



Joseph M. Centorino, Inspector General

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph Centorino, Inspector General

DATE: May 24, 2021
PROJECT: State Beachfront Management Agreement (#3595) Operational Audit Report
OIG No. 21-20
PERIOD: October 1, 2018 through September 30, 2019

This report is the result of an audit of the operational controls surrounding the City's managing of the State Beachfront Management Agreement No. 3595 and the corresponding amendment extending its terms through February 7, 2032. A separate audit report focusing on the OIG's financial review will be issued to the State of Florida in accordance with the agreement.

INTRODUCTION

In 1982, the City entered into a Management Agreement (No. 750-0006, currently No. 3595) with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida to manage the State-owned beach east of the erosion control line within the City, for a period of 25 years, which was subsequently extended for an additional 25 years beginning February 7, 2007. In return, the City agreed to remit twenty-five percent (25%) of any and all monies collected from concessionaires for the use of State beachfront property (i.e., "sand tax") to the State of Florida Department of Environmental Protection (State). The City is required to provide the State with an annual audited report of all monies collected from these concessionaires.

The City is to remit 25% sand tax to the State for all corresponding revenues collected from the following beachfront property users:

- Beachfront Concessions: beachfront operations authorized by the City to the upland owner concessionaire¹, or a direct concessionaire².
- Film & Print Vehicle Beach Access Passes: individuals and businesses wishing to conduct commercial film, television, video, photography, and all other media use projects on public property, which may require the parking of essential vehicles on sand areas.
- Special Event Permits and Vehicle Beach Access Passes: individuals and businesses wishing to conduct events on the beach, which in addition to the use of beachfront space may also require the parking of essential vehicles on sand areas.

¹ Upland owners include hotels, condominium associations and mobile cooking/heating (food trucks), also, Non-Upland properties that have negotiated an agreement with the nearby upland owner for the use of the beachfront.

² Direct City Concessionaire is a provider of beach concession management and operation services with which the City has contracted directly.

The following table shows the City's quarterly payments totaling \$365,783.83 that were remitted to the State on applicable revenues received during the fiscal year ending September 30, 2019:

Check Date	Period	Check Number	Check Amount
1/23/2019	Oct-Dec 2018	435038	\$81,474.34
4/16/2019	Jan-Mar 2019	437899	146,287.41
7/10/2019	Apr-Jun 2019	441040	35,891.86
10/15/2019	Jul-Sep 2019	444546	102,130.22
Total			\$365,783.83

OVERALL OPINION

Based upon an examination of City records provided for the reviewed period of October 1, 2018 through September 30, 2019, the Office of the Inspector General (OIG) found various under and over payments of sand tax to the State. Most concerning was the Office of Real Estate's \$600,000.00 underpayment related to the incorrect general ledger distribution of several Boucher Brothers payments occurring from June 2017 through October 2019. On a positive note, the City Administration, once notified of the oversight, promptly took the appropriate corrective action, and paid the deficiency.

In addition, several identified outstanding balances remain unpaid, including some identified in OIG's prior audit report dated December 11, 2019, which also affect the amount of the City's sand tax payments to the State. Although the COVID-19 pandemic has most likely contributed to the named parties' delinquency or inability to pay, the OIG recommends that the City actively research different approaches to improve its future collection efforts. Unpaid outstanding customer balances, dating back months and sometimes years, have been periodically addressed in prior audits.

SCOPE, OBJECTIVES, AND METHODOLOGY

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

The audit focused on the following general objectives:

- To ensure that all sand tax transactions for the 2018/19 fiscal year were properly calculated, and recorded in the City's Financial System.
- To ensure that the City's Finance Department accurately remitted the sand tax payments due to the State of Florida Department of Environmental Protection.
- To determine whether deficiencies identified in the prior audit have been corrected.
- Other audit procedures as deemed necessary.

The audit methodology included the following:

- Reviewed applicable provisions of agreements and City Standard Operating Procedures;

- Interviewed and made inquiries of staff to gain an understanding of internal controls, assess control risk, and plan audit procedures;
- Performed substantive testing consistent with the audit objectives, including, but not limited to, examination of applicable transactions and records;
- Drew conclusions based on the results of testing with corresponding recommendations, and obtained auditee responses and corrective action plans; and
- Performed other audit procedures as deemed necessary.

FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

FINDING 1:

Per Section 102-357 of the City Code, the City Commission levies a business tax for the privilege of engaging in or managing any business, profession, or occupation within the City. The business tax is levied on any person who maintains a permanent business location or branch office within the City, for the privilege of engaging in or managing any business, profession, or occupation within the City. The City's Finance Department typically mails its annual business tax receipts (BTRs) in July/August requesting payment for the upcoming fiscal year by October 1st.

As it relates to beachfront concessions, each concessionaire is required to pay an upland fee per unit (\$23 per unit during the 2018/19 fiscal year) as part of its BTR, granting it the right to use the public beach for the stated period. In addition to obtaining a valid BTR, concessionaires are required to concurrently sign and comply with the terms of the City's Authorization to Operate Beachfront Concession(s).

Direct concessionaires, such as Boucher Brothers Inc. and Penrod Brothers Inc., have been contracted directly by the City to manage and operate beachfront concessions adjacent to public property. Direct concessionaires are to follow the specific terms of their respective agreements.

Per City Code Sections 12-1 and 12-5, film and print productions, as well as applicants wishing to hold a special event, must submit complete documentation, in addition to any required fees. As it relates to events held on State-owned property east of the erosion control line (i.e., east of the dunes), there may also be such additional charges as a \$150 per vehicle access pass fee and/or a \$.25 per beach square footage fee.

In compliance with Management Agreement No. 3595, the City is to remit 25% from all monies collected from concessionaires for the use of State beachfront property. As a result, OIG staff reviewed all known taxable transactions from October 1, 2018 through September 30, 2019, whereby the following sand tax payment deficiencies were noted:

- A. Sand tax underpayments to the State totaling \$600,241.23
- The Office of Real Estate incorrectly allocated the payments received from the Boucher Brothers during the period of June 2017 through October 2019 among the appropriate general ledger accounts in the Munis system (the City's enterprise resource planning system). As a result, OIG staff determined that the City had underpaid the State by \$600,000.00, due primarily to lack of supervisory oversight. The City Administration was immediately notified of this omission and check number 455752 was promptly remitted to the State on September 24, 2020 to resolve the matter.

- Penrods Brothers Inc. incorrectly reported its beach sales to the City for the months of September 2018 through January 2019, and March 2019. Meanwhile, the City incorrectly recorded the direct concessionaire's February 2019 reported total beach sales. These errors resulted in a total underpayment to the State of \$241.23, which the City resolved through the issuance of check number 456648 on October 22, 2020.

B. Sand tax overpayments to the State totaling \$10,473.48

- The City overpaid the State by \$9,766.73 due to an improper calculation of year-end adjustments associated with Boucher Brothers Inc.'s reported 21st and 46th Street beach revenues. Upon notification, the \$9,766.73 overpayment was deducted from the City's next quarterly payment sent on October 22, 2020.
- Eight hoteliers (Crystal Beach Development Corp, Edition Management LLC, The Bath Club Entertainment LLC, Grand Beach Hotel, Carillon Hotel LLC, Shore Club Property Owners LLC, Setai Hotel, and The Palms South Beach Inc.) were inaccurately billed upland fees in the EnerGov system (the City's licensing and permitting system) due to a systematic rounding error. As a result, these hoteliers were overbilled by \$2,712.00 and the State was overpaid by \$678.00 (\$2,712.00 x 25%) in sand tax.
- 955 Bay Drive LLC was incorrectly billed for upland fees ((\$57.50 in 2018) + (\$57.50 in 2019) = \$115.00 x 25%) in the EnerGov system, resulting in an overpayment to the State in the amount of \$28.75.

C. Outstanding and/or incorrectly billed sand tax totaling \$7,563.64

- The Setai Hotel (RL-10007896) was incorrectly billed for 88 units through the business tax receipt process as the property consists of two different addresses according to the Miami-Dade County Property Appraiser's records. In addition, the October 3, 2015 Authorization to Operate Beachfront Concession letter properly states that the Setai Hotel has a total of 267 units. When questioned as to the reasons for the 179-unit billing difference (267 – 88), the Property Management Department's Beach Maintenance Director opined that the error most likely occurred because one of the addresses was omitted while comparing the records with the Miami-Dade County Property Appraiser.

As a result, OIG staff calculated that the Setai Hotel was underbilled by \$15,752.00 for the additional 179 units for 2017 through 2020. OIG's March 2021 EnerGov review found that the Setai Hotel was billed \$4,007.00 in upland fees through invoice 00253645, which was paid in full on September 25, 2020, and the City remitted \$1,001.75 to the State on 10/22/2020 through the issuance of check number 456648. Therefore, the Setai Hotel still owes the City \$11,745.00 (\$15,752.00 - \$4,007.00) and the State is entitled to receive 25% or \$2,936.25.

- For one event held east of the dunes by the Faena, the City accurately billed the hotelier on November 26, 2018, but no monies were received during the audit period. OIG's March 2021 EnerGov review found that the \$3,098.88 balance was paid on October 26, 2020 and was properly included in the City's quarterly payment to the State sent on January 29, 2021.

- The Triton Tower Condominium (RL-87045819) did not remit full payment (paid \$1,192.95 out of \$3,300.00 due) due for upland units under its 2019 BTR renewal during the audit period. OIG's March 2021 EnerGov review determined that the \$2,107.05 outstanding balance was paid on October 8, 2020 and the City properly remitted \$526.75 to the State on January 29, 2021.
- D. Prior audit findings that were not resolved during the audit period totaling \$6,522.94 in sand tax
- As part of OIG's prior audit follow-up of the report dated December 11, 2019, it was noted that the following has not been collected and/or corrected:
 - Journal Entry No. 12-103 processed the identified underpayments of \$2,163.38 and \$2,157.56 and was properly included in the City's payment to the State on October 22, 2020.
 - The Shelborne South Beach (RL-10007418) owed the City \$4,858.00 due to its non-upland agreement with the Mondrian Hotel that was not paid during the audit period. Similarly, the Four Points by ITT Sheraton (RL-97238095) owed \$1,100.00 due to its non-upland agreement with the Soho House Beach House that also was not paid. These agreements allow the guests of non-upland properties to use the nearby amenities of registered upland properties. In return, the upland fee property is billed additional upland fees on its annual BTR equal to the number of units of the non-upland property multiplied by the applicable per unit rate. OIG's March 2021 EnerGov review determined that the Shelborne South Beach still has not remitted the \$4,858.00 outstanding balance, but the Soho Beach House Hotel paid \$1,100.00 on July 14, 2020 and the City properly remitted \$275.00 to the State on October 22, 2020.
 - The Triton Tower Condominium remitted \$3,150.00 for the 2017 renewal period on October 8, 2020 and the City properly included \$787.50 in its January 29, 2021 remittance to the State.
 - Adjusting journal entry has not been completed for Miscellaneous Cash Receipt No. 413265 as the GE Projects event occurred west of the dunes. Consequently, the City mistakenly remitted \$75.00 in sand tax to the State.

Recommendation(s):

It is recommended that the City pursue collection of any outstanding fees due from concessionaires. In addition, it is recommended that any adjusting entries arising because of the current audit, and/or those due from last year's audit, should be promptly completed and recorded in the City's Financial System. Once collected/completed, the City's next quarterly sand tax payment to the State should accurately include these items.

As per OIG's prior audit, and further validated during this year's audit, the inaccurate billing of upland fees in the EnerGov system due to a systematic rounding error should be corrected. Lastly, it is recommended that any monies overpaid by concessionaires is refunded and the City's sand tax payment to the State should be appropriately adjusted.

Finance Department Response:

- B. Sand tax overpayments to the State totaling \$10,473.48
- The Finance Department Customer Service Section (CSS) is working with EnerGov Support to resolve the databases' systematic rounding programmed in the rate table. This will eliminate the need for future manual corrections. The overpayments on customer accounts will be credited and/or refunded to the customer and will be reflected on the next quarterly payment to the state.

The next quarterly payment to the State will be reduced by \$28.75. The amount will be reclassified from sand tax to fire revenue in the General Ledger.

- C. Outstanding and/or incorrectly billed sand tax totaling \$7,563.64
 - The CSS will promptly bill the Setai Hotel \$11,745.00 for the underbillings. Moving forward, the Property Management Department will promptly communicate billing revisions to the Finance Department.
- D. Prior audit findings that were not resolved during the audit period that totaled \$6,522.94 in sand tax
 - The next quarterly payment to the State will be decreased by \$75.00 to correct the overpayment. In the future, all adjusting entries will identify the vendor to ensure all adjustments are accounted for.

Tourism and Culture Department Response:

- C. Outstanding and/or incorrectly billed sand tax totaling \$7,563.64
 - With respect to Finding 1(C) regarding a Faena event, the Tourism and Culture Department acknowledges that the Faena was properly billed, and sand tax was properly remitted, and the final payment, by the Faena, was delayed. To ensure such a delay does not recur, the Tourism and Culture team will initiate a monthly internal review of Munis open Special Event invoices, compare with internal Tourism and Culture Special Event fee logs, to identify and address any possible outstanding payments.

Office of Real Estate Response:

- A. Sand tax underpayments to the State totaling \$600,241.23
 - As soon as the Administration identified the underpayment to the State by \$600,000.00. The Administration immediately notified the State of this omission and check number 455752 was promptly remitted to the State on September 24, 2020. Since then, the Administration has implemented a two-step approval process to review invoices generated to ensure the proper fund allocation for payments is processed.
 - Penrods Brothers Inc. incorrectly reported their beach sales amounts to the City for the months of September 2018 through January 2019, and March 2019. These errors resulted in a total underpayment to the State of \$241.23, which the City resolved through the issuance of check number 456648 on October 22, 2020. As a result, the Administration has worked with the concessionaire and has asked them to report the Food and beverage sales in a separate report. Additionally, the Office of Real Estate has implemented controls to prevent this oversight by tracking all sales in a spreadsheet to compare monthly sales provide by the concessionaire.
- B. Sand tax overpayments to the State totaling \$10,473.48
 - The City overpaid the State by \$9,766.73 due to an improper calculation of year-end adjustments associated with Boucher Brothers Inc.'s reported 21st and 46th Street beach revenues. The Office of Real Estate has worked closely with the concessionaire to resolve this, and now has access to their POS system, which allows for the year end calculation to be performed before the sales report is received by the City.

- 955 Bay Drive LLC – This last point is not under the Office of Real Estate. This property is a residential building located in Normandy and not owned by the City of Miami Beach.
- C. Outstanding and/or incorrectly billed sand tax totaling \$7,56.75
- The Setai Hotel was incorrectly billed for 88 units. Once this was identified it was found this property has multiple folios. This has been noted and will be addressed to prevent this oversight in the future.
 - The Faena Hotel event was reviewed and addressed by the Tourism and Culture Department.
 - Triton Towers Condominium did not remit full payment under their BTR. This was reviewed and addressed/corrected by the Finance Department.
- D. Prior Findings that were not resolved:
- Journal Entry No. 12-103 processed the identified underpayments of \$2,163.38 and \$2,157.56 and was properly included in the City's payment to the State on October 22, 2020. The Office of Real Estate submitted the journal entry to the Finance Department to process on September 4, 2020.
 - The Shelbourne Hotel and Soho Beach House have been collected as of April 2021. From this point forward the issuance of all Beach Concession Permits will require receipt of payment for all outstanding City invoices.
 - The Triton Tower Condominium was paid in January 2021. From this point forward the issuance of all Beach Concession Permits will require receipt of payment for all outstanding City invoices.
 - Journal Entry No. 413265 will be reviewed and addressed by the Finance Department.

FINDING 2:

Sections 4.1 and 4.2 of the concession agreement between the City and Boucher Brothers Inc. states that the concessionaire shall pay the City a Minimum Guarantee Annual Concession Fee (MG), in the amount of \$122,000 for food and beverage sales, beach equipment rentals, and the sale of beach-related sundries/skin care products for each agreement year. Furthermore, concessionaire shall pay the City the greater of the MG or after such time as the annual gross receipts exceed \$600,000, twenty-five percent (25%) of all gross receipts.

Based on the interpretation of the Office of Real Estate, the additional 25% was only calculated in excess of the \$600,000. However, as per the OIG and the City Attorney's Office interpretation presented in last year's audit report, the 25% should be applicable to all Gross Receipts based on the agreement's wording. Thus, when OIG staff recalculated the true-up, an additional \$28,000 was found to be due to the City. Once collected, the City is to remit 25% to the State in its next quarterly sand tax payment.

As part of OIG's follow-up on last year's audit findings, no monies have been collected from the concessionaire for years 2017 and 2018. Although this item has been placed on the City Commission agenda several times during the past year, it has been repeatedly deferred and no action has been taken.

Recommendation(s):

The OIG recommends that no action be taken until the item is heard by the City Commission and a final determination is made as to Sections 4.1 and 4.2. Once resolved, the appropriate actions

should be promptly taken to either amend the agreement or to assess the Boucher Brothers Inc. accordingly.

Approved by:



Joseph Centorino, Inspector General

05/25/2021
Date

Reviewed by:



Mark Coolidge, Chief Auditor

05/26/2021
Date

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