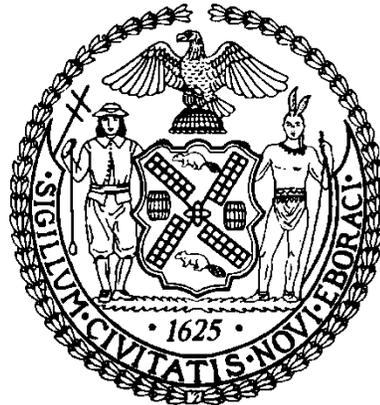


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

FINANCIAL AUDIT

**Tina Kim
Deputy Comptroller for Audit**



**Follow-up Audit Report
on the Compliance of
Central Park Tennis Center, Inc.,
with Its License Agreement and
Payment of License Fees Due the City**

FM11-134F

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

October 11, 2011

To the Residents of the City of New York:

My office has audited Central Park Tennis Center, Inc. (CPT) to determine whether the concessionaire implemented the recommendations made in a previous audit entitled *Audit Report on the Compliance of Central Park Tennis Center, Inc., With Its License Agreement and Payment of License Fees Due the City* (Audit No. FP08-096A, issued March 10, 2009). We perform follow-up audits of City concessionaires as a means of ensuring that concessionaires comply with their license agreements and pay the license fees due the City.

The current follow-up audit disclosed that of the 14 recommendations originally made (10 recommendations made to CPT and 4 recommendations made to Department of Parks and Recreation (Parks)), 11 were implemented and three were partially implemented. As a result, CPT has now corrected the internal control weaknesses cited in the previous report and currently maintains the required insurance and pays for its utility usage. However, Parks did not bill and CPT therefore has not paid \$67,071 of the \$110,347 in additional license fees and late charges for underreporting gross receipts and did not pay for all of its past utility usage.

The audit recommends that CPT pay the remaining balance of \$67,071 in additional license fees and late charges for underreporting gross receipts as identified in the original audit, and that CPT pay for prior utility usage from the beginning of the original contract in 2002 to April 2007.

The results of the audit have been discussed with officials of CPT and Parks, and their verbal comments have been considered in preparing this report. We submitted a draft report to CPT and Parks officials with a request that formal comments be submitted by September 12, 2011. We did not receive a written response from either CPT or Parks nor a request for an extension of the draft response due date. Therefore we are issuing this final report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Liu".

John C. Liu

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

**Follow-up Audit Report on the Compliance of
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Payment of License Fees Due the City
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AUDIT REPORT IN BRIEF

This follow-up audit determined whether 14 recommendations made in a previous audit entitled *Audit Report on the Compliance of Central Park Tennis Center, Inc., With Its License Agreement and Payment of License Fees Due the City* (Audit No.FP08-096A, issued March 10, 2009) were implemented. Ten of these recommendations were made to the Central Park Tennis Center, Inc. (CPT) and four were made to the New York City Department of Parks and Recreation (Parks).

The prior audit evaluated whether CPT accurately reported its total gross receipts, properly calculated the license fees due the City, paid its license fees on time, and had sound internal controls. It also determined whether CPT complied with other major terms of its license agreement (i.e. carried the proper types and amounts of insurance, maintained the proper security deposit, and paid for its utilities).

The prior audit, which covered the period January 1, 2006, through December 31, 2007, found that CPT owed \$110,347 in additional license fees and late charges for underreporting gross receipts. CPT also had significant internal control weaknesses over the financial operations of the tennis center. Therefore, it could not be determined whether all the revenue received was in fact recorded and reported to Parks. Additionally, the report found that CPT lacked the proper insurance and had unpaid utility bills due the City.

Audit Findings and Conclusions

This follow-up audit determined that of the 14 recommendations originally made (10 recommendations made to CPT and 4 recommendations made to Parks), 11 were implemented and three were partially implemented. As a result, CPT has now corrected the internal control weaknesses cited in the previous report and currently maintains the required insurance and pays for its utility usage. However, Parks did not bill and CPT therefore has not paid \$67,071 of the \$110,347 in additional license fees and late charges for underreporting gross receipts and did not pay for all of its past utility usage.

Audit Recommendations

To address the outstanding issues from the previous audit that still exist, we recommend that CPT should:

- Pay the remaining balance of \$67,071 in additional license fees and late charges for underreporting gross receipts as identified in the original audit;
- Pay for prior utility usage from the beginning of the original contract in 2002 to April 2007;

In addition, we recommend that Parks should:

- Require CPT to pay the remaining balance of \$67,071 in additional license fees and late charges for underreporting gross receipts which was identified in the original audit.
- Require CPT to pay for its prior utility usage from the beginning of the original contract in 2002 to April 2007.

Agency Response

The matters covered in this report were discussed with CPT and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to these officials and discussed at an exit conference on August 24, 2011. On August 26, 2011, we submitted a draft report to CPT and Parks officials with a request that comments be submitted by September 12, 2011. We did not receive a written response from either CPT or Parks nor a request for an extension of the draft response due date. Therefore we are issuing this final report.

INTRODUCTION

Background

On April 5, 2002, the City of New York, through Parks, entered into a six-year license agreement with Newyorktennis.net, to operate the tennis center at Central Park. On February 9, 2004, Newyorktennis.net transferred the license agreement to CPT. Under the terms of the agreement, the concessionaire is required to pay the City a minimum annual fee of \$55,500 in the first year of operation, escalating annually to \$70,834 in the final year, or 10 percent of the gross receipts derived from the operation of the tennis center, whichever is greater. According to the license agreement, gross receipts include all sales made from operations at the licensed premises, excluding collected sales taxes, net receipts from vending machines, a \$1.00 administrative fee that the licensee collects from the sale of single-play tickets and reservation tickets, and services provided by tennis instructors functioning as independent contractors of CPT. The term of the license agreement expired on November 15, 2007. On February 26, 2009, Parks entered into a new 15-year license agreement with NY Tennis at Central Park, LLC d/b/a Central Park Tennis to operate the tennis center at Central Park.

Objective

The objective of this follow-up was to determine whether 14 recommendations made in a previous audit entitled *Audit Report on the Compliance of Central Park Tennis Center, Inc., With Its License Agreement and Payment of License Fees Due the City* (Audit No.FP08-096A, issued March 10, 2009) were implemented. Ten of these recommendations were made to CPT and four were made to the Parks.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this follow-up audit was the current operating year 2011. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with CPT and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to these officials and discussed at an exit conference on August 24, 2011. On August 26, 2011, we submitted a draft report to CPT and Parks officials with a request that comments be submitted by September 12, 2011. We did not receive a written response from either CPT or Parks nor a request for an extension of the draft response due date. Therefore we are issuing this final report.

RESULTS OF FOLLOW-UP AUDIT

The current follow-up audit determined that of the 14 recommendations originally made (10 recommendations made to CPT and 4 recommendations made to Parks), 11 were implemented and three were partially implemented. As a result, CPT has now corrected the internal control weaknesses cited in the previous report and currently maintains the required insurance and pays for its utility usage. However, Parks did not bill and CPT therefore has not paid \$67,071 of the \$110,347 in additional license fees and late charges for underreporting gross receipts and did not pay for all of its past utility usage.

Previous Finding: "...CPT owes the City additional license fees and late charges totaling \$110,347"

Previous Recommendation #1: CPT should pay the City \$110,347 in additional license fees and late charges for underreporting gross receipts.

Previous CPT Response #1: CPT stated, "...we are happy to confirm that we have resolved all open financial issues with the Parks Department... We have agreed to pay \$22,390 in this matter."

"In 2005, the State of New York Department of Labor ('DOL') conducted an audit of Mullaly Park, a tennis club operated by Mullaly Park Tennis Group Inc. ("MPTG"), an affiliate of CPTC. In that audit, shockingly to us, the DOL determined that the tennis instructors who worked at that club should be characterized as employees. MPTG retained the services of a labor and employment attorney, at a great cost, to represent us in our discussions with the DOL. We were informed that the DOL would be checking all of our affiliate clubs to make sure the tennis instructors were being paid as employees. In order to comply with the law as it was now being defined by another governmental agency, we immediately changed the characterization of tennis instructors in all of our facilities, including Central Park Tennis Center, from independent contractors to employees. Other than changing reporting from 1099 forms to W-2 forms, we continued treating the tennis instructors as independent contractors and nothing changed with regard to their functioning as tennis instructors providing lessons to customers. We also continued to report gross receipts net of tennis instructors' fees.

As stated above, it is absolutely clear we complied with the full intent of the agreement before and after 2005. Simply, words changed, not duties. Please note the duties of the tennis instructors did not change, their hours did not change, their hourly fees did not change, the lesson rates did not change, the basis on which our payments were made to Parks did not change. We did not benefit in any way from changing the tennis instructors to employees. In fact, we were the only party required to incur greater expense by paying payroll taxes and unemployment insurance, which we immediately undertook.

Again, on the strong advice by our accountants and attorneys, in order to be in compliance with the law, we were forced to make the change. While CPTC respectfully disputes the amount that is claimed, and although all parties acknowledge there was no malice or inappropriate intent with respect to the deduction of the tennis professional

fees, we have nonetheless agreed to pay a total of \$22,390 in this matter. This, of course, is in addition to the additional monies we incurred in complying with the law.”

Relating to loans and other issues, CPT agreed to pay the amount stated in the prior audit.

Current Status: PARTIALLY IMPLEMENTED

Parks reduced the audit assessment from \$110,347 to \$43,276, and CPT paid the new assessment amount. Although CPT did pay this new amount that Parks reassessed, we do not agree with Parks’ reassessment. We maintain our position that CPT should have paid the remaining balance of \$67,071 in additional license fees and late charges for underreporting gross receipts as identified in the original audit. This will be discussed further in the current status for Recommendation #11. Therefore, we consider this recommendation to be partially implemented.

Previous Finding: “CPT had significant internal control weaknesses over the financial operations of the tennis center.”

Previous Recommendation #2: CPT should implement a system of internal controls and keep complete and accurate records as well as books of account and data, including daily sales and receipt records that show in detail the total business transacted by CPT and the gross receipts derived therefrom.

Previous CPT Response #2: CPT stated, “We have already implemented an updated system of internal controls as well as a more complete and accurate record of daily transactions and receipts. In addition, to assist us in this activity, we have already installed one POS scanner and another scanner is being installed which will be used to input every sale.”

Current Status: IMPLEMENTED

Our review of CPT’s general ledger, daily gross receipts, and “court sheets” (i.e., logbooks of all activities in each of the four private courts operated by CPT), found that each transaction paid for the week of May 7, 2011, through May 13, 2011, was properly recorded and accounted for in CPT’s point of sales system and deposited into CPT’s bank account. Therefore, we consider this recommendation to be implemented.

Previous Finding: “CPT does not issue receipts for all payments received.”

Previous Recommendation #3: CPT should issue receipts for all payments received.

Previous CPT Response #3: CPT stated, “We are issuing receipts for all payments received.”

Current Status: IMPLEMENTED

We found that CPT issued receipts for all private and semi-private lessons accounted for on the court sheets for the week of May 7, 2011, through May 13, 2011. Regarding the group lessons, we found CPT had issued receipts for all payments it received during that same week for future group lessons. CPT issued receipts for all of the purchases that were made during our unannounced observations. Therefore, we consider this recommendation to be implemented.

Previous Finding: “CPT failed to clearly identify and track funds transferred in or out of its bank account.”

Previous Recommendation #4: CPT should maintain records to track funds transferred in or out of its bank account, clearly identifying the purpose.

Previous CPT Response #4: CPT stated, “We already keep more accurate detailed records to track funds that are transferred in or out of our bank account.”

Current Status: IMPLEMENTED

Our review of their general ledger found that CPT now records and tracks the loans (funds transferred) that have been made to CPT and the loans that CPT makes to other facilities. Therefore, we consider this recommendation to be implemented.

Previous Finding: “CPT failed to clearly identify loan transactions.”

Previous Recommendation #5: CPT should maintain records that identify loans being made to CPT and loans that CPT makes to other facilities.

Previous CPT Response #5: CPT stated, “All loans made to or from CPT will be more clearly identified.”

Current Status: IMPLEMENTED

Again, CPT now records in the general ledger loans that have been made to CPT and loans that CPT makes to other facilities. Therefore, we consider this recommendation to be implemented.

Previous Finding: “CPT does not maintain documentation when expenses for other facilities administered by CPT, but not part of the license agreement, are paid from CPT’s bank account.”

Previous Recommendation #6: Maintain records clearly identifying the expenses that CPT pays on behalf of other tennis facilities and the expenses that are paid on behalf of the CPT.

Previous CPT Response #6: CPT stated, “In the future, CPT will not make any direct payments for the benefit of any other tennis facility. Also, there will be no payments made by other tennis facilities on behalf of CPT.”

Current Status: IMPLEMENTED

CPT now does not pay expenses of the other facilities. Instead, CPT now makes loans to the other facilities, which are recorded and tracked in the general ledger. Therefore, we consider this recommendation to be implemented.

Previous Finding: “CPT does not accurately record water and electricity use.”

Previous Recommendation #7: Arrange for the installation of separate electric and water meters for the licensed premises.

Previous CPT Response #7: CPT did not address this recommendation

Current Status: IMPLEMENTED

Parks indicated that it was not feasible to install a separate water and electric meter due to the seasonal nature of the business. In place of this recommendation, an agreement was made between Parks and CPT to require CPT to pay for 75 percent of the utilities at the facility. Therefore, we consider this recommendation to be implemented.

Previous Finding: “CPT failed to make payments to Parks for past electric and water usage.”

Previous Recommendation #8: Make arrangements with Parks to pay for past water and electricity use.

Previous CPT Response #8: CPT did not address this recommendation.

Previous Parks Response #8: “The NTC [Notice to Cure] requires CPT to reimburse Parks for past use of water and electricity in connection with the operation of this concession.”

(The Notice to Cure indicates that CPT is required to pay \$1,701 for past utility use for April 2007 through November 2008.)

Current Status: PARTIALLY IMPLEMENTED

CPT paid the amount assessed in the Notice to Cure by Parks for utility usage for the period of April 2007 through November 2008. However, no arrangement has been made to pay for prior utility usage from the beginning of the original contract in 2002 until April 2007. CPT is now paying for its current utility usage. Therefore, we consider this recommendation to be partially implemented.

Previous Finding: “Insurance Policy Not Enforced”

Previous Recommendation #9: Obtain the proper insurance coverage as required by the license agreement.

Previous CPT Response #9: CPT stated, “The required insurance coverage has been obtained and is in full force and effect.”

Previous Parks Response #9: “CPT will be required to maintain the proper insurance, as applicable, under any pending or future concession agreement with Parks. Parks will monitor CPT’s compliance with all necessary insurance requirements throughout the term of any pending or future concession agreement.”

Current Status: IMPLEMENTED

CPT provided us with its most current insurance policies. Our review found that CPT is now maintaining the proper insurance coverage as stipulated by the current license agreement. Therefore, we consider this recommendation to be implemented.

Previous Finding: “Underpayment of Sales Tax”

Previous Recommendation #10: Pay \$2,081 in back sales tax to New York.

Previous CPT Response #10: CPT stated, “We agree to amend the NYS Sales Tax Return for the quarter ended August 31, 2007 to reflect the additional sales tax liability of \$2,081.”

Previous Parks Response #10: “The NTC requires that CPT quickly resolve the amount owed in back taxes and provide copies of related correspondence from the New York taxing authorities to verify the resolution.”

Current Status: IMPLEMENTED

We were informed by CPT’s accountant that the amount of sales taxes owed cited in our previous report was not paid. However, at our August 24, 2011 exit conference a CPT official provided us with a copy of its Amended New York State Sales Tax Return for the quarter ending August 31, 2007 and a copy of a check dated August 11, 2011 indicating that payment was made for outstanding sales taxes. Based on the documentation provided, we consider this recommendation to be implemented.

Recommendations for Parks

Previous Recommendation #11: Issue a Notice to Cure CPT requiring that it pay \$110,347 in additional license fees and late charges for underreporting gross receipts.

Previous Parks Response #11: “Parks has sent a Notice to Cure (NTC) to CPT requesting that a portion of the fees and charges identified in Recommendation 1, totaling \$13,990 plus \$6,895 in late charges, be paid immediately.

“The remainder of the amount included in the recommendation, \$89,461 (\$63,829 in underreported gross receipts and \$25,632 in late charges), is related to CPT’s deduction of fees from reported gross receipts for tennis instructors.

“The Report notes that during the term of the Agreement, shortly before the period covered by the audit, the tennis instructors began filing W-2 forms (as employees) and stopped filing W-9 forms (as independent contractors). As a result, the Comptroller deemed this deduction to be inappropriate.

“The language in the Agreement referring to tennis instructors ‘functioning as independent contractors’ reflected the City’s understanding (in 2002) that the common practice in tennis facilities was to hire instructors as independent contractors. However, as CPT learned in 2005, as a result of a New York State Department of Labor audit, the relationship with the instructors did not meet the State’s standard for treatment as independent contractors. That said, the relative portion of the fee income that was going to the instructors remained unchanged. This, had Parks known in 2002 of this change, it would likely have altered the language defining gross receipts to eliminate the distinction between contractors and employees, with respect to the treatment of instructor fees, or it would have accepted a lower license fee proposal from CPT, to reflect the treatment of the entire instructor fee as gross receipts income.

“For the reasons above, Parks has determined that it would not be appropriate under the circumstances for the City to insist on full payment of license fees relating to the status of the instructors as employees. However, CPT must bear some responsibility for the audit finding because it failed to notify Parks in 2005 that the DOL audit has prompted a change in classification of the tennis instructors, and failed to confirm that parks would not seek to treat the instructor fees differently. In light of this failure to disclose on CPT’s part, Parks has determined to seek repayment, in installments, of \$22,390 (i.e., 25% of the amount of the audit finding amount for underreported gross receipts and late charges).”

Current Status: PARTIALLY IMPLEMENTED

As discussed in our response in the original audit, we disagree with Parks’ reduction of the audit assessment from \$110,347 to \$43,276. During the original audit, CPT followed DOL’s ruling and retained tennis instructors as employees – not as independent contractors. Consequently, the license agreement in effect at the time clearly precluded CPT from deducting from gross receipts any salaries paid to these instructors. As stated in our prior report “...the license agreement allows deductions from gross receipts of ‘professional fees’ paid to tennis instructors, the tennis instructors must be independent contractors. The license agreement states: ‘Gross Receipts shall include only Licensee’s net income received by Licensee in connection with services provided by tennis instructor functioning as independent contractors of Licensee.’

We found that the tennis instructors were, in fact, employees of CPT and not independent contractors.”

Parks did not have a written amendment to the agreement changing the terms. Furthermore the payment of employees’ salaries is a cost of doing business and it should not be allowed as a deduction from gross receipts. In other audits of Parks’ concessionaires when this issue was noted, the Parks Department agreed with our recommendations to recoup additional license fees associated with under-reported gross receipts – not just 25 percent of the fees. Therefore, we maintain our position that here, too, Parks should require CPT to pay the remaining balance of \$67,071 in additional license fees and late charges for underreporting gross receipts as identified in the original audit. Therefore, we consider this recommendation to be partially implemented.

Previous Recommendation #12: Require CPT to comply with the terms and conditions of the license agreement.

Previous Parks Response #12: Parks stated, “Parks will continue to closely monitor and require its concessionaires to comply with the terms and conditions of such agreements.”

Current Status: IMPLEMENTED

Parks issued an audit implementation plan which required CPT to comply with our audit recommendations. Our current audit determined that CPT is now complying with the terms and conditions of the license agreement. Therefore, we consider this recommendation to be implemented.

Previous Recommendation #13: Arrange for the installation of separate electric and water meters for the licensed premises.

Previous Parks Response #13: Parks stated, “CPT will be required to install separate electric and water meters at the commencement of any pending or future concession agreement with parks. Parks will enforce CPT’s compliance with this requirement as well as ensure proper payment by CPT of all water and electricity used in the operation of any pending or future concession agreement.”

Current Status: IMPLEMENTED

Parks indicated that it was not feasible to install a separate water and electric meter due to the seasonal nature of the business. In place of this recommendation, Parks is now requiring CPT to pay for 75 percent of the utility bill for the facility for the operating season. Therefore, we consider this recommendation to be implemented.

Previous Recommendation #14: More closely monitor CPT in the future.

Previous Parks Response #14: Parks stated, “Parks will continue to closely monitor and require its concessionaires to comply with the terms and conditions of such agreements.”

Current Status: IMPLEMENTED

Parks issued an audit implementation plan which required CPT to comply with our audit recommendations. The current audit determined that CPT is now complying with the terms and conditions of the license agreement. It now appears that Parks is now more closely monitoring CPT compliance with the agreement. Therefore, we consider this recommendation to be implemented.

RECOMMENDATIONS

CPT should:

1. Pay the remaining balance of \$67,071 in additional license fees and late charges for underreporting gross receipts as identified in the original audit;
2. Pay for prior utility usage from the beginning of the original contract in 2002 to April 2007; and

Parks should:

3. Require CPT to pay the remaining balance of \$67,071 in additional license fees and late charges for underreporting gross receipts which was identified in the original audit.
4. Require CPT to pay for its prior utility usage from the beginning of the original contract in 2002 to April 2007.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this follow-up audit was the current operating year 2011. To achieve audit objectives, we reviewed the current license agreement between Parks and CPT and correspondence between Parks and CPT, including gross receipt reports, insurance certificates, and other relevant documents on file with Parks.

On June 13, June 20, June 21, June 22 and June 24, 2011, we conducted unannounced observations of the facility and concession stand to observe transactions at the operation. We observed the collecting and recording of cash to determine whether all sales were recorded in the computerized Point of Sale (POS) system. We also purchased items at CPT, including court time and tennis lessons, to determine whether these sales were accurately and completely recorded and reported to Parks.

To meet our objectives, we interviewed one of CPT's co-owners, and reviewed CPT policies and procedures.

In addition, we:

- Reviewed the prior audit report issued by the Comptroller's Office, *Audit Report on the Compliance of Central Park Tennis Center, Inc., With Its License Agreement and Payment of License Fees Due the City*;
- Reviewed CPT's insurance policies;
- Reviewed CPT's internal controls and Point of Sale system;
- Reviewed payments made to Parks regarding the additional license fees and late fees assessed during the prior audit;
- Reviewed CPT's payment made to Parks for past and current water and electricity use;
- Requested verification that CPT paid \$2,081 in back sales tax to the State of New York as required by the prior audit; and
- Reviewed CPT's bank statements, deposit slips, and invoices for May 2011, specifically the week of May 7 – May 13, 2011.