

# AUDIT REPORT



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF FINANCIAL AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on Tavern on the Green Limited Partnership's Compliance With Its License Agreement**

*FM02-168A*

**January 6, 2003**

## **To the Citizens of the City of New York**

Ladies and Gentlemen:

Pursuant to Chapter 5, Section 93 of the New York City Charter, we have examined the compliance of Tavern on the Green Limited Partnership's License Agreement with the New York City Department of Parks and Recreation. Under the terms of the agreement, Tavern is to pay the City license fees to operate a restaurant and catering facility in Central Park. The results of our audit, which are presented in this report, have been discussed with officials from Tavern and the Parks Department, and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that private concerns conducting business on City property are complying with the terms of their agreements, properly reporting revenues, and paying the City all fees due.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my audit bureau at 212-669-8945 or e-mail us at [audit@Comptroller.nyc.gov](mailto:audit@Comptroller.nyc.gov).

Very truly yours,

William C. Thompson, Jr.

WCT/GR

Report: **FM02-168A**  
Filed: **January 6, 2003**

## ***Table of Contents***

Audit Report In Brief	1
Introduction	2
Background	2
Objectives	2
Scope and Methodology	3
Findings	5
Tavern Owes the City \$5,991 In Additional License Fees And Calculated Late Charges	5
Sales Tax Issues	5
Recommendations	6
 APPENDIX I	
 ADDENDUM I – Tavern on the Green Response	
ADDENDUM II – Parks Response	

***The City of New York  
Office of the Comptroller  
Bureau of Financial Audit***

**Audit Report on Tavern on the Green  
Limited Partnership's Compliance With  
Its License Agreement**

**FM02-168A**

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**Audit Report in Brief**

The Comptroller's Office performed an audit of Tavern on the Green Limited Partnership's (Tavern) compliance with the license agreement awarded by the Department of Parks and Recreation (Parks). Under the agreement, Tavern pays the City license fees to operate a restaurant and catering facility located in Central Park. During the operating year ending October 7, 2001, Tavern paid the City \$1,167,422 in license fees.

**Audit Findings and Conclusions**

Our audit found that Tavern generally complied with the terms of its license agreement with Parks. Specifically, Tavern:

- had adequate internal controls over its revenue collection and recording functions;
- fairly reported its revenue and paid its corresponding license fees;
- maintained adequate insurance coverage;
- remitted to the City the required security deposit; and
- paid for its water and sewer use.

However, Tavern improperly deducted certain amounts from its reported gross receipts and underreported its taxable sales to New York State. Specifically, Tavern:

- deducted \$111,793 in Tele-charge commissions resulting in additional franchise fees and late charges of \$5,991; and
- accepted Resale Certificates that are not valid for food and beverage purchases under New York State Sales and Use Tax Law and Regulations. As a result, Tavern owes \$20,914 in additional sales tax.

## **Audit Recommendations**

To address these issues, we recommend that Tavern should:

- Pay the City \$5,991 in additional license fees and late charges owed;
- Cease deducting Tele-charge commission from gross receipts reported to Parks;
- Pay \$20,914 in additional sales tax owed to New York State; and
- Cease accepting New York State Resale Certificates for food and beverages sales.

Additionally, we recommend that Parks should ensure that Tavern:

- Pays the City \$5,991 in additional fees and late charges owed: and
- Pays the additional \$20,914 in sales tax owed to New York State, and complies with the other recommendations in this report.

## **Introduction**

### **Background**

In 1985, the Department of Parks and Recreation (Parks) entered into a 25-year license agreement with Tavern on the Green Limited Partnership (Tavern) for the maintenance and operation of a restaurant and catering facility in Central Park, near West 67<sup>th</sup> Street. Tavern serves more than 500,000 patrons annually, and is currently the highest-grossing-independently operated restaurant in the United States, generating annual revenue of approximately \$34 million.

The agreement requires that Tavern pay the greater of a minimum annual fee that ranges from \$500,000 in the first year to \$1,000,000 in the 25<sup>th</sup> and final year, or a percentage of gross receipts ranging from 2.5 percent to 3.5 percent. The agreement defines gross receipts as all sales (including revenues received from subcontracted concessions) without deduction, except for the following: sales tax, credit card fees paid, gratuities and service charges paid to employees, “complimentary” sales, and free meals to employees. Fees are payable in 13 equal installments on or before the 15<sup>th</sup> day of each 28-day accounting period. A 2 percent interest (late) charge is applied to fees that are not paid on time. The agreement also requires that Tavern post a \$250,000 security deposit with the City; maintain certain types and amounts of insurance coverage; submit statements of gross receipts; pay water and sewer charges; and pay all applicable taxes. During the operating year ending October 7, 2001, Tavern reported gross receipts of \$33,354,901, and paid the City \$1,167,422 in fees.

### **Objectives**

The audit’s objectives were to determine whether Tavern:

- Maintained adequate controls over the recording and reporting of its gross receipts;

- Properly reported its total gross receipts, and correctly calculated and paid its license fees due the City; and
- Complied with certain other non-revenue-related terms of the license agreement.

### **Scope and Methodology**

To achieve our audit objectives, we reviewed the license agreement between Parks and Tavern and noted the requirements of the agreement. At Parks, we reviewed correspondence, revenue reports, and other relevant documents. We analyzed the Parks Concessionaire ledger from October 2, 2000, through October 7, 2001, for the amounts reported and paid to the City, and verified whether payments were received on time.

We evaluated Tavern's internal controls over its revenue functions. To gain an understanding of Tavern's daily operating procedures for recording and reporting gross receipts, we interviewed management personnel, conducted a walk-through of the operations on April 29, 2002, and familiarized ourselves with Tavern's accounting and record-keeping procedures. We documented our understanding of Tavern's operating controls through written narratives. We also observed Tavern's processing of simulated transactions through Tavern's computerized point-of-sales system.

To verify whether Tavern reported its gross receipts to Parks accurately, we traced the gross receipts that Tavern reported to Parks to its Sales Journal and bank account. In addition, we conducted unannounced observations of Tavern's dance nights to determine whether Tavern recorded the revenue derived from these events on its point-of-sales system.

For our tests of restaurant revenue, we examined the guest checks issued for one week—June 25, 2001, through July 1, 2001—to determine the reliability of Tavern's daily-computerized sales reports generated from its point-of-sales system. We determined whether all guest checks were accounted for, were properly numbered in consecutive order, and whether all amounts were accurately recorded on Tavern's daily-computerized sales reports. We compared the amounts recorded on the daily-computerized sales reports to Tavern's Sales Journal for the periods of November 27, 2000 through December 31, 2000, and May 21, 2001 through July 15, 2001. We then traced the amounts recorded on the Sales Journal to Tavern's General Ledger and to the amounts reported on the gross receipts statements submitted to Parks.

For our tests of banquet revenue, we obtained the contracts for the periods of November 27, 2000 through December 31, 2000, and May 21, 2001 through July 15, 2001. We compared the details listed on the contracts to the customer invoices. We then traced the sales amounts listed on the contracts to the Sales Journal and General Ledger. We noted that the banquet contracts were assigned contract numbers manually and were not issued in consecutive order. According to Tavern staff members, a Banquet Event Order (BEO) number is assigned to each contract by the Tavern's computerized banquet-tracking system. Therefore, we selected 100 consecutively numbered BEOs to determine whether all corresponding banquet contracts were accounted for. We then traced the amounts on those 100 contracts to the Sales Journal and to the General Ledger.

To determine whether deducted credit card fees and gratuities were appropriate and deducted from gross receipts accurately, we traced those deducted amounts to Tavern's credit card statements, payroll records, and General Ledger.

Finally, we verified whether Tavern complied with certain non-revenue terms of its agreement, such as if it remitted the proper security deposit, carried the proper amounts and types of insurance policies, and paid all applicable taxes and water and sewer charges.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included test of records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

### **Discussion of Audit Results**

The matters covered in this report were discussed with officials from Tavern and Parks during, and at the conclusion of this audit. A preliminary draft report was sent to Tavern and Parks officials on October 29, 2002. Tavern and Parks officials waived their right to an exit conference. On November 26, 2002, we submitted a draft report to Tavern and Parks with a request for comments. We received written comments from Tavern and Parks on December 9, 2002.

Tavern generally agreed with the audit's findings. However, Tavern believes that it is allowed to resell food and beverage purchases under New York State Tax Law. Tavern stated that it would seek a ruling concerning this matter from the New York State Tax Unit. Nevertheless, it agreed to implement all of the report's recommendations. In addition, Parks issued a Notice to Cure requiring that Tavern Implement the report's recommendations.

The full text of the responses from Tavern and Parks are included as addenda to this report.

OFFICE OF THE COMPTROLLER  
NEW YORK City of New York

Date Filed: January 6, 2003

## **Findings**

Tavern generally adhered to the provisions of its license agreement. It recorded its revenue fairly in its books and records, and its corresponding license fees were paid in accordance with the license agreement. Based on the audit tests performed and the unannounced observations of the facilities, we are reasonably assured that Tavern had adequate internal controls over its revenue collection and recording functions. Furthermore, Tavern generally complied with certain other non-revenue-related terms of the license agreement. By reviewing the respective insurance certificates, we verified that Tavern had the required general liability and worker's compensation insurance coverage, that Tavern maintained a \$250,000 security deposit with the City, and that it paid for its water and sewer use.

However, Tavern made some non-allowable deductions from revenues reported on its gross receipts statements that resulted in Tavern owing the City \$5,991 in additional license fees and late charges. Tavern also underreported \$253,500 in taxable sales on its New York State and Local Sales and Use Tax Returns that resulted in Tavern owing New York State \$20,914 in additional sales taxes. These issues are described in detail in the following sections of the report.

### **Tavern Owes the City \$5,991 In Additional License Fees And Calculated Late Charges**

Tavern improperly deducted \$111,793 in Tele-charge commissions—compensation made to a third party for selling meal packages to Tavern's dining patrons—from its reported revenues on its gross receipts statements submitted to Parks during operating years 1999, 2000, and 2001. Tavern's license agreement prohibits the deduction of Tele-charge commissions from gross receipts. In fact, Article 1(h), of the license agreement defines gross receipts as all sales, without deduction, except for: sales tax, credit card fees paid, and gratuities and service charges paid to employees. As a result, Tavern owes the City \$5,991, \$3,913 ( $\$111,793 \times 3.5$  percent) in additional license fees, and calculated late fees totaling \$2,078. (See Appendix I for calculation of late charges.)

### **Sales Tax Issues**

During the period from October 2, 2000 through October 7, 2001, Tavern underreported taxable sales on its New York State and Local Sales and Use Tax Returns by \$253,500. As a result, Tavern underpaid its Sales Tax by \$20,914 ( $\$253,500 \times 8.25$  percent).

Specifically, Tavern did not include \$253,500 of sales on its sales tax returns that it made to two companies that held banquet events at the facility. These companies provided Tavern with Resale Certificates, which generally would exempt them from sales tax. However, under New York State Sales and Use Tax Law and Regulations, Resale Certificates are not valid for food and beverage purchases. Therefore, Tavern was required to collect and remit the appropriate sales tax from those companies.



## Recommendations

We recommend that Tavern:

1. Pay the City \$5,991 in additional license fees and late charges owed.

**Tavern Response:** “In connection with recommendation number one, Tavern on the Green has made payment to Parks in the amount of \$5,991.00.”

2. Cease deducting “Tele-charge commissions” from gross receipts reported to Parks.

**Tavern Response:** “In connection with recommendation number two, Tavern has made the necessary corrections and is no longer deducting tele-charge commissions from gross receipts.”

3. Pay \$20,914 in additional sales tax owed to New York State.

**Tavern Response:** “In connection with resale certificates provided by two parties with sales revenue totaling \$253,500, we will be collecting the sales tax for these parties and will be filing an adjustment and paying the sales tax in the amount of \$20,913.75 on our next sales tax return. These two customers have agreed to pay the sales tax and file for a credit on their own respective sales tax returns. They both feel strongly that they have provided valid resale certificates.”

4. Cease accepting New York State Resale Certificates for food and beverages sales.

**Tavern Response:** “Tavern on the Green will seek a ruling from New York State Sales Tax to determine if under certain circumstances Tavern can sell future banquet parties for resale.”

Parks should ensure that Tavern:

5. Pays the City \$5,991 in additional fees and late charges owed.
6. Pays the additional \$20,914 in sales tax owed to New York State, and complies with the other recommendations in this report.

**Parks Response:** On December 6, 2002, Parks issued a “Notice To Cure” instructing Tavern to implement the report’s recommendations. Parks also stated that it has asked its internal auditor to perform a follow-up review of Tavern in three months to verify that the audit’s recommendations have been implemented.”

**Schedule of Late Charges Due to Inappropriate Deduction  
of Tele-charge Commissions**

Due Date	License Fee Due	Accumulated Balance Due	Period		Rate	Late Charge
			From	To		
10/18/99	\$ 542.05	\$ 542.05	10/18/99	11/17/99	2.00%	\$ 10.84
		552.89	11/18/99	12/18/99	2.00%	11.06
		563.95	12/19/99	01/18/00	2.00%	11.28
		575.23	01/19/00	02/18/00	2.00%	11.50
		586.73	02/19/00	03/20/00	2.00%	11.73
		598.47	03/21/00	04/20/00	2.00%	11.97
		610.44	04/21/00	05/21/00	2.00%	12.21
		622.65	05/22/00	06/21/00	2.00%	12.45
		635.10	06/22/00	07/22/00	2.00%	12.70
		647.80	07/23/00	08/22/00	2.00%	12.96
		660.76	08/23/00	09/22/00	2.00%	13.22
		673.97	09/23/00	10/23/00	2.00%	13.48
10/16/00	1,795.33	2,482.78	10/24/00	11/23/00	2.00%	49.66
		2,532.44	11/24/00	12/24/00	2.00%	50.65
		2,583.08	12/25/00	01/24/01	2.00%	51.66
		2,634.75	01/25/01	02/24/01	2.00%	52.69
		2,687.44	02/25/01	03/27/01	2.00%	53.75
		2,741.19	03/28/01	04/27/01	2.00%	54.82
		2,796.01	04/28/01	05/28/01	2.00%	55.92
		2,851.93	05/29/01	06/28/01	2.00%	57.04
		2,908.97	06/29/01	07/29/01	2.00%	58.18
		2,967.15	07/30/01	08/29/01	2.00%	59.34
		3,026.50	08/30/01	09/29/01	2.00%	60.53
		3,087.03	09/30/01	10/30/01	2.00%	61.74
10/22/01	1,575.36	4,724.13	10/31/01	11/30/01	2.00%	94.48
		4,818.61	12/01/01	12/31/01	2.00%	96.37
		4,914.98	01/01/02	01/31/02	2.00%	98.30
		5,013.28	02/01/02	03/03/02	2.00%	100.27
		5,113.55	03/04/02	04/03/02	2.00%	102.27
		5,215.82	04/04/02	05/04/02	2.00%	104.32
		5,320.13	05/05/02	06/04/02	2.00%	106.40
		5,426.54	06/05/02	07/05/02	2.00%	108.53
		5,535.07	07/06/02	08/05/02	2.00%	110.70
		5,645.77	08/06/02	09/05/02	2.00%	112.92
		5,758.68	09/06/02	10/06/02	2.00%	115.17
		5,873.86	10/07/02	11/06/02	2.00%	117.48
		5,991.33				
<b>TOTAL LATE CHARGES DUE:</b>						<b>\$ 2,078.59</b>



City of New York  
Parks & Recreation

## **ADDENDUM II**

**(Page 1 of 5)**

The Arsenal  
Central Park  
New York, New York 10021

Adrian Benepe  
Commissioner

Joanne G. Imohiosen  
Assistant Commissioner  
Revenue

(212) 360-3404  
joanne.imohiosen@parks.nyc.gov

December 6, 2002

### **BY FAX AND MAIL**

Mr. Greg Brooks  
Deputy Comptroller  
The City of New York  
Office of the Comptroller  
Executive Offices  
1 Centre Street  
New York, NY 10007

**Re: Draft Audit Report On Tavern on the Green Limited Partnership  
October 2, 2000 to October 7, 2001, FM02-168A, Dated November 26, 2002**

Dear Mr. Brooks:

This letter represents the Parks Department's (DPR), response to the recommendations contained in the subject audit of Tavern on the Green Limited Partnership (Tavern).

DPR has issued the attached "Notice To Cure" (NTC) to Tavern requesting payment under **Recommendation 1** for the full amount of \$5,991. Also, Tavern is required to implement **Recommendation 2** by discontinuing its practice of deducting "Tele-charge commissions" from gross receipts, and **Recommendations 3 and 4** by filing an amended sales tax return, paying \$22,489 to New York State for underpaid sales tax, and by taking appropriate action to ensure that sales taxes are properly collected for all food and beverage sales.

**Recommendation 5** states: "Parks should ensure that Tavern pays the City \$5,991 in additional fees and late charges owed."

**Recommendation 6** states: "Parks should ensure that Tavern pays the additional \$22,489 in sales tax owed to New York State, and complies with the other recommendations in this report."

These recommendations have been addressed by DPR's issuance of the above mentioned NTC to Tavern. Also, we have requested that DPR's Internal Auditor perform

[www.nyc.gov/parks](http://www.nyc.gov/parks)

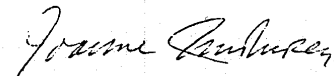
**ADDENDUM II**  
**(Page 2 of 5)**

Greg Brooks  
December 6, 2002  
Page 2

a follow-up review of Tavern in three (3) months to verify that the audit recommendations have been implemented.

We wish to thank the Comptroller's audit staff for their work and efforts in performing this review.

Sincerely,



Joanne Imohiosen

cc: David Stark  
Francisco Carlos  
Susan Kupferman, Mayor's Office of Operations



City of New York  
Parks & Recreation

**ADDENDUM II**

**(Page 3 of 5)**

The Arsenal  
Central Park  
New York, New York 10021

Adrian Benepe  
Commissioner

Joanne G. Imohiosen  
Assistant Commissioner  
Revenue

(212) 360-3404  
joanne.imohiosen@parks.nyc.gov

December 6, 2002

**BY FAX AND MAIL**

Mr. Bruce Allan Kurtz  
Managing Director  
Tavern On The Green  
Central Park at West 67<sup>th</sup> Street  
New York, NY 10023

**Re: NOTICE TO CURE**

**Draft Audit Report On Tavern on the Green Limited Partnership  
October 2, 2000 to October 7, 2001, FM02-168A, Dated November 26, 2002**

Dear Mr. Kurtz:

This letter addresses the findings and recommendations contained in the subject draft audit report on Tavern on the Green Limited Partnership (Tavern). Generally, the report stated that Tavern adhered to the provisions of its license agreement. Also, that Tavern had recorded its revenue fairly in its books and records, and that its corresponding license fees were generally paid in compliance with the terms of the license agreement. Furthermore, the audit disclosed that Tavern had an adequate system of internal controls over its revenue collection and recording functions.

However, the auditors found that Tavern made some non-allowable deductions from gross revenue that resulted in Tavern owing the City \$5,991 in additional license fees and late charges. Tavern also underreported taxable sales on its New York State and Local Sales and Use Tax Returns that resulted in Tavern owing New York State \$22,489 in additional sales taxes.

The audit report recommends that Tavern:

**Recommendation 1.** Pay the City \$5,991 in additional license fees and late charges owed.

The audit disclosed that Tavern improperly deducted \$111,793 in "Tele-charge commissions" from its reported revenues on its gross receipts statements submitted to Parks

[www.nyc.gov/parks](http://www.nyc.gov/parks)

**ADDENDUM II**  
**(Page 4 of 5)**

Bruce Allan Kurtz  
December 6, 2002  
Page 2

during operating years 1999, 2000 and 2001. Article 1(h) of Tavern's license agreement prohibits this type of deduction from gross receipts. As a result Tavern owes the City, \$5,991, \$3,913 in additional license fees, and late charges totaling \$2,078. Tavern is afforded thirty (30) days from the date of this letter to remit a check for \$5,991, made payable to CITY OF NEW YORK PARKS AND RECREATION, to this office, to clear the outstanding assessment balance.

**Recommendation 2.** Cease deducting "Tele-charge commissions" from gross receipts reported to Parks.

The gross receipts provision of Tavern's license agreement requires that Tavern report all sales, without deduction, except for: sales tax, credit card fees paid, and gratuities and service charges paid to employees. There is no deduction allowance for "Tele-charge commissions". Tavern should comply with this recommendation by immediately discontinuing its practice of reducing gross receipts by the amount of its "Tele-charge commissions".

**Recommendation 3.** Pay \$22,489 in additional sales tax owed to New York State.

During the period from October 2, 2000 through October 7, 2001, Tavern underreported taxable sales on its New York State and Local Sales and Use Tax Returns by \$272,588. As a result, Tavern underpaid its Sales Tax by \$22,489.

Tavern excluded \$253,500 of sales on its sales tax returns covering two banquet events. The two companies who held the affairs had provided Tavern with invalid Resale Certificates which do not apply to food and beverage purchases under New York State Sales and Use Tax Law and Regulations. Therefore, Tavern was required to collect and remit the appropriate sales tax from those companies. The remaining \$19,088 in underreported sales resulted from calculation errors on Tavern's sales tax returns.

Tavern is required to file an amended sales tax return and remit a check for the underpaid balance of \$22,489. To verify that the appropriate action has been taken Tavern should submit a copy of the amended return and check to this office.

**Recommendation 4.** Cease accepting New York State Resale Certificates for food and beverage sales.

Tavern should take the necessary action to ensure that sales taxes are properly collected for all food and beverage sales.

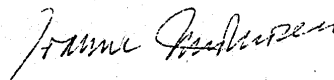
**ADDENDUM II**  
**(Page 5 of 5)**

Bruce Allan Kurtz  
December 6, 2002  
Page 3

By copy of this letter to Francisco Carlos, Parks' Internal Auditor, I am requesting that he perform a follow-up review of Tavern in three (3) months to verify that the recommendations cited above have been implemented.

Finally, we wish to thank Tavern for its cooperation during the audit review and anticipate your prompt action regarding the above recommendations.

Sincerely,



Joanne Imohiosen

cc: D. Stark  
F. Carlos