities, towns, and villages added to this profit sharing.
- (4) Fire Safety fees for fiscal year 2006/07 were waived by the City Commission. Fees were inadvertently collected by the City and then subsequently refunded to customers. The remaining balance is attributed to fees collected for the prior fiscal year.

OVERALL OPINION

Business tax receipts, certificate of use, and fire safety fee calculations, rates and penalties are generally correct and properly recorded to the City's Financial System in compliance with the City Code. However, the Code Compliance Department should work closer with the Finance Department to ensure the enforcement of the business tax provisions in the City Code, more field inspections to ensure business compliance and that the City is promptly collecting all business tax and penalty fees to which it is entitled. Further observations noted included:

- Eight of seventy Miami Beach businesses selected from the Yellow Pages were operating without a business tax receipt and had not been cited. Also, one of the seven selected businesses that needed to comply with the City's Resort Tax did not but still received a valid business tax receipt for the current fiscal year.
- There are minor shortcomings in the newly implemented Eden System's Licensing Module that should be addressed.
- The Finance Department had not updated its policies and procedures as of the time of this audit to better detail the newly instituted business tax practices.

PURPOSE

The purpose of this audit is to determine whether compliance existed with the provisions listed in City Code Article V Section 102 for Local Business Tax which includes testing for untaxed businesses; determining that correct business tax rates and fees are charged, collected, and recorded in the City's Financial System; and whether delinquencies are effectively and timely pursued.

SCOPE

1. Confirm that the collection of business tax receipts and certificates of use are in compliance with the State Statutes and City Code respectively.
2. Confirm that there is a uniform application of business tax receipts in the City by determining if Miami Beach businesses selected from the Yellow Pages have valid business tax receipts and resort tax licenses (if applicable).
3. Confirm that certificate of use and business tax fees were correctly billed in accordance with the fee schedules contained in City Code Exhibit A and Section 102-379 respectively.
4. Confirm that penalties for late payment of sampled certificate of use and business tax receipts are levied correctly.
5. Confirm that businesses operating without valid business tax receipts are cited with a Notice of Violation and are subject to one or more of the enforcement/collection procedures included in Section 102-377 of the City Code.

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6. Confirm that the Finance Department has updated policies and procedures for business tax receipts and certificate of use that are widely known and followed by staff.
7. Confirm that all tested entries into the City's Financial System were correct.

FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

1. Finding: Miami Beach Business Analysis

Seventy Miami Beach businesses were selected from the Yellow Pages and traced to the Eden System's Licensing Module entries to determine the status of their current business tax receipt. These businesses were chosen from sixty-five categories throughout the Yellow Pages. The following listing summarizes the results of Internal Audit's testing:

- 36 businesses had their business tax receipts renewed for the fiscal year.
- 15 businesses were classified as "pending" meaning that they are still in the process of obtaining their business tax receipt. They may not have submitted all the required documentation, have not paid their associated fees or may owe the City other monies (utility bills, resort taxes, City Bills, etc.).
- 4 businesses were labeled as closed and their corresponding business tax receipts were cancelled.
- 15 businesses could not be found in the Licensing Module and were forwarded to the Finance and Code Compliance Departments for further review. It was subsequently determined that six were not operating from the listed address, eight were operating and were subsequently cited by Code Compliance and one was unable to be tracked down and is still being investigated.

Furthermore, Internal Audit further investigated the seven applicable businesses that needed to register with the Resort Tax Division and remit a percentage of their sales to the City in return. Resort tax equates to a 3% tax on the rental of a room or rooms in any hotel, motel, rooming house or apartment house, and a 2% tax levied on the total sales price of all food, beverages, alcoholic beverages (including beer and wine) sold in any restaurant, bar or nightclub.

Testing determined that one, Carlos Restaurant located at 11 Island Avenue, was not registered but should have been. Research showed that the previous operator's inactive resort tax number was incorrectly assigned to Carlos Restaurant when it received its business tax receipt number. The Finance Department's Resort Tax Division was notified and is currently working with Code Compliance in an effort to obtain compliance.

Recommendation:

The City's Code Compliance Officers should more closely examine the businesses in their assigned areas through site visits to determine if they are operating without a valid business tax receipt. If not, they should be cited until they comply. They should also brainstorm to try and derive alternate ways (Yellow Pages review, Dade County license review, etc.) to identify those businesses operating without a business tax receipt that have not yet been identified and/or cited.

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Also, any business tax receipts listed as "pending" should be closely scrutinized to determine the cause. The "pending" business should then be notified of the problem and given a reasonable amount of time to resolve the issue or risk being cited by Code Compliance.

In addition, the Finance Department's Business Tax Division should ensure that the registering business has already obtained their own resort tax number before granting a valid business tax receipt. Code Compliance should continue to cite Carlos Restaurant until it complies with the resort tax requirement and remits the appropriate monies.

Management Response:

Code Compliance is going to fundamentally change the way business tax receipt enforcement is conducted. Currently the primary responsibility for enforcement rests with two officers. The city is divided into 18 geographic zones and each zone is assigned a code officer. In the new system the primary responsibility for business tax receipt enforcement will be with the zone officer. This will provide more proactive coverage and a higher degree of accountability.

The Finance Department reviews all new business tax receipt applications for compliance to our Resort Tax requirements before granting a valid business tax receipt. Since this audit was conducted, the business noted has come into compliance with established City Code requirements for Resort Tax. Originally, the business noted had provided a Resort Tax registration for the correct address of the application to the Customer Service Representative processing the file. An oversight, by the Customer Representative, was committed in not tying the address to the actual new business applying for a new business tax receipt. It should be noted, that the Customer Service Representative who processed this application is no longer a member of the Business Tax Division.

2. Finding- Conversion to Eden's Licensing Module

The Finance Department's 2007/08 conversion from the Permits Plus System to Eden System's Licensing Module has brought improvements in checks and balances and accountability. Although software conversions typically experience unforeseen difficulties, the follow items were noted and are in need of corrective action:

- Penalties can be added to an existing account with a zero balance by inadvertently pressing the wrong icon resulting in an outstanding balance owed.
- Penalties would not be levied against delinquent customers unless a line item existed which was not always present. Otherwise, selecting the appropriate penalty calculating icon would not update the account for late charges.
- Duplicate business tax receipt renewals were created and mailed for a number of accounts that created confusion. The cause was apparently due to an operator error and was not related to a global system problem and should not reoccur. Some customers actually paid twice, most were cancelled in the system and a few continue to show outstanding balances.
- The annual fee for travel bureaus/tour operators was not increased by 5% from \$182 to \$191 in accordance with City Code Section 102-374. This category was the only one noted during testing that was not increased and was subsequently confirmed by inquiries with department personnel.
- Some 2007/08 fiscal year accounts paid in full before they were invoiced. Their

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corresponding accounts are listed on the Eden System as "pending" rather than "renewed" for this system error.

Recommendation(s):

The aforementioned listed Eden System shortcomings and any others identified by Finance Department staff should be reported and corrected.

Management Response:

The Finance Department's response to the findings and recommendations listed above is as follows:

- Penalties can be added to accounts with zero balances, as long as the accounts are in pending status. This is a correct feature in the system, as a customer may have paid their business tax receipt in full, but pursuant to Florida Statutes and City Code, their renewal is still considered in pending status until all required documents have been furnished to the City and all past due amounts due to the City are paid. The business tax receipt shall be withheld until such time as all amounts due to the City are paid in full, during which the duration of this time the customer may accrue penalties.
- All Business Tax staff are trained in using the License Module, including adding penalty categories to customers when warranted by State Statute or City Code.
- During the conversion from Permits Plus to the Eden License Module, some duplicate business tax receipts were billed in error. Two City employees involved in this conversion, one from the Information Technology Division and one from the Business Tax Division are no longer employed by the City.
- Fee corrected as noted. Information Technology Division staff member who programmed the fee increase in our License Module is no longer employed by the City.
- There are a number of customers that have paid their 2007/08 fiscal year business tax receipt in full and remain in pending status because they still have other amounts due to the City. Pursuant to City Code, their renewal is still considered in pending status until all past due amounts due to the City are paid. The business tax receipt shall be withheld until such time as all amounts due to the City are paid in full.

3. Finding – Policies and Procedures

Although descriptive and covering a wide array of topics, the Finance Department's policies and procedures did not properly address the changes made for business tax receipt operations. Many of the procedures changed with the implementation of the new Eden System Licensing Module in October 2007. This process is known entirely by few and should be better documented to avoid further difficulties if personnel change.

Recommendation(s):

The Finance Department's operating policies and procedures should be updated as soon as possible and should more descriptively outline the current business tax receipt operations. Policies and procedures serve both as a benchmark to measure individuals' performance and as an instruction manual in the event employees' change.

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Management Response:

Policies and procedures have been routinely updated by the Finance Department. There are revised policies and procedures available since July 1997. Staff is awaiting the outcome and recommendations of the Finance and Citywide Projects Commission Committee's Business Tax Working Group before updating the current policies and procedures. The Business Tax Working Group and the Office of Budget and Performance Improvement are working on a new process flow for Business Tax Receipt, Certificate of Use, and Fire Inspection Fee renewals which will change/impact policies and procedures.

EXIT CONFERENCE

An exit conference was held on 12/17/08 and attended by Assistant Finance Director Georgina Echert, Financial Analyst III Betty Smith, Code Compliance Division Director Greg Tindle, Code Compliance Administrator Jose Alberto, Internal Auditor James Sutter and Senior Auditor Mark Coolidge. All management responses were received and incorporated into this audit report. All parties were in agreement as to the contents of this report.

JS:MC:mc

Audit performed by Mark Coolidge

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Cc: Patricia Walker, Chief Financial Officer
Georgie Echert Assistant Finance Director
Gregory Tindle, Code Compliance Director