

AUDIT REPORT

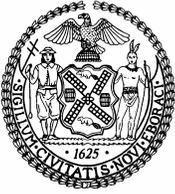


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the License Fees Due from Central Park Boathouse, LLC, And Compliance with Certain Provisions Of Its License Agreement

FP05-128A

March 28, 2007



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of the Central Park Boathouse, LLC with its license agreement.

We audit concessions such as this to ensure that private concerns under contract with the City comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

The results of this audit, which are presented in this report, have been discussed with officials from the Department of Parks and Recreation and the Central Park Boathouse, LLC, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads 'William C. Thompson, Jr.'.

William C. Thompson, Jr.

WCT/fh

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Filed: March 28, 2007

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

**Audit Report on the License Fees Due from
Central Park Boathouse, LLC, and Compliance with
Certain Provisions of Its License Agreement**

FP05-128A

AUDIT REPORT IN BRIEF

The Department of Parks and Recreation (Parks) has a license agreement with the Central Park Boathouse, LLC, (the Boathouse) to renovate, operate, and maintain the Boathouse restaurant, café, catering facility, outdoor bar, snack bar, boat and bicycle rentals, a Park Activity and Resource Center, and a shuttle service at the licensed premises in Central Park, for the accommodation, enjoyment, and convenience of the public.

This audit determined whether the Boathouse accurately reported its total gross receipts, properly calculated the license fees due Parks, paid the license fees on a timely basis, and complied with certain other non-revenue-related requirements of the license agreement.

Audit Findings and Conclusions

The Boathouse generally complied with the non-revenue requirements of the license agreement. We verified that the Boathouse remitted a letter of credit to cover the security deposit to Parks, paid all its utility bills, paid late fees assessed by Parks, operated a shuttle service to and from the Boathouse, had the certificates of occupancy and incorporation on file, provided 24-hour security, supplied 100 new rowboats and bicycles for rental, maintained required insurance coverage, and named the City as an additional insured.

However, the Boathouse did not accurately report a total of \$2,392,669 in gross receipts. As a result, it owes Parks \$381,070 in license fees, plus late charges. Specifically, that amount includes:

- \$412,012 in gross receipts from catering, film shoots, and bicycle-rental sales was underreported by the Boathouse. Accordingly, the Boathouse owes \$65,922 in license fees, plus late charges. It should be noted that an additional \$190,611 of bicycle-rental sales may have been underreported based on non-projectable estimates. These could result in an additional \$30,498 in license fees, plus late charges.

- \$1,513,950 was improperly deducted from reported gross receipts. Accordingly, the Boathouse owes \$241,911 in additional fees, plus late charges.
- \$255,302 for the value of employee meals and complimentary meals was not reported in gross receipts. Accordingly, the Boathouse owes \$40,798 in additional fees, plus late charges.
- \$185,988 in gross receipts was recorded on Boathouse records but not posted to the monthly gross receipt report submitted to Parks. This includes \$47,214 in catering revenue that was unreported for three months in 2005 and \$138,774 in revenue between December 2001 and February 2002 and for the month of December 2003. Accordingly, the Boathouse owes \$28,372 in additional fees, plus late charges.
- \$25,417 from gift certificate sales that was not reported in gross receipts. Accordingly, the Boathouse owes \$4,067 in license fees plus late charges.

Further, the Boathouse lacks adequate controls over gondola-ride sales, and does not have sufficient safeguards over password access to its computerized point-of-sale system.

Audit Recommendations

We made 36 recommendations, 22 to the Boathouse and 14 to Parks, concerning the operation of the Boathouse and the oversight of this concession by Parks. Compliance with these recommendations will ensure that Parks collects from the Boathouse all license fees that are due; controls over the operations of the Boathouse are adequate to ensure that all gross receipts collected by the Boathouse are reported to Parks; and the Boathouse deducts from gross receipts only those amounts from items specified in the license agreement.

INTRODUCTION

Background

On June 12, 2000, the Department of Parks and Recreation entered into a license agreement with the Central Park Boathouse, LLC, to renovate, operate, and maintain the Boathouse restaurant, café, catering facility, outdoor bar, snack bar, boat and bicycle rentals, a Park Activity and Resource Center, and a shuttle service at the licensed premises in Central Park, for the accommodation, enjoyment, and convenience of the public. The term of the agreement is from March 1, 2001 to January 16, 2016.

The license agreement requires the Boathouse to pay Parks the greater of either a minimum annual fee, or a percentage of its gross receipts, as noted in Table I, below.

Table I
License Fees Payable by the Boathouse to Parks

Period	Minimum Fee	Percentage of Gross Receipts
March 1, 2001 to February 28, 2004	\$1,000,000	15%
March 1, 2004 to February 28, 2005	\$1,100,000	16%
Transition Period		
March 1, 2005 to June 30, 2005	\$330,000	16%
July 1, 2005 to June 30, 2007	\$1,100,000	16%
July 1, 2007 to June 30, 2010	\$1,212,200	17%
July 1, 2010 to June 30, 2013	\$1,337,060	17%
July 1, 2013 to June 30, 2015	\$1,473,440	17%
July 1, 2015 to January 16, 2016	\$1,473,440	17%

According to the license agreement, gross receipts consist of all revenue excluding collected sales taxes and gratuities paid directly or indirectly to employees and staff in addition to their regular salaries. The agreement also allows the licensee (provided that it does not obtain any monetary or financial benefit) to exclude from gross receipts “pass-throughs” such as entertainment or florists hired by a concession patron directly.

Additionally, the license agreement requires the Boathouse to spend a minimum of \$1,750,000 on capital improvements, post a \$370,000 security deposit with Parks, maintain certain types and amounts of insurance coverage, submit statements of gross receipts to Parks, and pay all required taxes and utility charges related to the facility.

For the 2004 and 2005 operating years (March 1, 2003, through June 30, 2005) the Boathouse reported a total of \$29,882,088 in gross receipts and paid Parks \$4,469,935 in fees.

Objectives

Our audit objectives were to determine whether the Boathouse:

- Accurately reported its total gross receipts, properly calculated the license fees due Parks, and paid the license fees on a timely basis; and
- Complied with certain other non-revenue-related requirements of the license agreement.

Scope and Methodology

The audit covered the period January 1, 2004, through December 31, 2005. To achieve our audit objectives, we reviewed the license agreement between Parks and the Boathouse and examined the agreement's requirements. We reviewed Parks correspondence, revenue reports, and other relevant documents. We analyzed the Parks concessionaire ledger for the gross receipts reported and paid to Parks, and determined whether payments were received on time.

To obtain an understanding of the Boathouse's control procedures for recording gross receipts, auditors interviewed management personnel. To determine if those controls were functioning as prescribed by management, we conducted a walk-through and unannounced observations of the Boathouse operations.

The Boathouse uses the GCS (Rpower) System for point-of-sale transactions for the restaurant, fast food, bar sales, rowboat rentals and gondola-ride sales. The Comptroller's Office Information Technology unit evaluated the GCS (Rpower) System to determine its accuracy and reliability. To assess the controls over restaurant, fast food, and bar sales, we made purchases at various points-of-sale; dined at the restaurant on three separate occasions—lunch on August 9, 2005, Sunday brunch on August 14, 2005, and dinner on August 22, 2005; and purchased items from the fast-food café on August 17 and 18, 2005, and September 1 and 10, 2005.

To assess the controls over rowboat rentals, we rented boats on August 9 and 18, 2005. On each occasion the boat rental was for one hour, and a point-of-sale receipt was issued. To determine the controls over gondola-ride sales, we purchased a gondola ride on August 14, 2005, were given a point-of-sale receipt and then attempted to trace the receipt to the daily-close report. Bicycle rentals are recorded using bicycle-rental lease agreements. To assess the controls over bicycle rentals, we performed observations on September 1 and 10, 2005. The bicycle-rental operation was observed from opening to closing and recorded the time of day each bicycle was rented, the return time, and the type and number of bicycles rented. The results of our observations was compared with the Boathouse's bicycle-rental lease agreements. We also rented two bicycles on August 18, 2005, and were given a handwritten receipt.

To determine the accuracy of reported gross receipts, we compared daily receipt totals from the restaurant, fast food, bicycle and rowboat rentals, and gondola ride sales for August 2005 to the monthly profit-and-loss statements.

To determine whether the Boathouse accurately reported to Parks its gross receipts from banquet contracts, we traced those reported gross receipts to Boathouse profit-and-loss statements and subsidiary ledgers. We requested all banquet contracts and invoices from January 2004 through December 2005. All banquet contracts and invoices provided by the Boathouse were reviewed, and charges were compared to the amounts recorded on the profit-and-loss statements and subsidiary ledgers. The profit-and-loss statements listed 245 contracts for 2004 and 318 for 2005. We then traced the individual contract and invoice amounts to the general ledger and sales journal.

To determine whether the deductions from gross receipts for gratuities were correct under the terms of the license agreement, we traced the deducted amounts from the profit-and-loss statements to Boathouse banquet contracts. To determine whether those amounts paid to Boathouse staff through its payroll were actually gratuities, we reviewed the catering wait-staff payroll records for 2004 and 2005, including the employee data sheets, payroll registers, and W-2 forms. The amounts paid to catering wait staff on days when banquet events were held and the banquet contract included gratuities were compared to amounts paid to those same employees on days when there was no event, or when the banquet contract for the event did not include gratuities. We reviewed the payroll registers for two months in 2004 and two months in 2005 to ascertain whether the gratuities paid were in addition to the staff's regular salary.

To determine whether the Boathouse accurately reported its gross receipts from film shoots held at the Boathouse, we reviewed film-shoot invoices and traced them to the profit-and-loss statements. The statements listed eight film shoots for 2004 and nine film shoots for 2005.

We examined file documentation at Parks to confirm whether the Boathouse remitted to Parks the required \$370,000 security deposit. We reviewed Boathouse records to determine whether the Boathouse complied with the insurance requirements of this agreement, paid all of its utility bills, and has the certificates of occupancy and incorporation on file.

We determined whether the Boathouse contract was registered with the Comptroller's Office, as required by Chapter 14 of the City Charter. We determined whether license fee payments were remitted on time, and whether late charges were assessed and paid. We also tested the Boathouse's compliance with certain other provisions of the contract, such as whether it operated a Park Activity and Resource Center and a shuttle service to and from the Boathouse. Finally, we determined whether the Boathouse provided 24-hour security, supplied 100 new rowboats and bicycles for rent, and displayed a sign indicating hours of operations.

We did not assess whether the Boathouse renovated the restaurant, bathrooms, and catering hall as required by the license agreement since a previous audit, Audit report #EW03-136A (*Audit Report on Department of Parks and Recreation Oversight of Capital Improvements by Concessionaires*), issued January 20, 2004, confirmed that this work was substantially completed.

At the exit conference the Boathouse's Certified Public Accountant and its controller provided us with additional information related to our preliminary findings. We attempted to

follow up on the newly provided documentation but the Boathouse refused to respond to our written requests for clarification.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the 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 Parks and Boathouse officials during and at the conclusion of this audit. A preliminary draft report was sent to Parks and Boathouse officials and was discussed at an exit conference held on October 17, 2006. On January 2, 2007, we submitted a draft report to Parks and Boathouse officials with a request for comments. We received written responses from Parks on January 12, 2007, and from the Boathouse's attorney, LePatner & Associates, on January 17, 2007.

In its response, Parks agreed with 27 of the 36 audit recommendations, partially agreed with four recommendations, disagreed with one recommendation, and has forwarded to the City's Law Department issues concerning the four remaining recommendations. Parks officials advised us that a Notice to Cure has been issued requiring the Boathouse to pay \$113,854 in additional fees and interest and has required the Boathouse to implement the report's recommendations.

Parks officials decided not to pursue the additional estimated fees of \$30,498 from underreported bike-rental sales for the two years that we identified, claiming that our estimate was based on a "limited observation period." Parks officials also did not agree with our assessment of \$31,359 for the value of complimentary meals that was not included in gross receipts. Parks officials stated that they consider these meals as "a cost to the Boathouse to conduct and promote its business."

The four recommendations that are pending a decision from the City's Law Department concern the deduction from gross receipts of charges to customers of catered affairs to pay for wait-staff gratuities. We questioned the propriety of the deduction from gross receipts because these receipts were not used to pay gratuities, but instead to pay for the salaries of the wait-staff and the maitre d' and a commission to the catering sales managers. Payment of salaries and commissions are not deductible from gross receipts under the terms of the license agreement and its amendment. The total assessment concerning these four recommendations is \$480,179.

In his response, the Boathouse's attorney agreed that his client underreported gross receipts to Parks concerning catering receipts and receipts from film shoots held on the property and as a result owed additional license fees of \$61,880. However, he disagreed with our largest assessment that the deduction of \$1,513,950 from gross receipts reported to Parks to pay for wages to catering staff was improper and that the value of employee and complimentary meals should not have been excluded from gross receipts reported to Parks.

In his response, the Boathouse attorney attempted to obfuscate a number of valid concerns raised by the auditors in this report by taking advantage of the most convenient, unsupported interpretations of the terms of the license agreement and its amendment, and by questioning widely accepted audit methodologies and practices.

Concerning the interpretation of the deduction of gratuities from gross receipts that were charged and collected from customers of catered events, the attorney has misconstrued the terms of the license agreement and its amendment. As previously stated, the Boathouse used the receipts earned from gratuity charges to pay for salaries and other expenses. The terms of the license agreement and its amendment clearly preclude deduction from gross receipts of money distributed to employees as salary, in that it states “Licensee shall provide documentation satisfactory to Parks that such gratuities were paid to employees and staff in addition to their regular salaries.” (Emphasis in original.) However, the Boathouse was unable to provide the auditors with the required documentation to justify its contention that the deductions were used to pay staff gratuities in addition to their regular salaries. In fact, contrary to Boathouse’s contention, our own review indicated that Boathouse staff were not paid gratuities in addition to their regular salaries; rather the gratuities were used to fund a portion of the promised hourly salary rate.

Concerning the fact that the Boathouse did not report in its gross receipts \$196,308, the value of complimentary meals that were provided to customers in 2004 and 2005, the attorney asserts “that such complimentary meals are not only common in the restaurant industry, but are integral to the restaurant’s business development and financial growth, which, of course, only serves to benefit Parks as well.” Although this practice may be common in the restaurant industry the Boathouse presented no documentation to prove that the complimentary meals were, in fact, provided to potential customers and ultimately contributed to the restaurant’s business development and financial growth. Without the required documentation we cannot ascertain the validity of the claim by the Boathouse’s attorney.

Concerning our observations and estimate of underreported bike-rental sales for the 2004 and 2005 operating years, the attorney questioned our audit methodology and audit protocol used in reaching our conclusions. In fact, the methodology we used to determine underreported bike-rental sales was prudent and an established auditing practice used by the New York State Department of Taxation and Finance to project underreported sale taxes. Moreover, the Boathouse has refused to establish any controls that would prevent further underreporting of receipts to Parks, such as the installation of a point-of-sale terminal.

The specific comments raised by Parks and by Boathouse’s attorney are contained in the relevant sections of this report. The full texts of their comments are included as addenda to this report.

FINDINGS AND RECOMMENDATIONS

The Boathouse generally complied with the non-revenue requirements of the license agreement. We verified that the Boathouse remitted a letter of credit to cover the security deposit to Parks, paid all its utility bills, paid late fees assessed by Parks, operated a shuttle service to and from the Boathouse, had the certificates of occupancy and incorporation on file, provided 24-hour security, supplied 100 new rowboats and bicycles for rental, maintained required insurance coverage, and named the City as an additional insured.

However, the Boathouse did not accurately report a total of \$2,392,669 in gross receipts. As a result, it owes Parks \$381,070 in license fees, plus late charges. Specifically, that amount includes:

- \$412,012 in gross receipts from catering, film shoots, and bicycle-rental sales that was underreported by the Boathouse. Accordingly, the Boathouse owes \$65,922 in license fees, plus late charges. It should be noted that an additional \$190,611 of bicycle-rental sales may have been underreported based on non-projectable estimates. These could result in an additional \$30,498 in license fees, plus late charges.
- \$1,513,950 that was improperly deducted from reported gross receipts. Accordingly, the Boathouse owes \$241,911 in additional fees, plus late charges.
- \$255,302 for the value of employee meals and complimentary meals that was not reported in gross receipts. Accordingly, the Boathouse owes \$40,798 in additional fees, plus late charges.
- \$185,988 in gross receipts that was recorded on Boathouse records but not posted to the monthly gross receipt report submitted to Parks. This includes \$47,214 in catering revenue that was unreported for three months in 2005 and \$138,774 in revenue between December 2001 and February 2002 and for the month of December 2003. Accordingly, the Boathouse owes \$28,372 in additional fees, plus late charges.
- \$25,417 from gift certificate sales that was not reported in gross receipts. Accordingly, the Boathouse owes \$4,067 in license fees plus late charges.

Further, the Boathouse lacks adequate controls over gondola-ride sales, and does not have sufficient safeguards over password access to its computerized point-of-sale system.

These findings are discussed in detail in the following sections of this report.

\$412,012 in Revenue Not Reported in Gross Receipts

The Boathouse underreported \$412,012 in gross receipts from catering, film shoots, and bicycle-rental sales. Of this amount, \$400,344 was for underreported catering revenue, \$10,598 was for underreported film-shoot revenue, and \$1,070 was for underreported bicycle sale rentals.

As a result of underreporting this revenue, the Boathouse owes Parks \$65,922 in license fees, plus late charges. We note that an additional \$190,611 of bicycle-rental sales may have been underreported based on non-projectable estimates. These could result in an additional \$30,498 in license fees.

Underreported Catering Revenue

The Boathouse underreported \$400,344 in catering-event revenue for 2004 and 2005 because it failed to report 35 catered events, did not accurately report revenue from 11 events, and did not include revenue from events that were canceled but for which patron deposits were non-refundable. As a result, the Boathouse owes Parks \$64,055 in license-fee payments, plus interest and penalties. During this two year period the Boathouse reported 563 catered events at its facility.

Of the 35 unreported events, we identified 13 in 2004 and 22 in 2005 for which the Boathouse collected \$302,964 in revenue that was not included in its profit-and-loss statements and in the monthly report of gross receipts submitted to Parks. Consequently, the Boathouse underpaid \$48,474 in license fees. The Boathouse controller agreed that these events were not reported. The Boathouse does not have adequate controls to ensure that each catered event contract can be accounted for. Our review of the Boathouse files found that the contracts are not sequentially numbered. Therefore, we were unable to determine whether all gross receipts from catered events were reported to Parks.

Of the 11 catered events for which revenue was not accurately reported on profit-and-loss statements and on the monthly report of gross receipts, revenue was understated for eight events and overstated for three events. This resulted in a net underreporting of \$26,762 in revenue. Consequently, the Boathouse underpaid \$4,282 in license fees.

Finally, the Boathouse collected \$70,618 in deposits for one catered event in 2004 and nine events in 2005 that were canceled, although this revenue was not included in Boathouse gross receipts. Boathouse officials stated that revenue was not included in the gross receipts because of the licensee's practice of recognizing revenue only at the time an event is held. However, according to the Boathouse contract with its patrons, deposits are non-refundable. Therefore, the revenue should have been included in the profit-and-loss gross receipts and been subject to the license fee. Consequently, the Boathouse underpaid \$11,299 in license fees.

Recommendations

The Boathouse should:

1. Pay Parks license fees totaling \$64,055, plus interest and penalties, for underreporting catering event revenue.
2. Implement a system of internal controls to ensure that all events are accurately reported, including reconciling its catered event spreadsheets to the catering receipts and deposits.

3. Use prenumbered contracts when booking catered events. This will improve controls over each contract and will improve accountability over the catered events.
4. Include all payments when they are received from patrons in its monthly report of gross receipts submitted to Parks. The Boathouse should not wait until the date of the event to record revenue received.

Parks should:

5. Ensure that the Boathouse pays the City \$64,055, plus interest and penalties, for underreporting catering event revenue.
6. Ensure that the above business process recommendations are implemented.

Parks Response: In its response, Parks agreed with our assessment and stated that it issued a Notice to Cure requiring the Boathouse to comply with the above recommendations.

Boathouse Response: In his response, the Boathouse's attorney stated:

“The Boathouse will agree to pay Parks license fees totaling \$52,756, which corresponds to the missed/underreported revenues the Boathouse has confirmed are owed based upon its internal review of the audited documents.

“The Boathouse has established internal controls via Excel spreadsheets that cross-reference party contracts with posted revenues and deposits, and which can then be reconciled to financial records of deposits and receivables on a monthly basis.

“Contracts are being numbered via a new software program, *Catermate*.

“The Boathouse cannot in good faith include patron payments (deposits) as part of its Gross Receipts submitted to Parks. Such practice would be contrary to GAAP [Generally Accepted Accounting Principles] standards, which provides under the accrual method of accounting, that revenues should not be reported until goods and/or services are actually provided. The Boathouse proposes to continue as it has such that all deposits are to be recorded as liabilities and reconciled monthly. Then, in the month the event occurs, the deposit will be re-classified as revenue in accordance with GAAP.”

Auditor Comment: It is clearly the intent of the license agreement that the Boathouse must recognize patron payments, including deposits, upon receipt. As previously stated, the Boathouse accepted deposits for ten events that were subsequently canceled before the

scheduled event dates. These deposits were not refunded and were never included in gross receipts reported to Parks. The Boathouse response stating that the accrual method of accounting precludes reporting of deposits as revenue until the “event occurs,” fails to acknowledge that a deposit not refunded for a canceled event becomes revenue when the event is canceled.

Underreported Film-Shoot Revenue

The Boathouse did not report \$10,598 in revenue it obtained from 15 film shoots held in 2004 and 2005. As a result, the Boathouse underpaid its license fee by \$1,696. Additionally, invoices totaling \$1,500 for three film shoots were not on file; however, the film shoots were reported on the profit-and-loss statements.

Recommendations

The Boathouse should:

7. Pay Parks license fees totaling \$1,696, plus interest and penalties, for underreporting film-shoot revenue.
8. Issue sequentially numbered receipts for film shoots.
9. Reconcile its film-shoot invoices to the film-shoot receipts, deposits, profit-and-loss statements, and the monthly report of gross receipts submitted to Parks.

Parks should:

10. Ensure that the Boathouse pays the City \$1,696, plus interest and penalties, for underreporting film-shoot revenue.

Parks Response: In its response, Parks agreed with our assessment and stated that it issued a Notice to Cure requiring the Boathouse comply with the above recommendations.

Boathouse Response: In his response, the Boathouse’s attorney stated:

“The Boathouse will agree to pay Parks license fees totaling \$1,696, which corresponds to the missed/underreported revenues Boathouse has confirmed are owed based upon its internal review of the audited documents.

“On a going forward basis, film shoots will be handled in the same manner as a catered event, thus being subject to the same cross-referencing,

reconciling and balancing with each month's close as indicated above for catered events.”

Underreported Bike-Rental Sales

The Boathouse underreported bike-rental fees totaling \$1,070. As a result the Boathouse owes Parks an additional \$171 in license fees, plus late charges. The underreported amount is based on unannounced observations conducted for two-days in September 2005.

The results of our unannounced visits cannot be projected for the purposes of calculating additional license fees due Parks based upon underreported revenue. However, for illustrative purposes we estimated that bike rentals could have been underreported by an additional \$190,611, and this could result in an additional \$30,498 in license fees.

Our estimates are based on our unannounced observations for a two-day period in September 2005, in which the Boathouse underreported its bike-rental sales and understated the corresponding revenue by \$1,070.¹ (See Table II below.) Based on these observations, we determined that approximately 39 percent of total bike-rental receipts collected were not reported. Accordingly, we applied the underreported percentage of rental receipts to the Boathouse's reported bike-rental sales for 2004 (\$139,621) and 2005 (\$160,187), and estimated that the total underreported bike-rental sales could have been \$191,681. (The estimated \$191,681, less the actual underreported fees totaling \$1,070, results in \$190,611 of additional revenue that we estimate could have been underreported.)

Table II
Summary of Bike Rentals Reported vs. Observed

Date of observation	Number of bike rentals observed	Number of bike rentals reported	Difference	Total fees based on bike rentals observed	Total fees reported	Underreporting of bike revenue
September 1, 2005	86	54	32	\$874	\$541	\$333
September 10, 2005	167	109	58	\$1,851	\$1,114	\$737
Totals	253	163	90	\$2,725	\$1,655	\$1,070

¹ We stationed two auditors near the bike-rental booth and in full view of the rentals and found on September 1, 2005, (Thursday) that of the 86 bike rentals, 32 were not reported by the Boathouse. On September 10, 2005, (Saturday) we performed another observation and found that of the 167 bike rentals, 58 were not reported by the Boathouse.

The Boathouse lacks controls to ensure that all revenue generated from bike rentals is reported in gross receipts. We therefore conducted unannounced observations to assess potential revenue that may have been underreported due to the inadequate controls. The Boathouse rents bikes to the public and charges patrons an hourly rental fee. Four types of bikes are rented: cruisers at \$9 for the first hour; 21-speed bikes at \$15 for the first hour; tandem bikes (two-seaters) at \$20 for the first hour; and children's bikes at \$6 for the first hour. (For each type of bike, there is a prorated charge for each additional half-hour.) The Boathouse has one employee who handles all rentals and collects cash payments. The bike-rental kiosk uses a stand-alone register that is not connected to the Boathouse point-of-sale system. Moreover, there is no oversight of the bike attendant to ensure that the amount he collects daily is deposited and properly recorded.

Recommendations

The Boathouse should:

11. Pay Parks license fees totaling \$171, plus interest and penalties, for underreported bicycle-rental sales.
12. Install a register that is linked to the point-of-sale system used for restaurant sales and row boat rentals.

Parks should:

13. Ensure that the Boathouse pays the City \$171, plus interest and penalties, for underreporting bicycle-rental sales.
14. Ensure that the Boathouse bike-rental sales register is linked to the point-of-sale system so that subsequent bike revenues may be accurately recorded and reported.
15. Follow up on the estimated \$190,611 that may have been underreported and consider whether additional revenues of \$30,498 may be due.

Parks Response: In its response, Parks agreed with our assessment and stated that it issued a Notice to Cure requiring the Boathouse pay an additional \$174, inclusive of interest charges to Parks. However, it further stated:

“Subject to the Boathouse’s full implementation of the required actions noted . . . for recommendation 12, Parks will not pursue the collection of this additional sum considering that this additional assessment is based on a limited observation period.

“The audit observations . . . illustrate a serious deficiency in controlling the collection and reporting of revenue for bicycle rentals. The Boathouse must implement this recommendation (recommendation 12) to alleviate the problem of underreporting. Boathouse officials believed that an

internal audit program to randomly test the rental operation would provide a better monitor to ensure that all revenue is recorded. This additional action together with the point-of-sale link required under recommendation 12 should provide the necessary level of control over these ancillary sources of income.”

Boathouse Response: In his response, the Boathouse’s attorney stated:

“Notwithstanding the nominal amount purported to be due, the method of calculating such revenue and license fees is both unreasonable and unreliable. First, the Auditor’s review of the Boathouse’s bicycle-rental operations is solely based upon observations, without documentary support, conducted on 2 isolated days during one month of an Audit Period covering 2 years. The potential and likelihood for errors relating to speculation, conjecture and lack of documentary support are immeasurable.

“Based upon the Boathouse’s position on this issue, it is submitted that no additional fees are due and owing to Parks for bicycle-rental sales. Notwithstanding the recommendation in the Draft Report based on a two day observation, the Boathouse does not believe the installation of a point-of-sale terminal is likely to result in greater control of bike-rental sales.”

Auditor Comment: The methodology used in testing the accuracy of the reporting of the bicycle-rental sales is sound and an established auditing practice. New York State Department of Taxation and Finance auditors use this same methodology to project underreported sale taxes. The State auditors’ project underreported sales based on sample observations when testing the accuracy of reported sales. The State auditors have used observations of one day’s sales to estimate an entity’s sales tax liability for as many as four years. Moreover, in cases before the New York State Division of Tax Appeals, Administrative Law Judges have upheld the use of this methodology to determine sales tax liability when an entity’s sales records were insufficient to rely on.

The Boathouse response presents no explanation for the sales observed by our auditors that were not reported in gross receipts to Parks. The Boathouse notes a lack of “documentary support” without providing any books or records to dispute that the receipts based on the transactions we observed were reported to Parks. Additionally, the Boathouse fails to describe any controls that were in place to verify the accuracy of the bicycle-rental sales that were reported to Parks. As previously noted, the cash register at the bicycle-rental kiosk was not linked to the point-of-sale system. Moreover, the same person is responsible for collecting, recording and reconciling the daily sales activity, a clear violation of the basic tenet of sound internal controls. The duties of collecting, recording and reconciling sales should be separate to ensure that all revenues are collected, properly accounted for, recorded, and deposited in the bank.

Our estimate of \$190,611 in underreported bike-rental sales for 2004 and 2005 was formulated using the same methodology used by the New York State Department of Taxation and Finance for identifying unreported revenue. The Boathouse's attorney failed to provide any substantive evidence to support the claim in his response that the amount we identified was based on "speculation and conjecture." The Boathouse has refused to establish any controls that would prevent further underreporting of receipts to Parks, such as the installation of a point-of-sale terminal. The Boathouse's assertion that they do "not believe the installation of a point-of-sale terminal is likely to result in greater control of bike-rental sales" is without merit given our observations and the lack of basic controls. As the agency responsible for monitoring this concession, Parks must require the Boathouse to take the necessary measures to ensure that all the income earned by the Boathouse is accurately reported in gross receipts.

In its response, Parks notes that "Boathouse officials believed that an internal audit program to randomly test the rental operation would provide a better monitor to ensure that all revenue is recorded." However, to date no internal audit program or random test procedures have been implemented, identified, or even suggested by officials of the Boathouse. As noted above, the Boathouse response accepts no suggestion for an acceptable level of internal controls. Furthermore, we doubt the sincerity of the Boathouse acknowledgement of the benefit of random tests of the rental operations. The Boathouse was notified of our auditors' bike rental observation results on February 22, 2006, well before the start of the 2006 bike rental season. Yet the Boathouse acknowledged at the exit conference on October 17, 2006 that it did not perform its own observations or other random testing of the bike rental operations during the 2006 season.

As stated in the response, the Boathouse still has not established adequate internal controls over bike-rental sales. The methodology we used to determine unreported bike-rental sales was prudent and is identical to that used by the New York State Department of Taxation and Finance. In that regard, we believe that Parks should reconsider its position and require the Boathouse to pay the \$30,498 plus interest and penalties that we identified. In addition, Parks must require the Boathouse to establish an adequate system of internal controls over bike-rental sales to ensure that all sales are reported and all fees are paid.

Improper Deductions from Gross Receipts Relating to Catered Affairs

For 2004 and 2005, the Boathouse improperly deducted \$1,513,950 from its gross receipts when calculating the monthly franchise fee due Parks. According to Boathouse representatives, the deductions were used to pay gratuities to catering wait-staff and consisted of a mandatory 11.5 percent charge to customers for gratuities, a charge for maitre d' services, and an additional staff fee for each catered affair. While the September 10, 2001 amendment to the agreement permits gratuities to be deducted from gross receipts, our review of Boathouse records indicated that those deductions were actually used to pay the salaries of the maitre d', a commission to the catering sales managers, and approximately 80 percent of the hourly wages of

the catering wait-staff. The license agreement clearly does not allow these types of expenses to be deducted from the gross receipts. Thus, as a result of these improper deductions, the Boathouse owes Parks additional license fees totaling \$241,911, plus interest and penalties (\$112,490 in 2004 and \$129,421 in 2005).

The September 10, 2001 amendment requires that the *“Licensee shall provide documentation satisfactory to Parks that such gratuities were paid to employees and staff in addition to their regular salaries.”* (Emphasis in original.) However, the Boathouse was unable to provide the required documentation to justify its contention that the deductions were used to pay staff gratuities. In fact, contrary to Boathouse’s contention, our own review indicated that Boathouse staff were not paid gratuities.

The maitre d’ and the sales managers are paid fixed weekly salaries, regardless of the number of affairs held. The maitre d’s salary is funded from a \$300-\$350 charge that the Boathouse assesses customers for catered affairs, and a portion of the sales managers’ salaries are funded from 1.5 percent of catered-affair sales. Payroll records indicate that neither the maitre d’ nor the sales managers is paid any gratuities.

As indicated by the following Boathouse documentation, payments to the catering wait-staff were composed entirely of salary:

1) *Employee data sheets (employment agreements), signed by the employee and a Boathouse manager, stating the hourly salary for the job title.* For example, the job title of “Catering Waiter” lists the salary as \$17 per hour. This is a fixed hourly rate, and the employees do not receive gratuities in addition to the \$17.

2) *Payroll Registers showing two pay categories for catering wait-staff regular salary and “party pay.”* Regular salary is minimum wage. Party pay is the difference between the employees’ hourly hire rate and the minimum wage. For example, a catering waiter in 2004 earned \$17 per hour, consisting of a regular salary of \$3.30 and party pay of \$13.70 per hour. In 2005 and 2006, as the regular salary (minimum wage) increased to \$3.85 and \$4.35, the party-pay rate decreased to \$13.15 and \$12.65. If indeed the party pay was a gratuity payment, its amount should not decrease because the minimum wage increased.

3) *Boathouse payroll records in 2004 and 2005 indicating that catering wait-staff were paid \$66,541 in party pay for working 4,915 hours on days when there was either no catering event or there was an event at which no gratuities were collected from the patron hosting the event.* If indeed the party pay was a gratuity payment, it would not be paid on days that there was no catering event or when no gratuities were collected. Specifically, there were:

- 35 instances in which there was no record of an event held on the day indicated;

- 20 instances in which the event was not reported on the Boathouse profit-and-loss statements (both the revenue and the gratuities charged for these events were not reported to Parks as gross receipts);
- 15 instances in which the entire cost of the event was free-of-charge to the patron and a gratuity was not collected;
- 14 instances in which gratuities were not added to the invoice (a gratuity is listed as a separate line item on the invoice); and
- 2 instances, on Thanksgiving Day in 2004 and 2005, in which the catering hall was used to accommodate the overflow of patrons from the restaurant and a total of 16 catering wait-staff were paid \$17 per hour (\$13.70 “party pay” plus \$3.30 minimum wage). This was not a catered event for which the Boathouse charged gratuities.

4) *Boathouse payroll records indicating that a waiter was paid \$548 in party pay for one week’s vacation.* Obviously, if party pay was a gratuity payment, it would not have been used for vacation pay.

The results of our review belie the Boathouse contention that the gratuities it collects from customers for catered affairs should be deductible from gross receipts. In fact, documentation clearly indicates that the Boathouse has established a pattern of using customer gratuities to fund salaries for catering wait-staff, the maitre d’, and sales managers. Gratuities charged to patrons are deductible only if such gratuities were paid to employees and staff *in addition to their regular salaries*, which these gratuities clearly were not.

At the exit conference, the Boathouse stated that it was in compliance with the intent of the contract since it distributed the gratuities collected to its catering wait-staff even though the funds were paid as wages. However, the Boathouse could not offer any evidence to support its position. In fact, the Boathouse agreed that on the W-2 forms for the catering wait-staff, it records the total dollar amount of compensation as wages (box 1), not as tips (box 8). As stated above, the contract requires that if gratuities are to be deductible from gross receipts, they have to be paid *in addition* to regular salaries. Our analysis clearly shows that the \$1.5 million that the Boathouse deducted from gross receipts were used to pay the employees’ regular salaries and not paid as additions to their regular salaries. Thus, the Boathouse’s practice does not comply with the deductibility requirement in the September 10, 2001 amendment to the agreement.

Please note that from October 2001 to December 2003 and from January to June 2006, the Boathouse deducted from its gross receipts an additional \$1,503,620 for gratuities and additional staff. Although these periods were beyond the scope of our audit, we are concerned that these deductions have been used to pay the salaries of catering staff as reported above. Therefore, Parks should determine whether these deductions were in fact legitimate gratuity payments that could have been deducted from gross receipts. However, if Parks determines that these deductions were actually used to pay salaries, it should compel the Boathouse to pay an additional \$228,853 in license fees, plus interest and penalties.

Recommendations

The Boathouse should:

16. Pay Parks license fees totaling \$241,911, plus interest and penalties, for improper deductions from gross receipts.
17. Include all revenue received from its operations in its gross receipts without deducting for gratuities used to fund salaries. Gratuities should only be deducted to the extent that they are distributed to employees for services rendered for a specific event and when the distribution is in addition to their regular salaries. Commissions paid to sales managers should never be deducted from gross receipts.

Parks should:

18. Ensure that the Boathouse pays the City \$241,911, plus interest and penalties, for incorrectly deducting from gross receipts gratuities used to pay salaries and commissions.
19. Determine whether \$1,503,620 in deductions from Boathouse gross receipts from October 2001 to December 2003 and from January to June 2006 were used to pay salaries of its catering wait-staff. If so, Parks should collect from the Boathouse \$228,853 in additional license fees, plus interest and penalties.

Parks Response: In its response, Parks stated “**Recommendations 16, 17, 18, and 19** cover alleged improper deductions from gross receipts by the Boathouse that were used to pay employees’ regular salaries rather than as gratuities in addition to their regular salaries. Parks will refer this issue to the City’s Law Department to obtain a legal opinion on whether the Boathouse’s methodology to account for the gratuities it collects and then deducts from gross receipts complies with the license agreement language that allows for their exclusion from reportable sales. Parks will render a determination covering this issue after the Law Department has replied. The total assessments concerning this finding, \$480,179 (\$470,764 plus \$9,415) is pending a final ruling.”

Boathouse Response: In his response, Boathouse’s attorney stated:

“It is customary practice in the restaurant and food service industry to charge the customer a service charge/auto gratuity and then redistribute the payments as wages to the catering and related service staff. Such practice is consistent with the gratuity deduction permitted by in the Amendment to the Lease Agreement.

“The Boathouse submits that no fees are due relative to the gratuity issue detailed above. It is the Boathouse’s position that it is in full compliance with all Labor Law and License Agreement obligations as they relate to the receipt, handling and recording of gratuities and their deductions from the Gross Receipts.”

Auditor Comment: The assertion that the Boathouse gratuity deduction is consistent with the amendment to the license agreement lacks any basis in fact or law. The lease amendment allows gratuities to be deducted only when gratuities are paid *in addition* to employees’ regular salaries. In fact Parks stated in a response to another audit report on a similar license agreement that the “gratuity exclusion provision was never intended to serve as a means for a licensee to write-off its payroll expense against reportable gross revenue to the City.”²

The Boathouse’s attorney states that the Boathouse is “in full compliance with all Labor Law . . . obligations as they relate to the receipt, handling and recording of gratuities and their deductions from the Gross Receipts.” In regards to our audit assessment, this is irrelevant. The deductibility of gratuities from gross receipts in calculation of the license fee due is based not on Labor Law but on the terms stipulated in the license agreement and its amendment. As documented in our finding above, the terms of the license agreement and amendment clearly preclude deduction from gross receipts of money distributed to employees as salary.

Furthermore, the New York State Supreme Court (New York County) decision dated August 26, 1996, (Index No. 407578/93) determined that banquet service charges (including gratuity charges) in another City license agreement is not income to be included in gross receipts in those instances *in which 100 percent* of the banquet service charge is distributed to the banquet staff. The Court’s Order that was drafted by the Corporation Counsel of the City of New York was filed October 10, 1996, and finalizes this decision. As illustrated by our analysis, 100 percent of the banquet gratuities that was collected *was not* distributed to banquet staff working the affair. This is further exemplified by the fact that during the peak season period the Boathouse uses the services of a second maitre d’. The maitre d’ is paid a per shift fee of \$250, yet the Boathouse charges its patrons \$350 for maitre d’ services. Obviously, 100 percent of this maitre d’ charge deducted from gross receipts is not 100 percent disbursed to the maitre d’. Accordingly, the Boathouse is not adhering to the court’s criteria for gratuity deductibility.

Finally, if the gratuities were 100 percent distributed to meet deductibility of the test established by the court ruling, then the gratuity charges would be exempt from sales tax. The Boathouse has been charging its patrons sales tax on the gratuity charges. Therefore, the Boathouse has either been incorrectly charging New York State sales tax on the

² Audit Report FL03-102A, *Compliance of Crystal Ball Group, Inc., (Terrance on the Park) with Its License Agreement and Its Payment of License Fees Due the City April 1, 1999-March 31, 2002*, Addendum II, Page 4 of 6, issued February 26, 2004.

gratuity amount or the gratuity is not deductible from gross receipts. We believe the latter is true, and we accordingly assert that \$480,179 in additional license fees and interest is due Parks.

**Value of Employee Meals and Complimentary Meals
Not Included in Gross Receipts**

The Boathouse did not include in its gross receipts \$58,994 for the value of meals provided to its employees. As a result, the Boathouse underpaid Parks \$9,439 in license fees, plus late fees.

The Boathouse 2004 and 2005 payroll registers identified \$58,994 in meals provided to employees that employees were charged for in the form of a payroll deduction. As such, the payroll deduction for these meals are required to be treated as revenue and be included in the gross receipts.

Moreover, the Boathouse did not report in its gross receipts \$196,308, the value of complimentary meals that were provided to customers in 2004 and 2005. The value of those meals was recorded on the Boathouse point-of-sale system. As a result of not reporting this revenue, the Boathouse underpaid Parks \$31,359 in licensee fees, plus late fees.

According to §2.1 (l) (iv) of the license agreement:

Gross Receipts shall include sales made for cash or credit, (credit sales shall be included in gross receipts as of the date of the sale) regardless of whether the sales are paid or uncollected. It being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts. (Emphasis added)

The Boathouse claims that such complimentary meals promote its business and increase future sales by allowing patrons to sample its food before they either book a catered affair or dine with a large party. While we recognize that the Boathouse is permitted to forgo charging patrons or friends for meals, the agreement does not permit the Boathouse to similarly forgo paying license fees. Further, the Boathouse procedures do not document to whom the complimentary meals and drinks were given; therefore, we could not determine whether prospective clients were in fact the recipients of these complimentary meals, as claimed. Therefore, the value of complimentary meals must be included in the gross receipts reported to Parks.

Based upon documentation provided at the exit conference, we requested explanations for some of the larger complimentary meals and lost sales (deductions that ranged between \$800 and \$2,600 each) that were deducted from gross receipts reported to Parks. *The Boathouse would not provide us any further information.* Without an acceptable explanation and supporting documentation for these large deductions, we cannot assess their legitimacy and must disallow the complimentary meal deductions from gross receipts.

The documentation provided at the exit conference also showed that in many instances entire restaurant sales were deemed complimentary and excluded from gross receipts. In those cases, the Boathouse should pay either sales tax or compensating-use tax. Our review of sales tax returns revealed that the Boathouse submits sales tax based on its gross receipts (using the same dollar amount as reported to Parks for calculating the license fee); thus, the Boathouse does not pay either tax on the complimentary meals provided to patrons or the meals provided to employees. When the Boathouse purchases food and beverages it does so without paying sales tax because it is with the intention that these provisions will be resold and at that point sales tax will be charged. However, in the case of complimentary meals and employee meals, there is no sales tax charged when the meals are given to either patrons or employees. The Boathouse has the option to provide free meals but state tax law requires that compensating-use tax be paid on the cost of the provisions used to provide free meals. Based on the Boathouse's profit and loss statements the cost of the food and drink provided as complimentary would have resulted in \$4,523 compensating-use taxes for 2004 and 2005. Additional compensating-use tax is due on employee meals; however, we were unable to determine the cost of the provisions used to provide employee meals. The Boathouse should use a reasonable method to determine the tax due for employee meals under this contract.

We should also note that from October 2001 to December 2003 and from January to June 2006, the Boathouse did not report in its gross receipts \$249,638. That amount was the value of complimentary meals recorded on the Boathouse point-of-sale system. In addition, from January to June 2006, the Boathouse did not include in its gross receipts \$23,894 for meals that employees were charged through a payroll deduction. Although these periods were beyond the scope of our audit, we must point out that the value of complimentary and employee meals were similarly not included in gross receipts, as cited above. Therefore, Parks should determine whether the \$273,532 should have been included in reported Boathouse gross receipts. If Parks determines that the \$273,532 should have been included in gross receipts, then it should compel the Boathouse to pay an additional \$42,428 in license fees. In addition, the Boathouse did not pay compensatory-use tax on the \$249,638 for complimentary meals. It is estimated that the tax would be \$5,608.

Recommendations

The Boathouse should:

20. Pay Parks license fees totaling \$40,798, plus interest and penalties, for not reporting the value of employee meals and complimentary meals.
21. Include the value of meals employees are charged for and complimentary meals in its gross receipt reports to Parks.
22. Pay \$4,523 in additional compensating use tax owed to New York State as well as determine the compensating-use tax due for employee meals.

Parks should:

23. Ensure that the Boathouse pays the City \$40,798, plus interest and penalties, for not reporting the value of employee meals and complimentary customer meals.
24. Determine whether \$273,532, the value of complimentary and employee meals, should have been included in gross receipts reported to Parks. If so, Parks should collect from the Boathouse \$42,428 in additional license fees, plus interest and penalties. Parks should ensure that the Boathouse pay compensating use tax on the cost of the provisions used to provide the complimentary meals and employee meals.

Parks Response: In its response, Parks stated:

“Parks agreed with the portion of recommendation 20 that requires the Boathouse to report the value of meals provided to its employees and which the employees were charged for in the form of a payroll deduction. The Boathouse must pay \$9,628 (inclusive of interest) under recommendation 20, and another \$3,899 (inclusive of interest) for recommendation 24, representing the unreported amount of employee meals.

“Parks does not agree with the portion of recommendations 20 through 24 that represents an assessment for unreported complimentary meals that we consider to represent a cost to the Boathouse to conduct and promote its business.”

Boathouse Response: The Boathouse attorney disagreed with the auditors’ findings that the value of meals provided to its employees and the value of complimentary meals to customers are required to be included in the total Gross Receipts.

The Boathouse attorney stated in regards to employee meals, “Providing employees with meals is a standard practice throughout the restaurant and food service industry. Indeed, applicable Labor Law provisions permit restaurants to charge employees a nominal amount (up to \$2.00 per meal in 2006), which can be offset against labor costs. . . . Accordingly, the value of such meal is not deemed a sale in the normal course of business, but rather, a reduction of labor costs, and thus, should not be included in Gross Receipts. Meals provided as a courtesy to employees does not meet the defined criteria of ‘Gross Receipt’ under the terms of the License Agreement.”

In regards to complimentary meals, the attorney stated that “the Boathouse contends that such complimentary meals are not only common in the restaurant industry, but are integral to the restaurant’s business development and financial growth, which, of course, only serves to benefit Parks as well. Likewise, it is common that such meals are typically treated as a discounting of sales price.”

The Boathouse's attorney further stated that the Boathouse's position is supported by an Advisory Opinion of the New York State Commissioner of Finance, which notes that when a restaurant provides a beverage in conjunction with the sale of a meal or a beverage at no extra charge, the sales tax is to be computed on the actual amount paid by the customer.

In regards to recommendations 20 through 22, the Boathouse's attorney responded:

“The Boathouse disagrees with the Auditor's assessment of fees for employee meals and complimentary meals for the reasons discussed herein.

“The Boathouse similarly disagrees with the Auditor's position that employee and complimentary meals should be included in the calculation of Gross Receipts.

“Notwithstanding the inappropriate raising of the use tax issue in the Draft Report, and with reservation of rights and objections thereto, the Boathouse will confer with the J.H. Cohn Accounting and Consulting Firm for an opinion regarding the propriety of any use tax that may be applicable to the instant circumstance.”

Auditor Comment: We are pleased that Parks agrees with our findings pertaining to including in gross receipts the value of meals the Boathouse provided and charged its employees in the form of a payroll deduction. In the Boathouse response, its attorney calls the charge for employee meals a reduction of payroll expense, but neglected to recognize the fact that the employee is actually paying for the meal.

With regard to complimentary meals, we continue to maintain the value of the complimentary meals should be included in gross receipts, especially due to the nature of some of the undocumented complimentary meals. On numerous occasions the Boathouse coded large dollar amounts as complimentary (between \$800 and \$2,600) without any explanation. Without documentation to substantiate the purpose for the deduction, we could not assess whether these deductions were truly for complimentary meals that would foster the restaurant's business development and financial growth, or simply a method to avoid reporting gross receipts. As stated previously, the Boathouse would not provide us with any additional information regarding these complimentary meals.

The complimentary meal amount deducted from gross receipts included deductions coded both as lost sales and complimentary meals on the daily close reports. For example, the daily close report for April 22, 2005, contained a deduction of \$2,475, coded as complimentary meals with the notation “open food.” The daily close report for June 20, 2005, contained another deduction for \$2,601, coded as complimentary meals without a notation. The daily close report for August 17, 2005, contained a deduction of \$1,067, coded as a lost sale with a notation of “bike rentals.” The last example is of particular

concern since for this summer day there were no bike-rental sales recorded on the daily closeout report to adjust. These are only three examples of what lead us to question the merit of the entire deduction for complimentary meals, and how this deduction relates to enhancing the business development and financial growth of the Boathouse.

The license agreement Article IV §4.7 (c) allows “the Comptroller to make reasonable projections of the amount of Gross Receipts which would have been disclosed had the required statements been furnished or the required records be maintained, based upon such extrinsic factors as the auditors deem appropriate in making such projections.” In regards to complimentary meals, the documentation the Boathouse has refused to furnish makes it reasonable for us to disallow the entire deduction and assess license fees due. We therefore maintain that the Boathouse should pay license fees on the value of complimentary meals and recommend that Parks reconsider its position on this matter.

Revenue Not Reported Accurately to Parks

The Boathouse underreported \$47,214 in catering revenue for three months on its profit-and-loss statement and its monthly report of gross receipts in 2005. The underreported revenue was incorrectly reported for the months of February, May, and June 2005. These amounts were not correctly transferred from the Boathouse computerized listing of catered events to the profit-and-loss statement and the monthly report of gross receipt submitted to Parks. As a result, the Boathouse understated gross receipts for those months and underpaid Parks a total of \$7,554 in license fees. The Boathouse controller agreed that Boathouse underreported catering revenue for the three months, but claimed that this underpayment was more than offset by a \$57,630 refund given to another patron that was also not posted to the profit-and-loss statement. We did not accept this as a compensating offset since the Boathouse could not provide adequate documentation that it had provided a refund to a patron.

At our request, the Boathouse provided prior-period documentation addressing the above issue. We identified similar errors for the three months between December 2001 and February 2002 and for the month of December 2003. During these periods, a total of \$138,774 in revenue that was reported on the profit-and-loss statement was not reported on the monthly report of gross receipts that was submitted to Parks. As a result of these errors, the Boathouse owes Parks an additional \$20,818 in license fees, plus late fees.

At the exit conference, the Boathouse provided an explanation and documentation for a \$1,500 revenue discrepancy that had been identified for May 2005. The Boathouse claimed the discrepancy resulted from a reversal of a discounted gift certificate sale that was incorrectly reported as a catering food sale. Although we agree that a gift certificate sale should not have been reflected as part of catering sales, we believe it should have been included in the monthly gross receipts report to Parks as a gift certificate sale, which it was not. As a result of this explanation, a larger issue was disclosed, namely that the Boathouse sells gift certificates and does not include the sale in the gross receipt report until the gift certificate is redeemed, which could be never. In fact, 28 of the 34 gift certificates sold in May 2005 had not been redeemed by mid-October 2006, 17 months after they were issued. These gift certificates are no longer

redeemable since according to Boathouse officials gift certificates are good for one year. Therefore, the sale of the 28 gift certificates will never be included in gross receipts.

A further analysis of the Boathouse's gift certificate schedule indicated a total of \$25,417 outstanding gift certificates issued since January 20, 2005. Of these, \$7,371 in gift certificates were not redeemed within the one-year redemption period and are no longer valid. Although these certificates generated revenue, under the current procedures, revenue associated with these gift certificates will never be included in gross receipts. The contract requires the Boathouse to include in gross receipts all sources of income realized from its operation of the licensed premises. Based on this requirement, the revenue from gift certificate sales should have been included when the gift certificates were sold.

Recommendations

The Boathouse should:

25. Pay Parks license fees totaling \$28,372 plus interest and penalties for incorrectly reporting revenue.
26. Ensure that the profit-and-loss statements and the monthly report of gross receipts accurately report gross receipts.
27. Pay Parks license fees totaling \$4,067 plus interest and penalties on the \$25,417 in gift certificate sales not previously reported.
28. Ensure that all revenue the Boathouse realized from its operation of the leased premises such as gift certificate sales be included in gross receipts when the payment is received.

Parks should:

29. Ensure that the Boathouse pays the City \$28,372, plus interest and penalties, for incorrectly reporting revenue and the \$4,067 plus interest and penalties on the \$25,417 in gift certificate sales not previously reported.
30. Require the Boathouse to provide a list of outstanding gift certificates and ensure that the Boathouse pays the City the license fees due on the unreported gift certificate sales.

Parks Response: In its response, Parks agreed with our assessment and stated that it issued a Notice to Cure requiring the Boathouse comply with the above recommendations.

Boathouse Response: In his response, the Boathouse’s attorney stated that the Boathouse agrees that it misreported catering sales totaling \$45,714. However, he did not agree that gift certificate sales should be included in gross receipts and that a prior period year-end adjustment totaling \$138,774 by the outside accounting firm should be included in gross receipts. Accordingly, the attorney’s response to the recommendations stated:

“The Boathouse will agree to pay Parks \$7,428 in licensing fees, in accordance with the terms of the License Agreement.

“The Boathouse has implemented procedures to ensure correct and accurate profit-and-loss statements and monthly reports of Gross Receipts. Proper steps will be taken to finalize the catering sales reconciliations prior to any submission to Parks.

“Based on the foregoing, the Boathouse submits that revenue is not generated by gift certificate sales, and thus, no licensing fees are due as a result thereof.

“It should be noted that gift certificate sales are not the *operation of a leased premise* as presented in the Draft Report, rather, in accordance with GAAP, they are a liability maintained on the balance sheet and not a revenue-generating item.”

Auditor Comment: The Boathouse’s refusal to include the cash received for gift certificates in gross receipts is a violation of the license agreement. The license agreement Article II §2.1 (l) (iv) states that “Gross Receipts shall include sales made for cash or credit, (credit sales shall be included in gross receipts as of the date of the sale) regardless of whether the sales are paid or uncollected.” Furthermore, it should be noted that the license agreement, not GAAP, defines what is included in gross receipts. Accordingly, we are satisfied that Parks has issued a Notice to Cure for license fees due on the sale of gift certificates in the amount assessed by the auditors.

In addition, the Boathouse was unable to provide any documentation in regards to an alleged prior period adjustment totaling \$138,774. The only information that is currently available is that the Boathouse generated \$138,774 more in revenue than was reported to Parks. Therefore, the license fees should be paid on the \$138,774 additional revenue as indicated in the Parks Notice to Cure.

Poor Controls over Gondola-Ride Sales

The Boathouse has poor controls over its gondola-ride sales. As a result, not all revenue from gondola-ride sales was included in the gross receipts.

The Boathouse operates a gondola ride on the lake adjacent to the Boathouse restaurant. Patrons generally make an advance reservation that is recorded in the gondola reservation book. On August 14, 2005, two auditors reserved a gondola ride. Prior to their ride, they observed two

separate gondola rides. Afterwards, they went on the gondola ride for a half hour. At the conclusion of their ride, the auditors paid the \$30 fee and requested a receipt. They were given a computerized receipt from the Boathouse point-of-sale system.

We then traced the August 14, 2005 gondola sales to the daily-close report and found only two gondola rides had been reported for the entire day, despite the three rides that the auditors had either observed or taken. We attempted to trace the entire month of August 2005 gondola-ride sales to the reservation book, but were told that the gondolier took the 2005 reservation book with him at the end of the season and could not find it. As a result, we were unable to review the reservation book and reconcile it to the reported gondola sales.

The Boathouse does not have controls in place to ensure that all revenue generated from gondola-ride sales are reported in the gross receipts. By allowing the gondolier to take official records home, the licensee eliminated the checks and balances that were in place that could ensure that all sales have been recorded and deposited.

Recommendations

The Boathouse should:

31. Ensure that there are adequate controls to ensure that all gondola-ride sales are recorded and reconciled to the reservations made. This would include ensuring that the reservation book remains at the Boathouse at all times.
32. Reconcile the reservation book to the daily gondola receipts detailed in the daily-close reports to ensure that all gondola rides are accounted for.

Parks should:

33. Ensure that the Boathouse has adequate controls over its gondola-ride sales.

Parks Response: In its response, Parks agreed with our assessment and stated that it issued a Notice to Cure requiring the Boathouse comply with the above recommendations.

Boathouse Response: In his response, the Boathouse's attorney stated: "The Boathouse will take appropriate measures to properly secure the reservation book, and will establish a written protocol governing the reservations, the recording and sales of the gondola rides, and providing for the proper reconciliation of the reservation book to sales posted. It is anticipated that such protocol will be in force prior to the start of the 2007 season."

Noncompliance with Miscellaneous Contract Provisions

The Boathouse did not adhere to certain contract provisions. Specifically, the Boathouse did not operate a Park Activity and Resource Center and did not display a sign posting operating days and hours. The only sign we observed that was posted in the front of the restaurant was the menu that listed lunch, dinner, and brunch prices.

According to contract agreement Article IX, Operations, §9.1 (g), the Boathouse must “operate a Park Activity & Resource Center that will house information and materials pertaining to Loeb Boathouse and Central Park as well as serve as an informal meeting space for groups and organizations that frequently hold events in Central Park.” Further, §9.5 states that “Licensee shall, at its sole cost and expense, print, frame, and prominently display in a place and manner designated by Commissioner, the current approved schedule of operating days, hours, fees and rates.”

Recommendations

34. The Boathouse should comply with the contract provisions that require it to operate a Park Activity and Resource Center and display the operating days and hours.
35. Parks should ensure that the Boathouse complies with all contract provisions.

Parks Response: In its response, Parks stated that “the Boathouse already provides an informal meeting area for groups and organizations and is in the process of implementing a computerized information center about the Loeb Boathouse and Central Park.”

Boathouse Response: In his response, the Boathouse’s attorney stated: “The Boathouse will continue, as it has in the past, to take all steps necessary to comply with the License Agreement.”

Other Issues

Password Access to Point-of-Sale System Not Adequately Safeguarded

Our Information Technology unit reviewed the Boathouse computerized point-of-sale system and found that “the software package possesses adequate controls, if utilized properly, to ensure complete, accurate, and reliable information as needed for the Boathouse Restaurant operation.” However, the Boathouse needs to improve its password controls over access to the point-of-sale system. Specifically, the Boathouse did not implement a procedure to change employee passwords periodically; did not delete from its point-of-sale system password accounts for inactive and terminated employees; and did not maintain a written policy for its employees to protect the integrity of their passwords.

Changing passwords periodically and deleting inactive password accounts are important safeguards to prevent any unauthorized access.

Recommendation

36. The Boathouse should implement a procedure to periodically change employee passwords and delete inactive user accounts from the system as well as maintain a written policy for its employees to protect the integrity of their passwords.

Parks Response: In its response, Parks stated: “The Boathouse should implement the procedures suggested in recommendation 36 to provide important safeguards to prevent any unauthorized access.”

Boathouse Response: In his response, the Boathouse’s attorney stated: “The Boathouse will investigate and research the current software and R-Power system with its technology consultant to ensure that adequate account controls and safeguards are established.”



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10021

Joanne G. Imohiosen
Assistant Commissioner
Revenue

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

January 12, 2007

BY FAX AND MAIL

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

**Re: Comptroller's Draft Audit Report on Central Park Boathouse, LLC
January 1, 2004 through December 31, 2005 FP05-128A, Dated January 2, 2007**

Dear Mr. Graham:

This letter represents the Parks Department's ("Parks"), response to the recommendations contained in the subject draft audit report on Central Park Boathouse, LLC ("the Boathouse").

Parks has issued the attached "Notice To Cure" (NTC) requiring the Boathouse to pay \$113,854 in additional fees and interest, **Recommendations 1, 7, 11, 20 (partial), 24, 25 and 27** and pay New York State compensating use taxes assessed under **Recommendation 22**. Also, the Boathouse is required to implement internal control, record keeping and reporting **Recommendations 2, 3, 4, 8, 9, 12, 21 (partial), 26, 28, 31, 32, and 36**. The following recommendation numbers required that Parks ensure that the Boathouse comply by paying the audit assessments and by implementing the noted corrective action to be taken: **Recommendations 5, 6, 10, 13, 14, 18, 23 (partial), 24 (partial), 29, 30, 33, 35**. Parks' issuance of the attached NTC covers these recommendations.

Recommendations 16, 17, 18, and 19 cover alleged improper deductions from gross receipts by the Boathouse that were used to pay employees' regular salaries rather than as gratuities in addition to their regular salaries. Parks will refer this issue to the

John Graham
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City's Law Department to obtain a legal opinion on whether the Boathouse's methodology to account for the gratuities it collects and then deducts from gross receipts complies with the license agreement language that allows for their exclusion from reportable sales. Parks will render a determination covering this issue after the Law Department has replied. The total assessments concerning this finding, \$480,179 (\$470,764 plus \$9,415) is pending a final ruling.

Recommendation 15 states that Parks should follow up on the estimated \$190,611 that may have been underreported and consider whether additional revenues of \$30,498 may be due. Considering that the additional assessment was only based on a very limited observation period, and the requirement that the Boathouse fully implement the controls cited under recommendation 12 of the audit, Parks will not pursue the collection of this additional sum.

Recommendation 20 required that the Boathouse pay Parks license fees totaling \$40,798, plus interest and penalties, for not reporting the value of employee meals and complimentary meals. **Recommendation 21** requires that the Boathouse include the value of meals employees are charged for and complimentary meals in its gross receipt reports to Parks. **Recommendation 23** states that Parks should ensure that the Boathouse comply with recommendation 20, and **Recommendation 24** asks Parks to determine whether \$273,532, the value of complimentary and employee meals, should have been included in gross receipts reported to Parks. If so, Parks should collect \$42,428 in additional fees plus interest.

Parks agreed with the portion of recommendation 20 that requires the Boathouse to report the value of meals provided to its employees and which the employees were charged for in the form of a payroll deduction. The Boathouse must pay \$9,628 (inclusive of interest) under recommendation 20, and another \$3,899 (inclusive of interest) for recommendation 24, representing the unreported amount of employee meals.

Parks does not agree with the portion of recommendations 20 through 24 that represents an assessment for unreported complimentary meals that we consider to represent a cost to the Boathouse to conduct and promote its business.

The value of complimentary meals for the audit period only represents 0.6% of the total gross receipts. In 2006 the Boathouse paid Parks \$2.3 million in fees, ranking it as the third highest paying Parks licensee. Only the baseball stadium parking operator for Shea Stadium and Yankee Stadium pays a higher amount. Also, the Boathouse pays almost double the amount paid to Parks by Tavern On The Green, which annually grosses over \$35 million. Furthermore, the Boathouse's annual fee payment to Parks is double the \$1.2 million in fees paid by the former concessionaire, T.A.M. Restaurant.

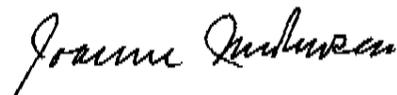
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Page 3

These comparative financial facts show that the Boathouse operation has been a huge success and it should not be penalized for the way in which it manages its complimentary meal expenses that clearly serve to promote and grow the business.

Finally, **Recommendation 34** stated that the Boathouse should comply with the contract provisions that require it to operate a Park Activity and Resource Center and display the operating days and hours. The Boathouse already provides an informal meeting area for groups and organizations and is in the process of implementing a computerized information center about the Loeb Boathouse and Central Park.

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

Sincerely,



Joanne Imohiosen

cc: Comm. Adrian Benepe
David Stark
Alessandro Olivieri
Frank D'Ercola
Francisco Carlos
Jeffrey Kay, Mayor's Office of Operations



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

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Joanne G. Imohiosen
Assistant Commissioner
Revenue

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

January 12, 2007

Mr. Dean Poll
President
Central Park Boathouse, LLC
700 Willis Avenue
Williston Park, NY 11596

Re: **NOTICE TO CURE**
Comptroller's Draft Audit Report on Central Park Boathouse, LLC
January 1, 2004 through December 31, 2005 FP05-128A, Dated January 2, 2007

Dear Mr. Poll:

This letter addresses the findings and recommendations contained in the subject draft audit report on Central Park Boathouse, LLC ("the Boathouse"). Generally, the Comptroller's audit disclosed that the Boathouse complied with the non-revenue requirements of its license agreement. However, the audit states that the Boathouse did not accurately report a total of \$2,392,669 in gross receipts and as a result, it owes the City of New York Parks and Recreation ("Parks") \$381,070 in license fees, plus late charges. The total amounts represent:

<u>DESCRIPTION</u>	<u>UNDERREPORTED GROSS RECEIPTS</u>	<u>ADDITIONAL LICENSE FEES OWED</u>
Underreported catering, film shoots, & bicycle-rental sales	\$412,012	\$65,922
Improper deductions from gross receipts	\$1,513,950	\$241,911
Value of employee & comp. meals not reported in G.R.	\$255,302	\$40,798
G.R. recorded on Boathouse records but not reported to Parks	\$185,988	\$28,372
Gift Certificate sales not reported in gross receipts	<u>\$25,417</u>	<u>\$4,067</u>
TOTALS	<u>\$2,392,669</u>	<u>\$381,070</u>

In addition, based on the auditor's findings, scope expansion and audit analysis, the report asks Parks to evaluate and consider imposing additional assessments totaling \$301,779 plus interest, that is summarized on the attached Exhibit A.

Dean Poll
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Page 2

Furthermore, the audit found the Boathouse lacks adequate controls over gondola-ride sales, and does not have sufficient safeguards over password access to its computerized point-of-sale system.

Specifically, the audit report requires that Crystal Ball should:

Recommendation 1. Pay Parks license fees totaling \$64,055, plus interest and penalties, for underreporting catering event revenue.

The audit disclosed that for 2004 and 2005 the Boathouse failed to report \$302,964 in revenue covering 35 events, did not accurately report revenue for 11 events resulting in net underreporting of income by \$26,762, and did not include \$70,618 of revenue from events that were canceled but for which patron deposits were non-refundable. As a result the Boathouse owes the following additional license fees plus interest:

	<u>ADDITIONAL LICENSE FEES</u>	<u>INTEREST</u>	<u>TOTAL AMOUNT DUE</u>
35 Unreported Events	\$48,474	\$969	\$49,443
Net underreported revenue for 11 catered events	\$4,282	\$86	\$4,368
Unreported non-refundable deposits for 10 canceled events	<u>\$11,299</u>	<u>\$226</u>	<u>\$11,525</u>
TOTALS	<u>\$64,055</u>	<u>\$1,281</u>	<u>\$65,336</u>

The Boathouse officials disagreed with the last item covering the reporting of non-refundable deposits however, Parks concurs with the total finding and requests that the Boathouse pay the total amount of \$65,336 which is part of the total assessment summarized on the attached Exhibit A.

Recommendation 2. Implement a system of internal controls to ensure that all events are accurately reported, including reconciling its catered event spreadsheets to the catering receipts and deposits.

Recommendation 3. Use prenumbered contracts when booking catered events. This will improve controls over each contract and will improve accountability over the catered events.

Recommendation 4. Include all payments when they are received from patrons in its monthly report of gross receipts submitted to Parks. The Boathouse should not wait until the date of the event to record revenue received.

The Boathouse should take the necessary action to implement internal control recommendations 2 and 3, and immediately comply with recommendation 4 that requires the prompt reporting of all patron revenue when received.

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Recommendation 7. The Boathouse should pay Parks fees totaling \$1,696 plus interest and penalties for underreporting film-shoot revenue.

The Boathouse did not report \$10,598 in revenue it obtained from 15 film shoots held in 2004 and 2005. As a result, the Boathouse underpaid its license fees by \$1,696. The Boathouse agreed with this finding and should pay the total amount of \$1,730, that includes \$34 interest, and which is part of the total assessment summarized on the attached Exhibit A.

Recommendation 8. The Boathouse should issue sequentially numbered receipts for film shoots.

Recommendation 9. The Boathouse should reconcile its film-shoot invoices to the film-shoot receipts, deposits, profit-and-loss statements, and the monthly report of gross receipts submitted to Parks.

The Boathouse should take the necessary action to implement internal control recommendations 8 and 9.

Recommendation 11. The Boathouse should pay Parks license fees totaling \$171, plus interest and penalties, for underreported bicycle-rental sales.

The Boathouse underreported bike-rental fees totaling \$1,070. As a result the Boathouse owes Parks an additional \$174, inclusive of interest charges that should be paid as part of the total assessment summarized on the attached Exhibit A. Furthermore, based on unannounced observations over a two-day period in September 2005, the auditors determined that approximately 39 percent of the total bike-rental receipts collected were not reported. By applying this percentage to the actual reported bike-rental sales for 2004 and 2005, it was estimated that \$190,611 of additional revenue could have been underreported, which would have resulted in an additional \$30,498 in license fees.

Subject to the Boathouse's full implementation of the required actions noted below for recommendation 12, Parks will not pursue the collection of this additional sum considering that this additional assessment is based on a limited observation period (See attached Exhibit A).

Recommendation 12. The Boathouse should install a register that is linked to the point-of-sale system used for restaurant sales and rowboat rentals.

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Page 4

The audit observations mentioned above in recommendation 11 illustrate a serious deficiency in controlling the collection and reporting of revenue for bicycle rentals. The Boathouse must implement this recommendation to alleviate the problem of underreporting. Boathouse officials believed that an internal audit program to randomly test the rental operation would provide a better monitor to ensure that all revenue is recorded. This additional action together with the point-of-sale link required under recommendation 12 should provide the necessary level of control over these ancillary sources of income.

Recommendation 16. The Boathouse should pay Parks license fees totaling \$241,911, plus interest and penalties, for improper deductions from gross receipts.

Recommendation 17. The Boathouse should include all revenue received from its operations in its gross receipts without deducting for gratuities used to fund salaries. Gratuities should only be deducted to the extent that they are distributed to employees for services rendered for a specific event and when the distribution is in addition to their regular salaries. Commissions paid to sales managers should never be deducted from gross receipts.

The audit report claims that the Boathouse improperly deducted \$1,513,950 from its gross receipts that were used to pay gratuities to catering wait-staff, a charge for maitre d' services, and an additional staff fee for each catered affair. From their examination of the Boathouse's records, the auditors believe that those deductions were actually used to pay the salaries of the maitre d', a commission to the catering sales managers, and approximately 80 percent of the hourly wages of the catering wait-staff. The audit report concluded that the license agreement clearly does not allow these types of expenses to be deducted from gross receipts and as a result, the Boathouse owes Parks additional license fees totaling \$241,911, plus interest and penalties.

To validate its gratuity deductions from gross receipts an amendment to the Boathouse license agreement dated September 10, 2001 requires that the "Licensee shall provide documentation satisfactory to Parks that such gratuities were paid to employees and staff in addition to their regular salaries." However, the report states that the Boathouse was unable to provide the required documentation to justify its contention that the deductions were used to pay staff gratuities. Furthermore, contrary to the Boathouse's contention, from the audit review the report indicated that the Boathouse staff were not paid gratuities.

At the exit conference, the Boathouse officials argued that it was in compliance with the intent of the contract since it distributed the gratuities collected to its catering wait-staff even though the funds were paid as wages. However, the auditors assert that

Dean Poll
January 12, 2007
Page 5

the Boathouse officials could not offer any evidence to support their position. The auditors stressed that their analysis clearly shows that the \$1.5 million that the Boathouse deducted from gross receipts were used to pay the employees' regular salaries and not paid as additions to their regular salaries. The report ends this subject by declaring that the Boathouse's practice does not comply with the deductibility requirement in the September 10, 2001 amendment to the agreement.

Furthermore, from October 2001 to December 2003 and from January to June 2006, the Boathouse deducted from its gross receipts an additional \$1,503,620 for gratuities and additional staff. Although these periods were beyond the scope of the audit, the audit report requests that Parks determine whether the deductions were in fact legitimate gratuity payments that could have been deducted from gross receipts. If Parks should determine that these deductions were actually used to pay salaries, it should compel the Boathouse to pay an additional \$228,853 in license fees, plus interest and penalties.

Before Parks makes a determination on this audit finding we will refer the issue to the City's Law Department. We need to obtain a legal opinion on whether the Boathouse's methodology to account for the gratuities it collects and then deducts from gross receipts complies with the license agreement language that allows for their exclusion from reportable sales. Parks will notify the Boathouse as soon as a ruling is rendered on this matter. The total amount of the pending audit assessments covering this issue, inclusive of interest and penalties, \$480,179, is listed on Exhibit A.

Recommendation 20. The Boathouse should pay Parks license fees totaling \$40,798, plus interest and penalties, for not reporting the value of employee meals and complimentary meals.

The audit report disclosed that the Boathouse did not include in its gross receipts \$58,994 for the value of meals provided to its employees and for which the employees were charged for in the form of a payroll deduction. As such, the payroll deduction for these meals is required to be treated as revenue and must be included in the gross receipts. As a result, the Boathouse underpaid Parks \$9,439 in license fees. Parks agrees with this part of the finding therefore, inclusive of interest the Boathouse owes a total of \$9,628 as shown on Exhibit A.

Also, the report states that the Boathouse did not report in its gross receipts \$196,308, the value of complimentary meals that were provided to customers in 2004 and 2005. As a result, the Boathouse underpaid Parks \$31,359 in license fees, plus interest. The report refers to Section 2.1 (1) (iv) of the license agreement that states, "... It being

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the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts.

The Boathouse argued that such complimentary meals promote its business and increase future sales by allowing patrons to sample its food before they either book a catered affair or dine with a large party. The auditor's position is that the license agreement does not permit the Boathouse to forego paying license fees.

Parks does not agree with this portion of recommendation 20 and considers the value of complimentary meals to be a cost to the Boathouse to conduct and promote business. We will discuss this point in more detail in Parks' response to the Comptroller.

In addition, the report noted that from October 2001 to December 2003 and from January to June 2006, the Boathouse did not include in its gross receipts \$249,638 representing the value of complimentary meals recorded on the Boathouse point-of-sale system. Also, from January to June 2006, the Boathouse did not include in its gross receipts \$23,894 for meals that employees were charged through a payroll deduction. As stated above, Parks agrees with the audit finding that the amount charged to employees for meals and collected through payroll deductions should have been included in gross sales. Therefore, the Boathouse owes an additional \$3,823 plus \$76 interest for a total of \$3,899 (see Exhibit A). The additional fees applicable to the value of complimentary meals covering the October 2001 to December 2003, and January to June 2006 periods, \$38,605 (\$39,377 inclusive of interest charge), will be discussed in Parks' response to the audit.

Recommendation 21. The Boathouse should include the value of meals employees are charged for and complimentary meals in its gross receipts reports to Parks.

The Boathouse is required to report in its gross receipts reports to Parks all payments for employees meals that is taken through payroll deductions. The subject of complimentary meals will be discussed in Parks' response to the Comptroller's report.

Recommendation 22. The Boathouse should pay \$4,523 in additional compensating use tax owed to New York State as well as determine the compensating use tax due for employee meals.

The audit report indicated that state tax law requires that compensating use tax be paid on the cost of the provisions used to provide free meals. Based on the Boathouse's profit and loss statements the cost of the food and drink provided as complimentary

Dean Poll
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would have resulted in \$4,523 compensating use taxes for 2004 and 2005. Also, the compensating use taxes for complimentary meals relating to the periods from October 2001 to December 2003, and January to June 2006 calculated to an estimated \$5,608. The Boathouse should remit payments to New York State to resolve these balances and submit evidence to Parks e.g. canceled check etc., to verify that the balances owed have been cleared.

Recommendation 25. The Boathouse should pay Parks license fees totaling \$28,372 plus interest and penalties for incorrectly reporting revenue.

The auditors found that the Boathouse underreported \$47,214 in catering revenue for three months on its profit-and-loss statement and its monthly report of gross receipts in 2005. As a result the Boathouse understated gross receipts for those months and underpaid Parks a total of \$7,554 in license fees. The Boathouse claimed that the underpayment was more than offset by a \$57,630 refund given to another patron that was also not posted to the profit-and-loss statement. However, the audit team did not accept this as a compensating offset since the Boathouse could not provide adequate documentation that it had provided a refund to a patron.

Furthermore, the auditors identified similar errors for the three months between December 2001 and February 2002 and for the month of December 2003. During this period, \$138,774 in revenue that was reported on the profit-and-loss statement was not reported on the monthly report of gross receipts that was submitted to Parks. As a result of these errors, the Boathouse owes Parks an additional \$20,818 in license fees, plus late fees.

The Boathouse should pay the total amount of \$28,939 that includes \$567 of interest, as part of the total payable amount on the attached Exhibit A.

Recommendation 26. The Boathouse should ensure that the profit-and-loss statements and the monthly report of gross receipts accurately report gross receipts.

The Boathouse should implement the necessary accounting changes to ensure that all catering revenue is captured and reflected on the profit-and-loss statements.

Recommendation 27. The Boathouse should pay Parks license fees totaling \$4,067 plus interest and penalties on the \$25,417 in gift certificate sales not previously reported.

Recommendation 28. The Boathouse should ensure that all revenue the Boathouse realized from its operation of the leased premises such as gift certificate sales

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Page 8

be included in gross receipts when the payment is received.

The audit report found that the Boathouse does not include the sale of gift certificates in gross receipts reports until they are redeemed, which could be never. The audit disclosed that 28 of the 34 gift certificates sold in May 2005 had not been redeemed by mid-October 2006, 17 months after they were issued. These gift certificates are no longer redeemable since according to Boathouse officials, gift certificates are good for one year. Therefore, the sale of the 28 gift certificates will never be included in gross receipts.

A further analysis of the Boathouse's gift certificate schedule indicated a total of \$25,417 in outstanding gift certificates issued since January 20, 2005. Of these, \$7,371 in gift certificates were not redeemed within the one-year redemption period and are no longer valid. Although these certificates generated revenue, under the current procedures, revenue associated with these gift certificates will never be included in gross receipts. The Boathouse's contract requires it to include in gross receipts all sources of income realized from its operation of the licensed premises. Based on this requirement, the revenue from gift certificate sales should have been included when the gift certificates were sold.

Parks agrees with the Comptroller's finding and requires that the Boathouse pay \$4,067 plus \$81 in interest for a total of \$4,148 (see attached Exhibit A). Also, the Boathouse should implement the necessary procedures to comply with recommendation 28. Gift certificate sales should be reported as a separate item on the Boathouse's gross receipts statements that it submits to Parks. Furthermore the Boathouse should provide a list of its outstanding gift certificates not covered by the audit finding and which have not been reported on its gross receipts statements to Parks.

Recommendation 31. The Boathouse should ensure that there are adequate controls to ensure that all gondola-ride sales are recorded and reconciled to the reservations made. This would include ensuring that the reservation book remains at the Boathouse at all times.

Recommendation 32. The Boathouse should reconcile the reservation book to the daily gondola receipts detailed in the close reports to ensure that all gondola rides are accounted for.

The audit report found that the Boathouse does not have adequate controls in place to ensure that all revenue generated from gondola-ride sales are reported in the gross receipts. The auditors were unable to trace gondola-ride sales to the reservation

Dean Poll
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book and reconcile it to the reported gondola sales for the audit test period of August 2005. The auditors were told that the gondolier had taken the 2005 reservation book with him at the end of the season and could not find it. By allowing the gondolier to take official records home, the Boathouse eliminated the checks and balances that were in place that could ensure that all sales have been recorded and deposited.

The Boathouse should implement internal control procedures to comply with recommendations 31 and 32, especially in ensuring that the reservation book remains at the Boathouse at all times.

Recommendation 34. The Boathouse should comply with the contract provisions that require it to operate a Park Activity and Resource Center and display the operating days and hours.

The audit report claims that the Boathouse did not operate a Park Activity and Resource Center and did not display a sign posting operating days and hours. In Parks' response to the audit we will point out that the Boathouse does provide an informal meeting area for groups e.g. birdwatchers, and organizations and is working on the implementation of a computerized information center pertaining to the Loeb Boathouse and Central Park.

Recommendation 36. The Boathouse should implement a procedure to periodically change employee passwords and delete inactive user accounts from the system as well as maintain a written policy for its employees to protect the integrity of their passwords.

The auditors Information Technology unit reviewed the Boathouse's computerized point-of-sale system and recommended that password controls over access to the point-of-sale system be improved. The Boathouse should implement the procedures suggested in recommendation 36 to provide important safeguards to prevent any unauthorized access.

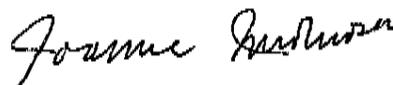
In summary, the Boathouse should remit a check to Parks within twenty (20) days from the date of this letter for \$113,854, representing the audit assessment amounts and interest discussed above, and which are summarized on the attached Exhibit A. Also, the Boathouse should pay \$4,523 and \$5,608 of compensating use tax to New York State. Parks will inform the Boathouse of the determination concerning recommendations 16 and 19 covering gratuity deductions from gross receipts after we have conferred with the City's Law Department on this matter. By copy of this letter to Frank D'Ercole, Parks'

Dean Poll
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Deputy Chief Fiscal Officer, I am requesting that he schedule an internal audit follow-up review of the Boathouse's operation in six (6) months, to ensure compliance with the Comptroller's recommendations as covered in this Notice to Cure.

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

Sincerely,



Joanne Imohiosen

cc: R. Lieberman
A. Olivieri
D. Stark
F. D'Ercola

LEPATNER & ASSOCIATES



BARRY B. LEPATNER
blepatner@lepatner.com

January 17, 2007

BY HAND

Mr. John Graham
Deputy Comptroller
The City of New York
Office of the Comptroller, Executive Offices
1 Centre Street
New York, New York 10007-2341

Dear Mr. Graham:

As you may be aware, this firm represents the Central Park Boathouse (the "Boathouse"). We have consulted extensively with our client and have conducted a detailed review of all relevant information in order to provide a complete response to the draft audit report issued by the City of New York, Office of the Comptroller, Bureau of Financial Audit (William C. Thompson, Jr., Comptroller) (the "Auditor") dated January 2, 2007, reference no. FP05-128A (the "Draft Report"). The Draft Report discusses issues relating to the Boathouse's compliance with its June 12, 2000 license agreement (the "License Agreement") with the Department of Parks and Recreation ("Parks") and purported license fees due from the Boathouse to Parks. Of importance, we note that the audit (the "Audit") covered the period January 1, 2004 through December 31, 2005 (the "Audit Period").

As you are aware, during the exit conference with the Boathouse representatives, the Boathouse meticulously responded to each and every finding of the Auditor's initial review. As a result of the information and materials furnished by the Boathouse's accountants and legal advisors during such conference, the Boathouse provided substantial facts to totally refute, among other things, the two largest items composing the majority of the Draft Report:

- The Auditor's allegation that the Boathouse improperly deducted \$1,513,950 from the Gross Receipts reported to Parks with respect to the Boathouse's catered affairs.
- The Auditor's conclusion that the Boathouse had an obligation to include the value of employee and complimentary meals in the Gross Receipts reported to Parks.

Having presented the required documentation to refute such allegations at the exit conference, and then to learn by way of the Draft Report, that such information was completely ignored, is difficult to accept. Indeed, the Auditor completely disregards its own defined objectives and "scope and method" on numerous occasions. Among other things, the Auditor (i) misstates facts, issues statements not supported by the documentation and offers conflicting findings of facts, (ii) issues

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January 17, 2007
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findings in direct conflict with applicable federal and state laws and/or previously issued governmental opinions and rulings, (iii) misapprehends the express terms of the License Agreement, as well as applicable provisions of federal and state law, (iv) addresses issues beyond the Auditor's self-defined scope and Audit Period, (v) issues findings contradicting its agency's prior auditing reports, and (vi) engages in general revisionist history by omitting important facts, ignoring the Boathouse's position, explanations and/or supporting documentation of an issue, and losing objectivity of the procedures and goals established by the Audit Division of the Comptroller's Office.

Accordingly, in light of such inaccuracies and apparent lack of regard for precedent and the established auditing protocol, we set forth below the specifics of what the Boathouse presented at the exit conference on an issue-by-issue basis, but which has been ignored by you and omitted in the Draft Report. This response challenges the authenticity and the very ethos of the Auditor's findings and recommendations.

However, please take notice that while of the belief that the general findings, conclusions and recommendations of the Draft Report are suspect, in the spirit of cooperation, fairness and good faith, the Boathouse will indicate the specific Audit Report findings with which it agrees, in whole or in part. Of course, the Boathouse contends that any fees determined to be due and owing to Parks as a result of this Audit, was the result of only unintentional errors in the reporting of revenue, deductions or otherwise as prescribed by applicable law and the terms of the License Agreement. To be clear, unlike the findings of the Draft Report, as demonstrated below, the Boathouse merely seeks an equitable determination and modification, if necessary, of what is due and owing under the License Agreement – no more, no less.

THE BOATHOUSE'S RESPONSE TO THE DRAFT REPORT'S FINDINGS AND RECOMMENDATIONS

A. The Amount of \$412,012 in Revenue Purportedly Not Reported in Gross Receipts is Overstated

The Draft Report alleges that the Boathouse underreported \$412,012 in gross receipts from catering (\$400,344), film shoots (\$10,598), and bicycle-rental sales (\$1,070), resulting in license fees to Parks totaling \$65,922. As detailed below, the unintentional underreporting of gross receipts for these items is overstated, and should be reduced accordingly. In brief, the (i) gross receipts for catering totaled \$329,729; (ii) gross receipts for film shoots totaled \$10,598 as indicated; and (iii) the auditing method of the bicycle-rental sales was purely speculative and the findings relating thereto lack sufficient documentary support. *Based on the foregoing, it is submitted that additional licensing fees due and owing to Parks under this category totals \$54,452.*

1. *Missed/Underreported Gross Receipts for Catering Totals \$329,729*

The Boathouse agrees with the Draft Report's findings of missed/underreported revenues for sales relating to catering in 2004 and 2005, but only to the extent that such missed revenues totaled \$329,726 (\$302,964 for missed revenue + \$26,762 for understated revenue). While the

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missed/underreported revenue from catering events were not the result of any intentional or malevolent act by the Boathouse, nevertheless, the Boathouse has since implemented stronger controls to significantly limit the likelihood of such a mistake to occur in the future. *Thus, the amount of licensing fees due and owing by the Boathouse for this additional revenue is \$52,756.*

Notwithstanding the foregoing, the Boathouse disagrees with the position of the Auditor that deposits of cancelled catering events totaling \$70,618 during the Audit Period should have been recorded by the Boathouse as Gross Receipts. First, according to *Generally Accepted Accounting Principles* (GAAP), deposits for catering events are not recognized as revenue until such time as the goods and/or services have been rendered. Secondly, any deposits not refunded due to cancellation of an event or otherwise, should not be recorded as, nor included with, Gross Receipts because the deposits are not included in the License Agreement's definition of Gross Receipts. Pursuant to the express terms of the License Agreement (Section 4(1)(i), p. 4), "*Gross Receipts shall included the sale of food and beverages, wares, merchandise or services of any kind.*" Clearly, deposits of catering events do not fall within any of the enumerated categories in the "Gross Receipt" definition. As such, the Boathouse is not obligated to include the value of deposits from cancelled events in its Gross Receipts used to calculate the licensing fee owed to Parks.

Response to the Draft Report's Recommendations

- The Boathouse will agree to pay Parks licenses fees totaling \$52,756, which corresponds to the missed/underreported revenues the Boathouse has confirmed are owed based upon its internal review of the audited documents.
- The Boathouse has established internal controls via Excel spreadsheets that cross-reference party contracts with posted revenues and deposits, and which can then be reconciled to financial records of deposits and receivables on a monthly basis.
- Contracts are being numbered via a new software program, *Catermate*.
- The Boathouse cannot in good faith include patron payments (deposits) as part of its Gross Receipts submitted to Parks. Such practice would be contrary to GAAP standards, which provides under the accrual method of accounting, that revenues should not be reported until goods and/or services are actually provided. The Boathouse proposes to continue as it has such that all deposits are to be recorded as liabilities and reconciled monthly. Then, in the month the event occurs, the deposit will be re-classed as revenue in accordance with GAAP.

2. Missed/Underreported Film-Shoot Revenue Totals \$10,598

The Boathouse agrees with the Auditor's findings that \$10,598 in revenue resulting from film shoots during the Audit Period were either missed or underreported in accordance with the terms of the Licensing Agreement. *Thus, the amount of licensing fees due and owing by the Boathouse for this additional revenue is \$1,696.*

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Response to the Draft Report's Recommendations

- The Boathouse will agree to pay Parks license fees totaling \$1,696, which corresponds to the missed/underreported revenues Boathouse has confirmed are owed based upon its internal review of the audited documents.
- On a going forward basis, film shoots will be handled in the same manner as a catered event, thus being subject to the same cross-referencing, reconciling and balancing with each month's close as indicated above for catered events.

3. *Purported Underreported Bike-Rental Sales are Speculative and Lack Documentary Support*

The Draft Report asserts that the Boathouse underreported bicycle-rental fees in the amount of \$1,070, and thus owes Parks and additional \$171 in licensing fees. Notwithstanding the nominal amount purported to be due, the method of calculating such revenue and licensing fees is both unreasonable and unreliable. First, the Auditor's review of the Boathouse's bicycle-rental operations is solely based upon observations, without documentary support, conducted on 2 isolated days during one month of an Audit Period covering 2 years. The potential and likelihood for errors relating to speculation, conjecture and lack of documentary support are immeasurable. Indeed, the Draft Report concedes that the numbers derived are merely "illustrative," "estimated" and "approximate," and thus cannot be used to form a basis for a conclusion of liability by the Boathouse.

Moreover, it is irresponsible to use the results of a mere two days of observations as the benchmark for a two year period. It is axiomatic that observations alone cannot demonstrate the sufficiency of reported sales; and indeed, principles of fairness and equity mandate that proper due diligence (i.e., documentary review) should have been conducted to support the Auditor's guesstimate, as such findings and commensurate retribution must be founded on more substantial conclusions than those relied upon by the Auditor.

Response to the Draft Report's Recommendations

- Based upon the Boathouse's position on this issue, it is submitted that no additional fees are due and owing to Parks for bicycle-rental sales.
- Notwithstanding the recommendation in the Draft Report based on a two day observation, the Boathouse does not believe the installation of a point-of-sale terminal is likely to result in greater control of bike-rental sales.

B. The Auditor's Methodology and Assessment of the Deductions from Gross Receipts Relating to Catered Affairs is Flawed and Misleading

In sum and substance, the Draft Report alleges that the Boathouse improperly deducted \$1,513,950 from its Gross Receipts when calculating the license fee owed to Parks under the Licensing Agreement. The foregoing purportedly resulted in \$241,911 in additional licensing fees not being paid to Parks during the Audit Period. Unfortunately, the Auditor chose to base its findings without fully appreciating and/or incorporating into its Draft Report applicable federal and state law and related advisory opinions/rulings governing (and supporting) the method used by the Boathouse to determine the proper deductions allowed under the Licensing Agreement. In fact, it appears as though the Draft Report completely ignores the applicable provisions of law and the established precedent fashioned by its own agency following an audit of the Boathouse's very own predecessor-in-interest.

Accordingly, *the Boathouse submits that no additional licensing fees are due and owing to Parks related to deductions taken from the gross receipts by the Boathouse*, which deductions are based upon existing law and the express terms of the License Agreement. Additionally, it is the Boathouse's position that the underlying premise of the Auditor's findings is flawed in that it is based upon half-truths, incomplete facts and a misapprehension and/or ignoring of applicable law. Notably, the Auditor's findings are premised (albeit incorrectly) on the following: (i) gratuities are collected from catering customers, (ii) these gratuities are used to fund salaries for waitstaff, maitre'd and sales managers (collectively, "employees"), and (iii) because there is no clear segregation of gratuity and salary, such as W-2 evidence of tip payment in box 8, these gratuities cannot be allowed. The following response highlights the factual and legal inconsistencies of the Draft Report's premise, and thus calls into question the validity of its findings.

1. *Amendment Letter to the License Agreement dated September 10, 2001*

The Amendment Letter dated September 10, 2001 (the "Amendment"), clearly states that "all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts, *provided however that any gratuities transmitted by Licensee directly or indirectly to employees and staff not to be included within Gross Receipts.*" The Amendment's qualification of "directly or indirectly," expressly requires that gratuities given to employees be segregated from the calculation of Gross Receipts.

2. *An Audit of the Boathouse's Predecessor Establishes that Salaries/Wages Paid to Employees are Permissible Gratuities*

The established practice of the Boathouse with respect to wages paid to the catering waitstaff, as demonstrated by the Payroll Registers provided to the Auditor, delineates between (i) the minimum wage, and (ii) the extended rate, referred on the provided payroll register as "Party Pay" (i.e., gratuity). However, to the contrary, a New York City audit report dated June 29, 1995 of the Boathouse's predecessor (TAM) (the "1995 Audit"), a copy of which is annexed hereto as Exhibit A, definitively established that salaries/wages paid to the waitstaff by the licensee (the Boathouse) are permissible

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gratuities, provided that the amount of the defined minimum wage is not taken as a deduction off the Gross Receipts (see Exhibit A, p. 5-6).

Interestingly, the Draft Report incorrectly states that no documentation was provided to justify the Boathouse's contention that deductions were used to support employee gratuities. Nothing could be further from the truth. In actuality, the Boathouse provided the Auditor, during the exit conference, with a two-year compilation covering the complete Audit Period. The compilation verified the sufficiency of the Boathouse's current business practices by comparing (i) the historical pooling of gratuities paid evenly to employees with (ii) the actual deductions posted to Gross Receipts. The Draft Report was conspicuously silent as to the efficacy of such comparison.

Instead, the Auditor chose to ignore such evidence, and instead continued to emphasize that there were instances in which the catering waitstaff was paid on days for which there was no event. Rather than considering the Boathouse's position and evidence offered in support thereof, the Auditor disregarded this evidence, and asserted that under the circumstances, such payments could not be considered a gratuity. Significantly, the reverse situation holds true as well, such that there have been events that have been held and either a lesser or no gratuity payment was received and/or charged and recorded as income for events, but were nevertheless worked by the catering staff. Curiously, numerous instances of such occurrences were provided to the Auditor during the exit conference, but any reference thereto failed to make it into the Draft Report. The Boathouse's position at that time, and continues to be, that its historical reference of charges in relation to wages paid, as determined by Party Pay, has equated to gratuities paid and deducted from Gross Receipt reported to Parks. This position is corroborated by the two-year comparison referred to above that was provided during the exit conference.

The benefit of the Boathouse's policy accrues to the employee, not the Boathouse, since, regardless of whether or not the Boathouse collects gratuities for days or weeks, the employee nevertheless continues to accrue the gratuities and thus can rely upon a "regular" and "consistent" paycheck. Contrary to the Draft Reports conclusion that the employees receive a "fixed hourly rate" and "do not receive gratuities," such a statement is inaccurate and belies both industry practice and the established business practices of the Boathouse. Indeed, the only "fixed hourly rate" is the minimum wage received by the employees, the remainder of the wages are gratuities that fluctuate.

3. *Department of Labor Rulings and the Findings of an Independent Accounting Firm Confirm the Boathouse's Position*

In an effort to complicate matters, the Draft Report repeatedly proffers that in order for gratuities to be sufficiently defined (or reported), the gratuity must be identified as such on the W-2 in the designated "Tips box".

The Boathouse sought and received the professional advice from the J. H. Cohn, Accounting and Consulting Firm regarding the Boathouse's position relating to the recording and payment of gratuities to the catering staff and employees. The accounting firm, based upon existing Labor

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Department rulings, established precedent and the terms of the License Agreement, reaffirmed the Boathouse's position.

It is customary practice in the restaurant and food service industry to charge the customer a service charge/auto gratuity and then redistribute the payments as wages to the catering and related service staff. Such practice is consistent with the gratuity deduction permitted by in the Amendment to the Lease Agreement.

Even though the Draft Report wishes to exist in a vacuum by failing to even acknowledge the existence of the Labor Law, or any other governmental body or applicable provisions of law having authority over the issues posed herein, the Boathouse nevertheless conducts its business with the intent of being in full compliance with the such authorities. For example, pursuant to the State of New York Department of Labor Minimum Wage Order for the Restaurant Industry (Article 19 of the N.Y.S. Labor Law, §137 and as set forth above, the Boathouse includes any service charge/auto gratuity as wages to its employees. It is well-established by legal precedent that such gratuities cannot be referenced as tips. In fact, the Internal Revenue Service and New York State Department of Labor wage and hour guidelines (IRS Rev. Rule. 69-28 1969-1, IRC SECs. 3306, Instructions for Form 8027) highlight the distinction between Service Charge/Auto Gratuity and Tips. They provide as follows:

- **Service Charge/Auto Gratuity** is a transaction between the customer and the business establishment. IRS Rev. Rule 69-28 is clear that this is income to the establishment. It must be treated as income to the establishment and the payment to the service staff must be reported as salary on the W-2 in box 1.
- **Tips** are transactions between the customer and the employees. A tip is received from a customer and is not income to the establishment. A tip must be declared separately by the waitstaff/employee and reported in the W-2 box 8 (tips).

Based on the foregoing definitions, there is no basis for the Auditor to surmise that the amounts paid by the Boathouse to its employees constitutes anything other than minimum wage plus gratuity. For the Auditor to instruct otherwise, would require the Boathouse to operate its business in direct conflict of federal and state law.

Response to the Draft Report's Recommendations

- The Boathouse submits that no fees are due relative to the gratuity issue detailed above.
- It is the Boathouse's position that it is in full compliance with all Labor Law and License Agreement obligations as they relate to the receipt, handling and recording of gratuities and their deductions from the Gross Receipts.

C. The Auditor Incorrectly Assesses the Boathouse's Obligation to Include the Value of Employee and Complimentary Meals in the Gross Receipts

The Draft Report concludes that the Boathouse did not include \$58,994 in Gross Receipts as it related to value of meals provided to its employees, and \$196,308 related to the value of complimentary meals to customers. The foregoing allegedly resulted in underpaid licensing fees to Parks in the amount of \$9,439 and \$31,359, respectively. The Boathouse disagrees with the Auditor's findings that such meals are required to be included in the total Gross Receipts, and as such, submits that no additional fees are due and owing to Parks for the values of such meals.

1. *Value of Employee Meals Should Not Be Included in Gross Receipts*

Providing employees with meals is a standard practice throughout the restaurant and food service industry. Indeed, applicable Labor Law provisions permit restaurants to charge employees a nominal amount (up to \$2.00 per meal in 2006), which can be offset against labor costs (*see* Department of Labor Minimum Wage Order for Restaurant Industry, § 137-1.9(a)). Accordingly, the value of such meal is not deemed a sale in the normal course of business, but rather, a reduction of labor costs, and thus, should not be included in Gross Receipts. Meals provided as a courtesy to employees does not meet the defined criteria of "Gross Receipts" under the terms of the License Agreement.

2. *Complimentary Meals to Patrons Not Be Included in Gross Receipts*

Similarly, the Boathouse does not agree with the inclusion of complimentary meals in the totaling of Gross Receipts. To be clear, any complimentary meal to a patron is recorded as a sale in the point-of-sale system and then deducted/discouted from the sales reported. This position is made clear to avoid any confusion or otherwise that may lead to the belief that such meals are recorded as a direct reduction in sales. As indicated in the Draft Report, the Boathouse contends that that such complimentary meals are not only common in the restaurant industry, but are integral to the restaurant's business development and financial growth, which, of course, only serves to benefit Parks as well. Likewise, it is common that such meals are typically treated as a discounting of sales price.

The Boathouse's position is supported by an Advisory Opinion of the N.Y.S. Commissioner of Finance ("Advisory Opinion"), a copy of which is annexed hereto as Exhibit B, and is conveniently omitted from the Draft Report. The Advisory Opinion, at page 3, specifically identifies complimentary food and beverage as a discount on sales price – the Boathouse's current business practice. In §1101(b)(3) of the Tax Law and §526.5 of the Sales and Use Tax Regulations, it is noted that when a restaurant provides a beverage in conjunction with the sale of a meal, or a beverage at no extra charge, the sales tax is to be computed on the actual amount paid by the customer. See Advisory Opinion, p.4. Accordingly, complimentary meals and beverages are the discounting of sales price and are correctly excluded from Gross Receipts under the License Agreement.

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It is evident from the Draft Report's findings that the Auditor misinterpreted §2.1(1)(iv) of the License Agreement. The License Agreement language cited, i.e., "Gross Receipts shall include sales made for cash or credit" and "all sums due to be received," refers to the full collection on sales regardless of whether receivables go uncollected or credit sales are charged back. Reliance upon this provision in support of the Auditor's position is misplaced. Additionally, the Auditor asserts that since the Boathouse could not identify the specific individuals receiving the complimentary meal and/or beverage, a determination as to whether or not such meal was for the benefit of a prospective client could not be made, and thus such meals must be included in the Gross Receipts. Such a position is ludicrous and has no foundation in law or fact. Not surprisingly, the Auditor fails to cite any provision of the License Agreement or applicable law that requires the Boathouse to maintain a list of persons and/or entities who received the benefit of such complimentary meals. It is submitted that the Auditor failed to include such a reference because none exists. Again, it appears as though the Auditor would unreasonably have the Boathouse take on greater obligations than those required by the terms of the License Agreement or by law, a risk and liability the Boathouse neither contemplated nor agreed to accept when entering into the License Agreement.

3. *It was Improper for the Auditor to Request Additional Documentation and Issue Findings Beyond the Scope of the Audit*

In a further display of unfairness and egregious conduct, the Auditor references a request he made for a supplemental explanation and additional documentation purportedly necessary to assess whether the Boathouse properly deducted employee and complementary meals from its Gross Receipts. This office issued a response denying the request in light of the Auditor failing to offer a valid reason for the request. In brief, the Auditor was unable to provide a reasonable explanation to refute the following facts: (i) the request was being made after the exit conference was completed, (ii) the request was beyond the Audit's protocol established by the Auditor and Comptroller, and (iii) the Auditor intended to deny the Boathouse, Parks and the Mayor's Office an opportunity to review any supplemental findings that may have arisen as a direct result of the additional information furnished by the Boathouse.

There were also two new issues introduced by the Draft Report that were absent from both the preliminary draft of the Audit, as well as the discussions during the exit conference. First, is the issue of the applicability of the "use tax" on complimentary meals. Second, the Draft Report again circumvents the established protocol of the Audit by addressing the potential issue of additional deductions from Gross Receipts for complimentary meals during the period of October 2001 through December 2003, which is clearly outside the Audit Period. Thus, not only does the Boathouse disagree with the findings therein, but find the inclusion of such issues palpably improper and well beyond the scope of the Audit.

Response to the Draft Report's Recommendations

- The Boathouse disagrees with the Auditor's assessment of fees for employee meals and complimentary meals for the reasons discussed herein.
- The Boathouse similarly disagrees with the Auditor's position that employee and complimentary meals should be included in the calculation of Gross Receipts.
- Notwithstanding the inappropriate raising of the use tax issue in the Draft Report, and with full reservation of rights and objections thereto, the Boathouse will confer with the J. H. Cohn Accounting and Consulting Firm for an opinion regarding the propriety of any use tax that may be applicable to the instant circumstance.

D. Missed/Unreported Revenue to Parks

The Boathouse agrees with the conclusion of the Auditor only to the extent that it appears that the Boathouse inadvertently misreported catering sales totaling \$45,714. However, \$1,500 of the total Audit findings (\$47,214) resulting from sales of gift certificates has been excluded by the Boathouse since the sale of gift certificates do not constitute sales revenue. Rather, the certificates are a current liability, and at such time when the certificate is redeemed, the redemption is recorded as a sale in accordance with the accrual method of accounting. If we were to include the sale of gift certificates in the Gross Receipts, the subsequent redemption by a patron would result in a double-reporting of the Gross Receipt previously reported to Parks.

Additionally, even though the Boathouse's gift certificates have an expiration date of one year from purchase, it is the practice to accept in good faith the gift certificate even though the expiration date may have passed. Furthermore, the Boathouse has not at any time reversed the gift certificate liabilities to a revenue account, thus there is no basis upon which the Auditor can assume such monies are reported income to the Boathouse.

The remaining shortfall to posted revenues of \$138,774 correlates to a year-end adjustment journal entry in the amount of \$138,016. This entry was a "plug" posting made by the Boathouse's outside accounting firm to reconcile a general imbalance of its general ledger accounts. The offset was posted to a revenue account – in this case, catering food sales, but cannot be verified with any sense of specific accuracy. The additional \$758 of sales that were unintentionally mis-posted to catering is presumed (without any evidence to the contrary) to be an accurate finding by the Auditor.

However, the claim of \$25,417 in unreported gift certificate revenues, raised for the first time in the Draft Report, is inaccurate. Thus, while the validity of such findings was not a topic of discussion during the exit conference, the Boathouse relies on its position stated herein as to its customary practice with respect to the processing and recording of gift certificates.

Response to the Draft Report's Recommendations

- The Boathouse will agree to pay Parks \$7,428 in licensing fees, in accordance with the terms of the License Agreement.
- The Boathouse has implemented procedures to ensure correct and accurate profit-and-loss statements and monthly reports of Gross Receipts. Proper steps will be taken to finalize the catering sales reconciliations prior to any submission to Parks.
- Based on the foregoing, the Boathouse submits that revenue is not generated by gift certificate sales, and thus, no licensing fees are due as a result thereof.
- It should be noted that gift certificate sales are not the *operation of a leased premise* as presented in the Draft Report, rather, in accordance with GAAP, they are a liability maintained on the balance sheet and not a revenue-generating item.

E. Poor Controls over Gondola-Ride Sales

The Boathouse, while reserving all rights, generally agrees with the Draft Report's findings.

Response to the Draft Report's Recommendations

- The Boathouse will take appropriate measures to properly secure the reservation book, and will establish a written protocol governing the reservations, the recording and sales of the gondola rides, and providing for the proper reconciliation of the reservation book to sales posted. It is anticipated that such protocol will be in force prior to the start of the 2007 season.

F. Purported Non-compliance with Miscellaneous Contract Provisions

Response to the Draft Report's Recommendations

- The Boathouse will continue, as it has in the past, to take all steps necessary to comply with the License Agreement.

G. Password Access to POS System not Adequately Safeguarded

Response to the Draft Report's Recommendations

- The Boathouse will investigate and research the current software and R-Power system with its technology consultant to ensure that adequate account controls and safeguards are established.

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In addition to the foregoing response, the Boathouse acknowledges and agrees with the Auditor's Draft Report findings that the Boathouse complied with its non-revenue related financial obligations including, but not limited to, posting of security deposit, maintaining and paying for all necessary utilities, making payment of late fees assessed by Parks (notwithstanding its objections thereto), and maintaining the requisite insurance coverage including naming the City as an additional insured. Additionally, you noted that the Boathouse, as required by the License Agreement, operated a shuttle service to and from the Boathouse grounds, properly filed certificates of occupancy and incorporation, provided 24-hour security, supplied 100 new rowboats and bicycles for rental, and performed various renovations to the restaurant, bathrooms and catering hall (which you indicated was confirmed by prior audit report #EW03-136A).

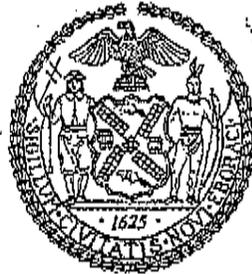
The Boathouse reserves the right to supplement and/or modify its response to the Draft Reports' findings, conclusions and recommendations, as deemed necessary, to ensure that the Comptroller has complete and accurate information in order to properly assess the Boathouse's compliance with the License Agreement and all applicable federal, state and local laws, rules and regulations.

Thank you for your consideration in this matter.

Very truly yours



Barry B. LePatner



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

ALAN G. HEVESI
Comptroller

**Audit Report on Licensing Fees
Due From TAM Concessions, Inc.
And Compliance With Its License Agreement
July 1, 1989 to June 30, 1994**

FN 94-241A

June 29, 1995

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

**Licensing Fees Due From TAM Concessions, Inc.
And Compliance With Its License Agreement
July 1, 1989 to June 30, 1994
FN 94-241A**

EXECUTIVE SUMMARY

We audited TAM Concessions, Inc (TAM), an operator of a food, and boat and bicycle rental concession in Central Park to determine if it had paid all license fees due the City in a timely manner and was in compliance with all significant provisions of its license. Our audit covered the period July 1, 1989 to June 30, 1994.

TAM's license, awarded on February 8, 1985 and administered by the Department of Parks and Recreation, permits it to operate a cafe, snackbar, and party facility in the Loeb Memorial Boathouse in Central Park near East 72nd Street. TAM is required to pay the City annual percentages from sales of food and from rentals of boats and bicycles subject to an annual minimum. Both the percentages and the minimum escalate as the agreement matures.

For the five-year audit period, July 1, 1989, through June 30, 1994, TAM reported \$17,641,076 in gross receipts and paid the City \$1,897,558 in license fees. Our audit found that TAM underreported gross receipts by \$643,710 in the following categories:

Base Salaries	
("Wait Gratuity Disbursement")	\$275,220
Meals Discount	130,487
Promotional Meals	114,201
Parties and Cafe	61,230
Reported Gross Receipts	
vs. General Ledger	21,665
Sales Gratuity	<u>40,907</u>
Total Adjustments	<u>\$643,710</u>

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

**Licensing Fees Due From TAM Concessions, Inc.
And Compliance With Its Lease Agreement
July 1, 1989, to June 30, 1994**

FN 94-241A

INTRODUCTION

Background

TAM Concessions, Inc., (TAM) operates and maintains a snack bar, an a la carte cafe, and party (banquet) facilities at the Loeb Memorial Boathouse in Central Park near East 72nd Street in Manhattan. Under a 15-year license awarded on February 8, 1985, TAM, in addition to the food concessions, rents both bicycles and rowboats. Approximately 80 percent of TAM's gross receipts are split evenly between its cafe and its party operations; the remaining 20 percent is attributable to the snack bar and receipts from the rental of rowboats and bicycles. TAM accounts for its a la carte sales through a computer software package called Squirrel, and for its party revenue by means of contracts.

Under the terms of the original license, TAM is required to pay the City various percentages of annual gross receipts from its concessions, subject to an annual minimum fee. The annual percentages and minimum fee escalate over the term of the license. (See Appendix III for the terms for each year.)

During our audit period (years 5 through 9 of the agreement), the minimum annual fee ranged from \$60,000 to approximately \$75,000, the percentage fees were 10 and 11 percent for food and merchandise sales, and 12 to 14 percent for the rental of bicycles

and boats.¹ Payment was due on the 10th day of the following month accompanied by a monthly statement of gross receipts.

On October 4, 1990, the Department of Parks and Recreation (DPR), the administering agency, amended the agreement in two respects: TAM is permitted to (1) defer payment of percentage fees, which are above the minimum annual fee, to "45 days after June 30th" (i.e., July 15th), and (2) exclude from the gross receipts, which are subject to a license fee, those gratuities that are directly transmitted to employees.

Other provisions of the license require TAM to furnish an annual financial statement, prepared by a certified public accountant, within 60 days after each anniversary of the agreement, and to maintain insurance coverage in stipulated amounts. Late payments are subject to penalties and interest.

In 1990, DPR issued an audit report on TAM for the 3 years ending June 30, 1989. The report assessed TAM \$198,288.68 for "exclusion of income received from gratuities (tips) and equipment rentals and underreporting of bicycle rental receipts." TAM paid \$136,990.54 of the assessment. DPR waived late charges and interest of \$61,298.14, which were included in the original assessment.

For the five-year audit period, TAM reported \$17,641,076 in gross receipts and paid the City \$1,897,558 in license fees.

Objectives

The objectives of the audit were to:

- evaluate the adequacy of TAM's internal control structure to ensure the correct recording and reporting of gross receipts,
- verify that TAM accurately reported gross receipts to the City,
- verify whether license fees due were paid on time, and

¹TAM's license contains a provision that if 75 percent of the prior year's gross receipts exceeds the current year's annual minimum fee, then that amount divided by 1.2 becomes the current year's minimum monthly fee. This provision did not materially affect the monthly minimum fees due during our audit period.

- determine whether TAM is in compliance with other requirements of its license, such as insurance coverage, that could have a monetary effect.

Scope and Methodology

To achieve our audit objectives, we reviewed TAM's books and records for the period July 1, 1989 to June 30, 1994. To determine whether the internal control structure for the recording and reporting of gross receipts was adequate, we interviewed TAM's personnel, flowcharted the revenue system, and performed limited tests of transactions, verifying whether the internal controls were operating as represented by management. Specifically, for July, August, and September (historically TAM's highest grossing quarter), we traced reported amounts from the gross receipts statements to the general ledger entries, sales journals, and other supporting documentation. We did not review the amounts reported for bicycle rentals because they accounted for an average of less than 1 percent of total reported revenue.

In addition, we asked the Comptroller's Office, Electronic Data Processing (EDP) unit to render an opinion on the reliability of the financial information obtained from TAM's computerized point-of-sales system (SQUIRREL). The EDP unit stated: "In our opinion the controls built into the SQUIRREL system were sufficient to rely on the information related to gross income data."

Based on the results of the preliminary examination we limited our testing in prior years to one month's transactions in fiscal year 1993. In addition, we verified the reasonableness and validity of reported gross receipts for the remainder of the period, except where noted below, by tracing the amounts reported to DPR to TAM's general ledger.

TAM's management refused to submit any portion of the general ledger relating to balance sheet items, such as inventory and accounts receivable, for the entire audit period. Also, the entire general ledger for the periods covering July 1, 1989, through September 30, 1990 were unavailable. Despite these scope limitations, we believe that, based on the results of our review and testing, the amounts reported by TAM are reasonably stated.

To ensure TAM was in compliance with the insurance requirements of its license, we reviewed TAM's policies for Worker's Compensation, Public Liability, Property Damage, and Fire Insurance.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. The

audit was performed in accordance with the City Comptroller's audit responsibilities as set forth in Chapter 5, Section 93, of the New York City Charter, and Exhibit A, Article 5 of the license agreement.

Agency and Auditee Responses

The matters covered in this report were discussed with officials of both TAM and DPR during, and at the conclusion, of this audit. An exit conference was held on April 9, 1995. Subsequent to this conference, a draft report was issued to TAM and DPR with a request for formal comments. A written response was received from TAM on May 12, 1995, and from DPR on May 19, 1995. Their comments have been incorporated in the report where appropriate, and the full texts of their responses have been appended as Appendices I and II.

FINDINGS AND RECOMMENDATIONS

TAM Owes the City Additional License Fees of \$136,913

During our audit period, TAM reported gross receipts of \$17,641,076 and paid license fees of \$1,897,558. We determined that, for the same period, reported gross receipts should have been \$18,284,786, a difference of \$643,710, resulting in additional fees due of \$136,913, including interest and penalties, as summarized in Table I and discussed below.

TABLE I

SUMMARY OF LICENSE FEES DUE

Reported Gross Receipts		\$17,641,076
Audit Adjustments		
Base Salaries		
("Wait Gratuity Disbursement")	\$275,220	
Meals Discount	130,487	
Promotional Meals	114,201	
Parties and Cafe	61,230	
Reported Gross Receipts		
vs. General Ledger	21,665	
Sales Gratuity	<u>40,907</u>	
Total Adjustments		<u>643,710</u>
Audited Gross Receipts		<u>\$18,284,786</u>
Rent Due on Audit Adjustments		\$ 69,757
Interest and Penalties Due On:		
Percentage Fees	\$ 37,045	
Minimum Fees	8,341	
Audit Adjustments	<u>21,770</u>	
Total Interest and Penalties		<u>67,156</u>
Total Rent Due the City		<u>\$ 136,913</u>

Audit Adjustments

Base Salary

TAM owes the City additional license fees of \$29,572 because it understated gross receipts by deducting wait staff base salaries of \$275,220. TAM is allowed, under the amended license, to exclude gratuities paid directly to employees from gross receipts for the purpose of calculating fees due the City. TAM, however, deducted from reported gross receipts the amounts posted in its general ledger "Wait Gratuity Disbursement" account. This account includes

not only the wait gratuities collected, but also the hourly minimum wage (base salary) of the party wait staff. Exhibit A, Article I(h), of the agreement states: "Gross Receipts shall include all sums received by the Licensee without deductions of any kind, resulting directly or indirectly from operations of this license." The amendment excludes only gratuities paid directly to employees-- not salary.

Agency and Auditee Responses: Both TAM and DPR agreed with this finding.

Meals Discount

TAM owes \$14,354 in additional fees to the City because it excluded from reportable gross receipts \$130,487 in credit sales made through the barter company Transmedia during fiscal years 1992 through 1994. The arrangement between TAM and Transmedia calls for Transmedia to reimburse TAM 50 percent of all sales made by TAM to Transmedia participants. TAM posts the total amount of the sale to the cafe revenue account, and offsets the discount by entering one-half of the sale in a contra-revenue account called "Meals Discount - Barter Company". (A contra account reduces the main account to arrive at a net amount.) In return for this service, TAM is listed in Transmedia's restaurant guide. Consequently, although TAM reduces the amount of gross receipts reported to DPR by the amount in the contra-account, it does receive a direct economic benefit from this form of advertising. This benefit should be quantified by the value of what it is giving up.

Exhibit A, Article I(h), states:

"Gross receipts shall include sales made for cash or credit (credit sales shall be included in gross receipts as of the date of the sale) regardless of whether the sales are paid or uncollected...."

Agency and Auditee Responses: TAM responded that "People patronize places that offer discounts. ...They help generate sales. We believe that rent should be paid on the amount actually received toward the meal. This is the discount amount received from TransMedia...."

DPR responded that "TAM properly reported the total revenue which they received for discounted meals,...."

Auditor's Comments: It is illogical to assume that any for-profit restaurant would not charge the full price of a meal if it did not expect to accrue a benefit from discounting,

whether in the form of free advertising, increased sales or good will. In this case, TAM is bartering a discount (available only to Transmedia card holders) for a listing in the Transmedia directory and an advance on 50 percent of projected Transmedia sales, which should be valued at the sales revenue foregone.

Further, TAM's license states, "Gross receipts shall also include all sales made by any other operator (emphasis added) or operators using the Licensed Premises." During the audit period, Transmedia received \$130,487 from sales generated at the Boathouse Cafe, retaining half that amount and bartering the remainder for subscriber fees and other considerations. Therefore, the full amount of all Transmedia sales should be included in reported gross receipts.

Promotional Meals

Similarly, TAM owes additional license fees of \$12,213 because it excluded \$114,201 in revenue representing the value of meals given on a promotional basis, from its reportable a la carte receipts. Free meals were provided to current and prospective customers, as well as to hotel concierges, to promote the Boathouse Cafe. TAM is receiving a benefit in the form of increased sales and goodwill, which should be valued at the cost of the meals provided, and which should be included in gross receipts. TAM furnished us with monthly promotional meal summaries for a 5-month period. We calculated, on a daily basis from TAM's "Detail Promo" report, the value of promotions for the remainder of fiscal year 1994. Using the ratio of promotions to total cafe sales, we estimated the amount of promotions for the other years of our audit period, as shown in Table II below.

TABLE II

Total Promotions for FY 94	\$30,101
Divided by Total Cafe Sales	\$1,768,996
Percentage of Promotions to Cafe Sales	1.7016%

	<u>FY 93</u>	<u>FY 92</u>	<u>FY 91</u>	<u>FY 90</u>
Total Cafe Sales	\$1,662,190	\$1,228,131	\$1,071,652	\$980,459
Percentage Applied	<u>1.7016</u>	<u>1.7016</u>	<u>1.7016</u>	<u>1.0716</u>
Value of Promotional Meals	\$ <u>28,284</u>	\$ <u>20,898</u>	\$ <u>18,235</u>	\$ <u>16,583</u>

Agency and Auditee Responses: TAM stated, "We believe that rent should be calculated on the amount actually received toward the meal. Since nothing is received toward the meal on promotions, we have not and do not believe it is to be included in calculating rent under the contract."

DPR stated that it considered promotional meals as operating and marketing expenses, rather than elements of revenue, and, thus, no fees should be assessed.

Auditor's Comments: We believe that promotional meals serve as a form of barter for good will or as an inducement to increase sales, and that the benefit that TAM is receiving should be valued by what it is relinquishing, i.e., the sales price of the meal.

Understatements in Reported Revenue

Party and Cafe Revenue

TAM underpaid license fees by \$6,735 because of various math and posting errors in its general ledger party and cafe revenue accounts. The largest single item in total net underreported revenue of \$61,230 was the value (\$40,400) of a party donated to charity in fiscal year 1994. Since TAM is required to include both collected and uncollected sales in reportable gross receipts, this item should have been included. Additionally, TAM realizes a direct economic benefit from this donation in the form of an eligible income tax deduction. Other mispostings of party revenue combined to cause an additional net understatement of \$17,090 in fiscal year 1994 and an overstatement in fiscal year 1993 of \$491. Total net understatement of cafe revenue for the audit period was \$4,321.

Agency and Auditee Responses: TAM objected to \$40,400 of the above finding, the value of a party donated to AMFAR (AIDS Research), which it characterized as "...a promotional type activity...." TAM does "not believe it should be included in calculating rent...."

DPR responded that, "...it would be totally insensitive to assess a fee against the value of a charity event which would not have taken place at the facility had the site and food not been donated. The contribution by TAM clearly represents a goodwill promotional gesture that will benefit the business."

Auditor's Comments: The characterization by both DPR and TAM of the charity event as a promotion suggests that the donation was more in the nature of advertisement, and, thus, should be considered as barter. The amount of rent due on the event is negligible; however, TAM's license does not authorize it to make in-kind contributions on behalf of the City, and until its license is amended to so read, TAM should include the value of promotional and donated events in its reported gross revenue.

Reported Versus General Ledger Revenue

In addition to posting errors to its general ledger, TAM also understated revenue reported to DPR by \$21,665, resulting in an additional understatement of \$2,383 in fees due the City. This misstatement is attributable to overall differences in the amounts posted in TAM's general ledger and the amounts reported to DPR. These differences in reported revenue are an understatement in fiscal year 1994 of \$5,592, an overstatement in fiscal year 1993 of \$13,920, and an understatement in fiscal year 1992 of \$29,993.

Agency and Auditee Responses: TAM did not dispute this finding.

DPR has included these adjustments in the amount it has billed TAM.

Sales Gratuity

For the period October 1, 1991, through June 30, 1994, TAM excluded from gross receipts \$40,907, resulting in an understatement of \$4,500 in fees due the City. This amount represents distributions to employees as "Sales Gratuities." The employees receiving this "gratuity" are responsible for writing the contracts for parties, as well as overseeing the affair. These employees receive a set percentage of the net contract amount, which constitutes a commission--not a gratuity. They also receive a regular salary, as opposed to wait staff, who earn a minimum hourly wage. These payments are clearly commissions and, as such, are not excludable from reportable gross receipts.

Agency and Auditee Responses: It is TAM's position that the amount in question represents gratuities which are passed through to salaried employees. As such, it does not constitute a commission, and should not be included in gross revenue.

DPR responded that, "TAM has been instructed to include all amounts collected as Sales Gratuity in Gross Receipts reported to Parks...."

Interest and Penalty Charges

Under Article 4 of the license agreement as amended October 4, 1990, TAM is charged interest and penalties for any late payments. Article 38 modifies this provision by allowing a 10 day grace period before interest and penalties are imposed. During the audit period, TAM frequently paid its fees late; however, DPR rarely charged interest and penalties. We calculated, based on TAM's late payments during the audit period, that DPR should have collected an additional \$45,386. Further, based on the additional fees due of \$69,757 resulting from our audit adjustment, TAM owes additional interest of \$21,770. (Appendices IV, V and VI detail the interest and penalty calculations.)

Agency and Auditee Responses: TAM stated that it has paid interest and penalties whenever DPR has billed them and that it is unfair to be cited for them retroactively.

DPR has included interest and penalties of \$50,923 in its bill to TAM. DPR's amount differs from that of the Comptroller's Office because DPR disagrees with some of the Comptroller's Office's findings and because of slightly different methods of calculation. (See the full text of DPR's response in Appendix II for specific methodology and the period covered.)

Compliance

TAM Did Not Comply With Reporting Requirements

Exhibit A, Article IV(d), requires TAM to submit annual financial statements, prepared by a certified public accountant within 60 days after each anniversary of the license. TAM has not submitted the annual certified financial statements for years 1993 and 1994.

Agency and Auditee Responses: TAM stated that it has sent a copy of its fiscal year 1993 and 1994 statement to DPR and is working with its CPAs to obtain and submit financial statements to DPR on a more timely basis.

DPR has asked TAM to submit future statements in a more timely manner.

Inadequate Enforcement of TAM'S Contract by DPR

TAM has been consistently late in its payments during the entire audit period. Although DPR officials maintain that they reminded TAM both through correspondence and by telephone of its obligation to pay fees on time, they were unsuccessful in persuading TAM to comply with its agreement. Failing this course of action, DPR neither amended the contract to permit later payments of fees nor imposed interest and penalties more than four or five times during the audit period. Consequently, under the terms of its license, TAM's liability for interest and penalties exceeds \$67,000.

Agency Response: DPR states that it has become stricter in its enforcement of the late payment provision.

Recommendations

TAM should:

1. Pay its assessment of \$136,913.

(Both TAM and DPR disagreed with the amount of the assessment. However, DPR has agreed with a portion of this assessment, totalling \$89,669, which it has billed TAM.)

2. Include in reported gross receipts the total value of services rendered whether such services are discounted, promotional, or contributed.

(Both TAM and DPR disagreed with this recommendation.)

3. Include in reported gross receipts the amount collected as "Sales Gratuity."

(TAM disagreed with this recommendation; DPR agreed with it.)

4. Submit certified financial statements when due.

(Both TAM and DPR agreed with this recommendation.)

5. Adopt procedures to ensure that entries made to its accounting system are correct.

(Both TAM and DPR agreed with this recommendation.)

DPR should:

6. Monitor payments made by TAM to ensure that late penalties and interest are charged and collected.

(DPR agreed with this recommendation.)



May 10, 1995

Mr. Roger D. Liwer
Deputy Comptroller for Audits & Engineering
The City of New York
Office of the Comptroller
161 William Street, 3rd Floor
New York, NY 10038-2607

Re: Audit report on Licensing Fees Due from
TAM Concessions, Inc. and Compliance with
License Agreement July 1, 1989, to June 30, 1994
FN94-241A

Dear Mr. Liwer:

We have reviewed the above referenced draft report and note that we have a difference of opinion or interpretation on some of the matters included.

The following summarizes our views but these views have been expressed in an exit interview and other correspondence with your office prior to the issuance of this draft.

Meals Discount

People patronize places that offer discounts. Discounts are not an expense but an investment. They help generate sales.

We believe that rent should be paid on the amount actually received toward the meal. This is the discount amount we received from TransMedia and included in calculating and paying rent under the contract with the DPR.

Promotions

Audit findings showed \$30,101 in fiscal year end 1994 as promotions. (The prior years were calculated as a percentage of sales based on 1994 experience). We feel it is important to note that this promotion amount is generated from three separate categories:

- A) At the beginning of each lunch and dinner shift the Manager on Duty has a staff meeting. At these meetings, one area discussed is daily specials. These specials are brought out to the meeting and the Chef explains the ingredients and preparation. This is considered very "normal practice" in a restaurant as wait staff must know the items they're offering. At the Boathouse we offer three specials per day (1 appetizer, 1 entrée and 1 pasta). Based upon our pricing, we have worked out the following formula:

Appetizer Specials	\$ 7 - \$12
Pasta Specials	\$17 - \$21
Entrée Specials	\$20 - \$23

Based on an average price of \$50.00 per shift posted to promo's we have come up with the following:

May - September (open for lunch & dinner) 153 days x \$100 =	\$15,300
March, April, October (open for lunch) 56 days @ \$50 =	2,800
Reduction on promo for 1994	\$18,100

- B) The second type of promo is a situation where the Cafe Manager, General Manager or Operations Managers check on our quality and consistency by placing an order without the kitchen's knowledge. Again this type of procedure is customary in our industry and gives us information on presentation, timing, portion control, etc. It is our estimate that approximately \$25.00 per day (some days may be "0" and others higher) are promo'ed for quality control. This would approximate \$5,225 for each year, 1991 thru 1994.
- C) The third type of promo is generated through not charging potential clients, business associates, etc. As we do not collect any money on this type of promo it is our position that there was no rent factor applicable. This helps promote other, larger sales which are included in revenue and in your rent calculation.

We believe that rent should be calculated on the amount actually received toward the meal. Since nothing is received toward the meal on promotions, we have not and do not believe it is to be included in calculating rent under the contract.

Parties and Cafe Revenue

Included in this category is \$40,400 for a party from which we did not collect money, namely AMFAR. This event was hosted by TAM to help AMFAR (AIDS Research) in its quest in finding a cure for AIDS. As this event was donated, in kind contributions were received from vendors on food products and staff for their time. The only money received was for gratuity to supplement staffing requirements and that was passed thru to the wait staff.

This was a promotional type activity and on the premise that rent should be calculated on the amount actually received toward the meal, we did not and do not believe that this should be included in calculating rent under the contract.

There is a reference made in your report that TAM received an eligible income tax deduction from this event. The truth is that we are on a "cash basis" for tax purposes. Any cash collected could be used as a donation, but since none was collected, there is no tax deduction to be taken.

Sales Gratuity

It should be noted that our sales staff receive a gratuity which is reflected as such on the contract because they oversee the events and are not just booking agents. They, like wait staff, get involved in the party itself and the gratuity is theirs.

Our sales staff is salaried. Salaried people receive gratuity - not commission. Like wait staff gratuity is passed thru to the sales staff person working the party. None of it is shared by the company and therefore none of it has been included in rent calculations.

We believe sales gratuity, like wait staff gratuity, which is transmitted by TAM directly to employees and staff should not be included in gross receipts for purpose of calculating fees.

Interest and Penalties

It should be noted that TAM has always been up front and honest with the City. It has been in compliance with all significant provisions of its license. We feel that DPR has billed us when they felt interest and/or a penalty was due, and we paid them. We feel that it is unfair to be cited for interest and penalties retroactively. Furthermore, for a company of this size, this type of set back would significantly effect our viability to operate.

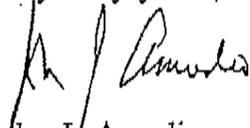
Recommendations

TAM has recently received its financial statement for its fiscal year end 1993 and 1994 from its accountants. A copy of such financials have been sent to DPR. We are working closer now with our CPA's to obtain financial statements on a regular basis and submit them timely to DPR.

We believe that our records are accurate, albeit, some posting errors have occurred. The deduction of waitstaff base salaries over the five year period was simply an error made on day one in our calculation and then the erroneous calculation was used month after month as if it were "gospel". This error was uncovered as the result of your audit and we immediately made correction upon discovery. Naturally, every effort will be made to continue to maintain accurate records.

In closing, we hope this letter expresses TAM's opinion without seeming insensitive to your position. We realize the importance your office plays in ensuring that the City is receiving all which is due them. We would be pleased to discuss this further with you but hope that you will reconsider your position.

Very truly yours,



John J. Amodio
President
TAM Restaurant Group



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10021

Henry J. Stern
Commissioner

Joanne G. Imohiosen
Assistant Commissioner
Revenue

May 17, 1995

Mr. Roger D. Liwer
Deputy Comptroller for Audits & Engineering
The City of New York
Office of the Comptroller
161 William Street, Room 200
New York, NY 10038-2607

Re: Audit Report on Licensing Fees Due from TAM Concessions,
Inc. and Compliance with its License Agreement
July 1, 1989 to June 30, 1994
Audit Report No. FN 94-241A

Dear Mr. Liwer:

This letter responds to the findings and recommendations presented in the subject audit of TAM Concessions, Inc. (TAM).

The audit report recommends that TAM pay an assessment of \$174,261, comprised of license fees on adjusted Gross Receipts totaling \$69,757, and Penalties and Interest charges amounting to \$104,504. Of this total assessment Parks agrees with, and has billed TAM for \$89,669, consisting of \$38,746 in additional license fees and \$50,923 in penalty and interest charges. A copy of Parks' Notice To Cure to TAM is attached for your information.

Attachment A of the Notice to Cure summarizes the items with which Parks agrees with the audit findings, and have billed TAM. Our position on Meals Discounts, Promotional Meals and the A.I.D.'s Research charity event, is that these components represent operating and marketing expenses, rather than elements of revenue. TAM properly reported the total revenue which they received for discounted meals, and since no income was realized for promotional meals or the charity event, no fees should be assessed against these expense categories:

Roger Liwer
May 17, 1995
Page 2

Furthermore, it would be totally insensitive to assess a fee against the value of a charity event which would not have taken place at the facility had the site and food not been donated. The contribution by TAM clearly represents a goodwill promotional gesture that will benefit the business.

As a point of information it should be noted that TAM, through their marketing and advertising strategies, has nearly doubled their income from F/Y 90 to F/Y 94, and license fees paid to Parks have increased 100%, from \$264 thousand in F/Y 90 to \$528 thousand in F/Y 94. TAM's business plan covering the operation of their Loeb Boathouse facility has proven to be very successful, and Parks and the City have also greatly benefitted economically from their prosperity.

The attached Schedules I, II and III, represent a recalculation of the assessed Penalty and Interest charges summarized in audit report Appendices II, III and IV. In accordance with Article 38 of the General Provisions of TAM's license agreement, our computations included no penalty and interest charges for late payments of 10 days or less. Also, interest charges were not immediately compounded against principal plus penalty amounts during the first 30 days. Interest was applied after the first month which had been covered by the initial 2% penalty.

The audit states that Parks enforcement of TAM's contract has been inadequate because the late payment penalty provisions were not strictly enforced. In the past, TAM's pattern of paying late, although chronic, had not been a serious issue. Parks therefore took a more liberal approach in exercising late penalties. However, after recognizing that TAM was not making any effort to correct their payment deficiency we became stricter in our enforcement of the late payment provision. From March 1993 to June 1994, Parks has assessed, and TAM has paid almost \$7,000 in late penalties.

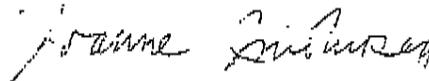
The revised Penalty and Interest total of \$50,923 represents a substantial and equitable assessment against TAM as retribution for their late payment practices. We will continue to monitor the timeliness of TAM's payments, and will apply late penalties and interest when required.

Roger Liwer
May 17, 1995
Page 3

Recommendations 3, 4, and 5 of the audit report are addressed in our Notice To Cure to TAM. TAM has been instructed to include all amounts collected as Sales Gratuities in Gross Receipts reported to Parks, and to take corrective action to preclude any recurrence of the accounting deficiencies cited in the audit. We received TAM's certified financial statements for 1993 and 1994, and have requested in the future that they comply in a more timely manner.

We thank you for the efforts of your staff in performing this audit and for the disclosures and recommendations contained in the report.

Sincerely,



Joanne Imohiosen

cc: H. Stern



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10021

Henry J. Stern
Commissioner

Joanne G. Imohiosen
Assistant Commissioner
Revenue

May 16, 1995

CERTIFIED MAIL R.R.R.

Mr. Frank Cretella, CEO
TAM Restaurant Group
1163 Forest Avenue
Staten Island, NY 10310

Re: NOTICE TO CURE
Audit Report on Licensing Fees Due from TAM Concessions,
Inc. and Compliance with its License Agreement
July 1, 1989 to June 30, 1994
Audit Report No. FN 94-241A

Dear Mr. Cretella:

We have received a Draft report covering the subject audit of TAM Concessions, Inc. (TAM), whose corporate name has been changed effective 5/4/93, to TAM Restaurant Group. The findings and recommendations contained in that document are addressed below.

TAM was assessed \$174,261 of additional rent, comprised of license fees on adjusted Gross Receipts totaling \$69,757, and Penalties and Interest amounting to \$104,504. Of the total assessment recommendation, Parks agrees that TAM owes at least \$89,669 consisting of \$38,746 in additional license fees and \$50,923 in penalty and interest charges.

The attached spreadsheet summary (Attachment A), identifies those findings where we concur with the audit report, and those adjustments which we take exception to. We have billed TAM for the additional fees associated with underreported gross receipts based on: erroneous Base Salary deductions; misposted Party and Cafe revenue (excluding the \$40,400 AID's research charity party); differences between amounts posted in TAM's general ledger and the amounts reported to Parks; and commissions erroneously deducted from revenue as Sales Gratuities.

Frank Cretella
May 16, 1995
Page 2

Our Agency response to the Comptroller will discuss Parks position to allow the exclusion of Meals Discounts, Promotional Meals, and Charity Party revenue from reportable Gross Receipts. However, pending the final resolution of these items, the unbilled balance of the audit adjustment assessment, which totals \$31,011, will remain open and may be charged to TAM at a later date.

The Penalty and Interest assessment of \$50,923 is based on our recalculation of the Comptroller's numbers in Appendices II, III and IV. Following is a summary of the above total:

Recalculated Penalties and Interest On

Minimum Fees	\$ 9,377
Audit Adjustments	13,796
Percentage Fees	<u>27,750</u>
TOTAL	<u>\$50,923</u>

The reduced total is attributable to the lower audit adjustment assessment, and the use of a different calculation methodology. Our computations excluded any late payments of ten days or less, and did not immediately apply interest against principal plus penalty totals for the entire late period; any imposed late penalty covered the first 30 days, during which interest charges were not applied. Again, until we reach a final resolution of this assessment with the Comptroller's Office, the unbilled penalty and interest balance in the amount \$53,581 will remain open and may be charged to TAM at a later date.

Pursuant to the above findings, hereby, we request that TAM Restaurant Group remit a check, made payable to CITY OF NEW YORK PARKS AND RECREATION, in the amount of \$89,669, within fifteen (15) days from the date of this letter. Failure to comply with this request shall represent a material breach of TAM's license agreement with the City.

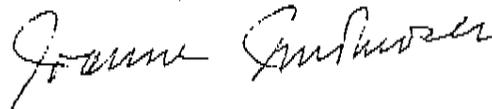
TAM shall also make certain that all amounts collected as Sales Gratuities are included in Gross Receipts reported to Parks, and that corrective action shall be taken by TAM to preclude any recurrence of the accounting deficiencies cited in the audit.

Frank Cretella
May 16, 1995
Page 3

Furthermore, we acknowledge receipt of TAM's annual certified financial statements for the years 1993 and 1994. We request that in the future TAM comply with this reporting requirement in a timely manner, within sixty (60) days after the end of each operating year.

We appreciate your cooperation and prompt reply to this Notice.

Sincerely,



Joanne Imohiosen

cc: J. Amodio, TAM

TAM CONCESSIONS, INC.
 COMPTROLLER'S AUDIT NO. FN94-241A
 ANALYSIS OF PRELIMINARY DRAFT FINDINGS

MONTH/ YEAR	AUDIT ADJUSTMENTS										TOTAL AUDIT ADJUSTMENTS
	BASE SALARY	MEALS DISCOUNT	PROMOTIONAL MEALS	PARTIES	CAFE	TOTAL PARTIES & CAFE	REPORTED G.R. VS G/L	SALES GRATUITIES			
SEP 90	\$2,858.09		\$2,085.43								\$4,943.52
OCT 90	\$2,858.09		\$2,085.43								\$4,943.52
NOV 90	\$2,858.09		\$2,085.43								\$4,943.52
DEC 90	\$2,858.09		\$2,085.43								\$4,943.52
MAR 91	\$2,858.09		\$2,085.43								\$4,943.52
APR 91	\$2,858.09		\$2,085.43								\$4,943.52
MAY 91	\$2,858.09		\$2,085.43								\$4,943.52
JUN 91	\$2,858.09		\$2,085.43								\$4,943.52
F/Y 91	\$47,383.49		\$18,235.17								\$65,618.66
F/Y 92	\$49,753.96	\$11,457.88	\$20,897.80						\$29,993.07	\$6,706.09	\$118,808.80
F/Y 93	\$80,207.05	\$54,752.14	\$28,283.73	(\$490.94)	\$291.59	(\$199.35)			(\$13,920.01)	\$13,507.44	\$162,631.00
F/Y 94	\$75,011.02	\$64,277.07	\$30,100.62	\$57,490.09	\$3,939.81	\$61,429.90			\$5,591.92	\$20,693.61	\$257,104.14
TOTAL ADD'L G.R.'S	\$275,220.24	\$130,487.09	\$114,200.76	\$56,999.15	\$4,231.40	\$61,230.55			\$21,664.98	\$40,907.14	\$643,710.76
DISPUTED TOTALS	\$0.00	(\$130,487.09)	(\$114,200.76)	(\$40,400.00)	\$0.00	(\$40,400.00)			\$0.00	\$0.00	(\$285,087.85)
ADJUSTED BALANCE	\$275,220.24	\$0.00	\$0.00	\$16,599.15	\$4,231.40	\$20,830.55			\$21,664.98	\$40,907.14	\$358,622.91
ADDITIONAL RENT DUE PER COMPTROLLER	\$29,571.76	\$14,353.59	\$12,212.88	\$6,269.91	\$465.45	\$6,735.36			\$2,383.15	\$4,499.79	\$69,756.53
DISPUTED FEES	\$0.00	(\$14,353.59)	(\$12,212.88)	(\$4,414.00)	\$0.00	(\$4,414.00)			\$0.00	\$0.00	(\$31,010.47)
ADJUSTED BALANCE	\$29,571.76	\$0.00	\$0.00	\$1,825.91	\$465.45	\$2,291.36			\$2,383.15	\$4,499.79	\$38,746.06

IAM CONCESSIONS, INC.
RECALCULATION OF PENALTIES & INTEREST
JULY 1, 1989 - JUNE 30, 1994

PERIOD COVERED	DUE DATE	MINIMUM FEES DUE	DATE PAID	DAYS LATE	AMOUNT PAID	2% PENALTY	2% INTEREST	BALANCE	FY BALANCE
FY 90									
7/10-8/9/89	7/10/89	\$5,000.00	7/13/89	3	(\$5,000.00)	\$0.00	\$0.00	\$0.00	\$0.00
8/10-9/9/89	8/10/89	\$5,000.00	8/15/89	5	(\$5,000.00)	\$0.00	\$0.00	\$0.00	\$0.00
9/10-10/9/89	9/10/89	\$5,000.00	9/26/89	16	(\$5,000.00)	\$100.00	\$0.00	\$100.00	\$100.00
10/10-11/9/89	10/10/89	\$5,000.00	10/17/89	7	(\$5,000.00)	\$0.00	\$2.00	\$102.00	\$102.00
11/10-12/9/89	11/10/89	\$5,000.00	11/20/89	10	(\$5,000.00)	\$0.00	\$2.04	\$104.04	\$104.04
12/10/89-1/9/90	12/10/89	\$5,000.00	12/26/89	16	(\$5,000.00)	\$100.00	\$2.08	\$206.12	\$206.12
1/10-2/9/90	1/10/90	\$5,000.00	1/22/90	12	(\$5,000.00)	\$100.00	\$4.12	\$310.24	\$310.24
2/10-3/9/90	2/10/90	\$5,000.00	3/5/90	23	(\$5,000.00)	\$100.00	\$6.20	\$416.45	\$416.45
3/10-4/9/90	3/10/90	\$5,000.00	3/26/90	16	(\$5,000.00)	\$100.00	\$8.33	\$524.78	\$524.78
4/10-5/9/90	4/10/90	\$5,000.00	4/18/90	8	(\$5,000.00)	\$0.00	\$10.50	\$535.27	\$535.27
5/10-6/9/90	5/10/90	\$5,000.00	5/15/90	5	(\$5,000.00)	\$0.00	\$10.71	\$545.98	\$545.98
6/10-7/9/90	6/10/90	\$5,000.00	6/12/90	2	(\$5,000.00)	\$0.00	\$10.92	\$556.90	\$556.90
TOTALS FY 90		\$60,000.00			(\$60,000.00)	\$500.00	\$56.90		\$556.90

FY 91									
Beginning Balance								\$556.90	
7/10-8/9/90	7/10/90	\$5,416.67	7/13/90	3	(\$5,416.67)	\$0.00	\$11.14	\$568.04	
8/10-9/9/90	8/10/90	\$5,416.67	8/7/90	0	(\$5,416.67)	\$0.00	\$11.36	\$579.40	
9/10-10/9/90	9/10/90	\$5,416.67	9/19/90	9	(\$5,416.67)	\$0.00	\$11.59	\$590.99	
10/10-11/9/90	10/10/90	\$16,544.25	10/17/90	7	(\$16,544.25)	\$0.00	\$11.82	\$602.81	
11/10-12/9/90	11/10/90	\$16,544.25	11/19/90	9	(\$16,544.25)	\$0.00	\$12.06	\$614.86	
12/10/90-1/9/91	12/10/90	\$16,544.25	12/24/90	14	(\$16,544.25)	\$330.89	\$12.30	\$958.04	
1/10-2/9/91	1/10/91	\$16,544.25	12/24/90	0	(\$16,544.25)	\$0.00	\$19.16	\$977.21	
2/10-3/9/91	2/10/91	\$16,544.25	2/19/91	9	(\$6,544.00)	\$330.89	\$19.54	\$1,327.88	
3/10-4/9/91	3/10/91	\$16,544.25	2/25/91	15	(\$10,000.00)	\$0.00	\$0.00	\$1,327.88	
4/10-5/9/91	4/10/91	\$16,544.25	3/11/91	1	(\$6,544.25)	\$330.89	\$26.56	\$1,685.33	
5/10-6/9/91	5/10/91	\$16,544.25	4/1/91	21	(\$10,000.00)	\$0.00	\$0.00	\$1,685.33	
6/10-7/9/91	6/10/91	\$16,544.25	4/16/91	6	(\$16,544.25)	\$0.00	\$33.71	\$1,719.03	
7/10-8/9/91	7/10/91	\$16,544.25	5/6/91	0	(\$16,544.25)	\$0.00	\$34.38	\$1,753.41	
8/10-9/9/91	8/10/91	\$16,544.25	6/7/91	0	(\$16,544.25)	\$0.00	\$35.07	\$1,788.48	
TOTALS FY 91		\$165,148.26			(\$165,148.01)	\$992.66	\$238.68		\$1,231.58

SCHEDULE I
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TAM CONCESSIONS, INC.
RECALCULATION OF PENALTIES & INTEREST
JULY 1, 1989 - JUNE 30, 1994

PERIOD COVERED	DUE DATE	MINIMUM FEES DUE	DATE PAID	DAYS LATE	AMOUNT PAID	2% PENALTY	2% INTEREST	BALANCE	FY BALANCE
FY 92									
Beginning Balance								\$1,788.48	
7/10-8/9/91	7/10/91	\$18,869.43	7/17/91	7	(\$16,544.25)	\$377.39	\$35.77	\$4,526.82	
8/10-9/9/91	8/10/91	\$18,869.43	8/12/91	33	(\$2,325.18)	\$0.00	\$90.54	\$2,292.17	
9/10-10/9/91	9/10/91	\$18,869.43	8/12/91	2	(\$14,219.07)	\$377.39	\$0.00	\$7,319.92	
10/10-11/9/91	10/10/91	\$18,869.43	9/11/91	32	(\$4,650.36)	\$0.00	\$146.49	\$2,815.96	
11/10-12/9/91	11/10/91	\$18,869.43	9/11/91	1	(\$11,893.89)	\$377.39	\$0.00	\$10,168.89	
12/10/91-1/9/92	12/10/91	\$18,869.43	10/11/91	31	(\$6,975.54)	\$0.00	\$203.38	\$3,396.73	
1/10-2/9/92	1/10/92	\$18,869.43	10/11/91	1	(\$11,893.89)	\$377.39	\$0.00	\$10,749.66	
2/10-3/9/92	2/10/92	\$18,869.43	11/12/91	33	(\$6,975.54)	\$0.00	\$214.99	\$3,989.11	
3/10-4/9/92	3/10/92	\$18,869.43	11/12/91	2	(\$11,893.89)	\$0.00	\$0.00	\$10,964.65	
4/10-5/9/92	4/10/92	\$18,869.43	11/18/91	8	(\$6,975.54)	\$0.00	\$0.00	\$3,989.11	
5/10-6/9/92	5/10/92	\$18,869.43	12/10/91	0	(\$18,869.43)	\$0.00	\$79.78	\$4,068.89	
6/10-7/9/92	6/10/92	\$18,869.43	1/21/92	11	(\$18,869.43)	\$377.39	\$81.38	\$4,527.66	
TOTALS FY 92		\$226,433.16	2/13/92	3	(\$18,869.43)	\$0.00	\$90.55	\$4,618.21	
			3/9/92	0	(\$18,869.43)	\$0.00	\$92.36	\$4,710.58	
			5/4/92	24	(\$18,869.43)	\$377.39	\$94.21	\$5,182.18	
			5/12/92	2	(\$18,869.43)	\$0.00	\$103.64	\$5,285.82	
			6/9/92	0	(\$18,869.43)	\$0.00	\$105.72	\$5,391.54	\$3,603.06
					(\$226,433.16)	\$2,264.33	\$1,338.72		
FY 93									
Beginning Balance								\$5,391.54	
7/10-8/9/92	7/10/92	\$18,869.43	6/17/92	0	(\$18,869.43)	\$0.00	\$107.83	\$5,499.37	
8/10-9/9/92	8/10/92	\$18,869.43	8/04/92	0	(\$18,869.43)	\$0.00	\$109.99	\$5,609.36	
9/10-10/9/92	9/10/92	\$22,409.95	9/11/92	1	(\$22,409.95)	\$0.00	\$112.19	\$5,721.55	
10/10-11/9/92	10/10/92	\$22,700.05	10/16/92	6	(\$22,700.05)	\$0.00	\$114.43	\$5,835.98	
11/10-12/9/92	11/10/92	\$22,700.05	11/10/92	0	(\$22,700.05)	\$0.00	\$116.72	\$5,952.70	
12/10/92-1/9/93	12/10/92	\$22,700.05	12/11/92	1	(\$22,700.05)	\$0.00	\$119.05	\$6,071.75	
1/10-2/9/93	1/10/93	\$22,700.05	1/11/93	1	(\$22,700.05)	\$0.00	\$121.43	\$6,193.18	
2/10-3/9/93	2/10/93	\$22,700.05	2/16/93	6	(\$22,700.05)	\$0.00	\$123.86	\$6,317.05	
3/10-4/9/93	3/10/93	\$22,700.05	4/02/93	23	(\$15,000.00)	\$454.00	\$126.34	\$14,597.44	
			4/14/93	35	(\$7,700.05)	\$0.00	\$291.95	\$7,189.34	
			4/14/93		(\$454.01)	\$0.00	\$0.00	\$6,735.33	
4/10-5/9/93	4/10/93	\$22,700.05	4/14/93	4	(\$8,207.95)	\$454.00	\$0.00	\$21,681.43	
5/10-6/9/93	5/10/93	\$22,700.05	4/29/93	19	(\$14,492.10)	\$0.00	\$0.00	\$7,189.33	
6/10-7/9/93	6/10/93	\$22,700.05	5/13/93	3	(\$22,700.05)	\$0.00	\$143.79	\$7,333.12	
TOTALS FY 93		\$264,449.26	6/16/93	6	(\$22,700.05)	\$0.00	\$146.66	\$7,479.78	\$2,088.24
					(\$264,449.26)	\$908.00	\$1,634.25		

TAM CONCESSIONS, INC.
RECALCULATION OF PENALTIES & INTEREST
JULY 1, 1989 - JUNE 30, 1994

<u>PERIOD COVERED</u>	<u>DUE DATE</u>	<u>MINIMUM FEES DUE</u>	<u>DATE PAID</u>	<u>DAYS LATE</u>	<u>AMOUNT PAID</u>	<u>2% PENALTY</u>	<u>2% INTEREST</u>	<u>BALANCE</u>	<u>FY BALANCE</u>
<u>FY 94</u>									
Beginning Balance								\$7,479.78	
7/10-8/9/93	7/10/93	\$22,700.05	7/20/93	10	(\$22,700.05)	\$0.00	\$149.60	\$7,629.38	
8/10-9/9/93	8/10/93	\$22,700.05	8/17/93	7	(\$22,700.05)	\$0.00	\$152.59	\$7,781.96	
9/10-10/9/93	9/10/93	\$22,700.05				\$454.00	\$155.64	\$8,391.65	
10/10-11/9/93	10/10/93	\$28,379.67	10/12/93	32	(\$22,700.05)	\$0.00	\$621.83	\$9,013.44	
	Late Fee Pd		10/12/93	2	(\$5,679.62)	\$567.59	\$0.00	\$32,281.08	
			10/12/93		(\$3,633.48)			\$28,647.60	
11/10-12/9/93	11/10/93	\$28,379.67	12/2/93	53	(\$22,700.05)	\$0.00	\$572.95	\$6,520.50	
			12/27/93	47	(\$28,379.67)	\$567.59	\$0.00	\$35,467.77	
12/10/93-1/9/94	12/10/93	\$28,379.67				\$0.00	\$709.36	\$7,797.45	
	Late Fee Pd		12/27/93		(\$1,143.42)	\$567.59	\$0.00	\$36,744.71	
1/10-2/9/94	1/10/94	\$28,379.67	1/10/94	31	(\$28,379.67)	\$0.00	\$712.03	\$35,601.29	
	Late Fee Pd		1/10/94		(\$564.53)	\$567.59	\$0.00	\$7,933.65	
2/10-3/9/94	2/10/94	\$28,379.67	2/18/94	39	(\$28,379.67)	\$0.00	\$726.33	\$8,663.04	
	Late Fee Pd		3/8/94	26	(\$28,379.67)	\$567.59	\$0.00	\$9,230.63	
3/10-4/9/94	3/10/94	\$28,379.67	3/8/94		(\$567.59)			\$8,663.04	
	Late Fee Pd		4/7/94	28	(\$28,379.67)	\$567.59	\$173.26	\$9,403.90	
4/10-5/9/94	4/10/94	\$28,379.67	4/7/94		(\$567.59)			\$8,836.31	
5/10-6/9/94	5/10/94	\$28,379.67	4/14/94	4	(\$28,379.67)	\$0.00	\$176.73	\$9,013.03	
6/10-7/9/94	6/10/94	\$28,379.67	5/20/94	10	(\$28,379.67)	\$0.00	\$180.26	\$9,193.30	
			6/9/94	0	(\$28,379.67)	\$0.00	\$183.87	\$9,377.16	
TOTALS FY 94		\$323,517.18			(\$329,993.79)	\$3,859.56	\$4,514.43	\$1,997.38	

TOTAL LATE PAYMENT PENALTIES AND INTEREST DUE ON MINIMUM FEES JULY 1, 1989 TO JUNE 30, 1994

\$9,377.16

Late Penalties were applied to Minimum Fees paid over 10 days late.
Interest was calculated on the unpaid balance as of the 10th of each month.

SCHEDULE OF RENT DUE, PENALTIES, & INTEREST (AUDIT ADJUSTMENTS)

JULY 1, 1989 - JUNE 30, 1994 (RECALCULATION OF PENALTIES AND INTEREST)

MONTH/YEAR FY '90	AREA	AUDIT ADJUSTMENT	RENT PERCENTAGE	RENT DUE	TOTAL DUE	DATE DUE	INTEREST COVERED		PERIOD	2% PENALTY (ONE TIME)	2% INTEREST (MONTHLY)	COMMENTS
							FROM	TO				
JULY/90	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
AUGUST/90	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
SEPTEMBER/90	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81		09/10/90 09/10/90	09/10/90 09/10/90	10/10/90 10/10/90	0.00 5.72	0.00 0.00		1 1
OCTOBER/90	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	291.53	10/10/90 10/10/90	10/10/90 10/10/90	11/10/90 11/10/90	0.00 5.72	6.02 0.00		2 1
NOVEMBER/90	Promotions Base Salary	0.00 2,856.09	10% 10%	0.00 285.81	589.08	11/10/90 11/10/90	11/10/90 11/10/90	12/10/90 12/10/90	0.00 5.72	11.78 0.00		2 1
DECEMBER/90	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	892.36	12/10/90 12/10/90	12/10/90 12/10/90	03/10/91 03/10/91	0.00 5.72	53.54 0.00		2 1
JANUARY/91	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
FEBRUARY/91	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
MARCH/91	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	1,248.88	03/10/91 03/10/91	03/10/91 03/10/91	04/10/91 04/10/91	0.00 5.72	25.81 0.00		2 1
APRIL/91	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	1,566.22	04/10/91 04/10/91	04/10/91 04/10/91	05/10/91 05/10/91	0.00 5.72	31.32 0.00		2 1
MAY/91	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	1,889.07	05/10/91 05/10/91	05/10/91 05/10/91	06/10/91 06/10/91	0.00 5.72	39.04 0.00		2 1
JUNE/91	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	2,219.63	06/10/91 06/10/91	06/10/91 06/10/91	08/15/91 08/15/91	0.00 5.72	97.66 6.86		2 1
TOTALS		2,858.09		2,858.09	2,858.09					2,615.68		

SCHEDULE OF RENT DUE, PENALTIES, & INTEREST (AUDIT ADJUSTMENTS)
 JULY 1, 1989 - JUNE 30, 1994 (RECALCULATION OF PENALTIES AND INTEREST)

YEAR	AREA	ADJUSTMENT	RENT PERCENTAGE	RENT DUE	TOTAL DUE	DATE DUE	INTEREST COVERED		2% PENALTY (ONE TIME)	2% INTEREST (MONTHLY)	COMMENTS
							FROM	TO			
FY-91	Promotions	0.00	10%	0.00	2,615.88	08/15/91	08/15/91	08/15/92	0.00	636.23	2
	Base Salary	47,383.48	10%	4,738.35		08/15/91	08/15/91	08/15/92	94.77	1,061.39	1
Total Interest and Penalties FY-91 \$1,794.38											
FY-92	Reported vs G/L	29,993.07	11%	3,299.24	9,148.42	08/15/92	08/15/92	08/15/93	-65.98	2,226.11	2
	Promotions	0.00	11%	0.00		08/15/92	08/15/92	08/15/93	0.00	736.89	1
	Base Salary	49,763.96	11%	5,472.94		08/15/92	08/15/92	08/15/93	109.46	0.00	1
	Meals Discount	0.00	11%	0.00		08/15/92	08/15/92	08/15/93	0.00	1,222.29	1
	Sales Grat. Disb.	6,706.09	11%	737.67		08/15/92	08/15/92	08/15/93	14.75	0.00	1
	Total Interest and Penalties FY-92 \$7,540.16										
23,198.44											
FY-93	Reported vs G/L	(13,920.01)	11%	(1,531.20)		08/15/93	08/15/93	08/15/94	0.00	0.00	1
	Promotions	0.00	11%	0.00		08/15/93	08/15/93	08/15/94	0.00	0.00	1
	Base Salary	80,207.05	11%	8,822.78		08/15/93	08/15/93	08/15/94	176.46	1,699.85	1
	Meals Discount	0.00	11%	0.00		08/15/93	08/15/93	08/15/94	0.00	0.00	1
	Parties	(490.94)	11%	(54.00)		08/15/93	08/15/93	08/15/94			
	Fast Food	(68.37)	11%	(7.52)		08/15/93	08/15/93	08/15/94			
	Cafe	291.59	11%	32.07		08/15/93	08/15/93	08/15/94	0.64	6.18	1
	Sales Grat. Disb.	13,507.44	11%	1,485.82		08/15/93	08/15/93	08/15/94	29.72	266.27	1
Total Interest and Penalties FY-93 \$7,132.65											
39,079.03											
FY-94**	Reported vs G/L	5,591.92	11%	615.11		08/15/94	N/A	N/A	N/A	N/A	
	Promotions	0.00	11%	0.00		08/15/94	N/A	N/A	N/A	N/A	
	Base Salary	75,011.02	11%	8,251.21		08/15/94	N/A	N/A	N/A	N/A	
	Meals Discount	0.00	11%	0.00		08/15/94	N/A	N/A	N/A	N/A	
	Parties	17,090.09	11%	1,879.91		08/15/94	N/A	N/A	N/A	N/A	
	Fast Food	84.65	11%	9.31		08/15/94	N/A	N/A	N/A	N/A	
	Cafe	3,939.81	11%	433.38		08/15/94	N/A	N/A	N/A	N/A	
	Boals	32.79	11%	3.61		08/15/94	N/A	N/A	N/A	N/A	
	Sales Grat. Disb.	20,693.61	11%	2,276.30		08/15/94	N/A	N/A	N/A	N/A	
	Total Interest and Penalties FY-94 \$13,796.42										
TOTAL RENT, PENALTIES, INTEREST THROUGH FY-94 \$52,547.86											
TOTALS 358,873.90 36,751.44											

SCHEDULE OF RENT DUE, PENALTIES, & INTEREST (AUDIT ADJUSTMENTS)

JULY 1, 1989 - JUNE 30, 1994 (RECALCULATION OF PENALTIES AND INTEREST)

Percentage fees due for Fiscal Year 1990 became payable in Fiscal Year 1991 on a monthly basis as per an agreement dated October 4, 1990 between TAM and the Dept. Of Parks And Recreation.

** No interest or penalties charged for audit adjustments for Fiscal Year 1994 since percentage fees become due after the end of the audit period (June 30, 1994).

Comments Explained

1. This calculation is for interest and penalty charged on the audit adjustment only during the interest period covered.
2. This calculation is for interest and penalties on the sum of the audit adjustments to date and the interest and penalties to date for the interest period covered.

SCHEDULE III
SCHEDULE OF PAYMENTS (PERCENTAGE FEES)

SCHEDULE III

JULY 1, 1989 - JUNE 30, 1994

(RECALCULATION OF PENALTIES AND INTEREST)

MONTH/YEAR	PERCENTAGE FEES DUE*	DUE DATE	AMOUNT PAID	DATE PAID	DAYS OVERDUE	AMOUNT OVERDUE	INTEREST PERIOD COVERED		2% PENALTY (ONE TIME)	2% INTEREST (MONTHLY)	COMMENTS
							FROM	TO			
FY-91	\$103,379.91	08/15/91	\$25,000.00	09/24/91	40	\$103,379.91	08/15/91	09/24/91	\$2,067.60	\$702.98	1
		09/24/91	\$10,000.00	09/30/91	6	\$73,379.91	09/24/91	09/30/91		\$313.52	3
		09/30/91	\$68,379.91	10/21/91	21	\$68,379.91	09/30/91	10/21/91		\$957.32	3
					326	\$5,813.95	10/21/91	09/11/92		\$1,263.57	2
							TOTAL INTEREST AND PENALTIES FY-91			\$5,304.98	
FY-92	\$136,767.70	08/15/92	\$66,063.70	09/11/92	27	\$136,767.70	08/15/92	09/11/92	\$2,735.35	\$0.00	1
		09/11/92	\$4,641.50	09/29/92	18	\$70,704.00	09/11/92	09/29/92		\$848.45	3
		09/29/92	\$33,031.50	11/20/92	52	\$66,062.50	09/29/92	11/20/92		\$2,290.17	3
		11/20/92	\$10,000.00	12/21/92	31	\$33,031.00	11/20/92	12/21/92		\$682.64	3
		12/21/92	\$3,060.00	12/31/92	10	\$23,031.00	12/21/92	12/31/92		\$153.54	3
		12/31/92	\$20,031.00	01/21/93	21	\$20,031.00	12/31/92	01/21/93		\$280.43	3
					264	\$14,068.10	01/21/93	10/12/93		\$2,475.99	2
							TOTAL INTEREST AND PENALTIES FY-92			\$9,466.57	
FY-93	\$181,674.14	08/15/93	\$181,674.14	10/12/93	58	\$181,674.14	08/15/93	10/12/93	\$3,633.48	\$3,459.08	1
					261	\$23,636.64	10/12/93	06/30/94		\$4,112.78	2
							TOTAL INTEREST AND PENALTIES FY-93			\$13,296.96	
FY-94**	\$183,216.95	08/15/94	\$80,000.00	08/31/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
			\$50,000.00	09/09/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
			\$15,000.00	10/14/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
			\$38,216.95	11/23/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
					0	\$27,749.42	N/A	N/A	N/A	N/A	2
							TOTAL INTEREST AND PENALTIES FY-94			\$0.00	
TOTALS	\$809,745.80		\$669,745.90				TOTAL INTEREST AND PENALTIES THROUGH FY-94			\$27,749.42	

* Percentage fees due for Fiscal Year 1990 became payable in Fiscal Year 1991 on a monthly basis as per an agreement dated October 4, 1990 between TAM and the Dept. Of Parks And Recreation.

** No interest or penalties charged on payments made for fiscal year 1994 percentage fees due since payments were made after end of audit period (June 30, 1994).

Comments Explained

1. This calculation is for interest and penalty charged on the percentage fee payment only during the interest period covered.
2. This calculation is for interest on the total interest and penalties charged during the interest period covered.
3. The interest calculated is for the remaining balance due on the percentage fee payment during the interest period covered.

Appendix III

CONTRACT FEE SCHEDULE
TAM CONCESSION, INC.

<u>TERM</u>	<u>ANNUAL MINIMUM FEE</u>	<u>OR</u>	<u>75% OF PREVIOUS YEARS GROSS RECEIPTS</u>	<u>OR</u>	<u>FOOD AND MERCHANDISE % OF GROSS RECEIPTS</u>	<u>PLUS</u>	<u>BICYCLE & BOAT RENTAL % OF GROSS RECEIPTS</u>
YEAR 1	\$40,000				8%		10%
2	\$45,000				8%		10%
3	\$50,000				9%		11%
4	\$55,000				9%		11%
5	\$60,000				10%		12%
6	\$65,000				10%		12%
7	\$70,000				11%		13%
8	\$75,000				11%		13%
9	\$75,000				11%		14%
10	\$75,000				12%		14%
11	\$80,000				12%		15%
12	\$80,000				12%		15%
13	\$85,000				13%		16%
14	\$90,000				13%		16%
15	\$90,000				13%		17%

TAM CONCESSIONS, INC.
SCHEDULE OF PAYMENTS (MINIMUM FEES)
JULY 1, 1989 - JUNE 30, 1994

Audit # FN84-241A
Filename: Pay420

PERIOD FY	GROSS REVENUE		MINIMUM FEES DUE	PERCENTAGE FEES DUE	DUE DATE	AMOUNT PAID	DATE PAID	DAYS OVERDUE	AMOUNT OVERDUE	INTEREST COVERED FROM TO	2% PENALTY (ONE TIME)	2% INTEREST (MONTHLY)	COMMENTS	
	FOOD	BOATS												
FY 90	AT 10%		AT 12%											
JULY/89	\$404,033.06	\$34,142.59	\$5,000.00	\$44,501.02	07/20/89	\$5,000.00	07/13/89	0	0.00	0.00	0.00	0.00		
AUGUST/89	378,249.15	24,763.49	\$5,000.00	46,796.53	08/20/89	\$5,000.00	08/15/89	0	0.00	0.00	0.00	\$0.00		
SEPTEMBER/89	268,191.55	17,733.50	\$5,000.00	28,938.18	09/20/89	5,000.00	09/28/89	6	5,000.00	09/20/89	09/28/89	100.00	20.40	
OCTOBER/89	232,704.56	10,466.18	\$5,000.00	24,526.40	10/20/89	5,000.00	10/17/89	34	122.08	10/17/89	11/20/89	0.00	\$2.77	
NOVEMBER/89	42,262.52	1,688.71	\$5,000.00	4,428.90	11/20/89	5,000.00	11/20/89	0	0.00	11/20/89	12/28/89	0.00	0.00	
DECEMBER/89	56,646.82	0.00	\$5,000.00	5,664.88	12/20/89	5,000.00	12/28/89	8	5,000.00	12/20/89	12/28/89	100.00	27.20	
JANUARY/90	22,853.38	0.00	\$5,000.00	2,205.34	01/20/90	5,000.00	01/22/90	25	255.22	12/28/89	01/22/90	100.00	\$4.25	
FEBRUARY/90	19,469.45	0.00	\$5,000.00	1,956.95	02/20/90	5,000.00	03/05/90	2	5,000.00	01/20/90	01/22/90	100.00	6.80	
MARCH/90	38,883.40	123.33	\$5,000.00	3,824.14	03/20/90	5,000.00	03/28/90	42	366.27	01/22/90	03/05/90	100.00	\$10.26	
APRIL/90	184,134.41	17,378.81	\$5,000.00	20,498.90	04/20/90	5,000.00	04/18/90	13	5,000.00	02/20/90	03/05/90	100.00	44.29	
MAY/90	477,940.59	27,930.66	\$5,000.00	51,145.97	05/20/90	5,000.00	05/15/90	21	520.72	03/05/90	03/26/90	100.00	\$7.29	
JUNE/90	311,462.13	42,330.78	\$5,000.00	36,219.91	06/20/90	5,000.00	06/12/90	6	5,000.00	03/20/90	03/26/90	100.00	20.40	
TOTALS	2,524,435,203.02	3,176,557,452.11	\$50,000,000.00	3,254,702,200.00				23	648.42	03/26/90	04/18/90	100.00	\$9.94	
Percentage fees Due FY-90											0	0.00	\$11.85	2
TOTAL INTEREST AND PENALTIES THROUGH FY-90											0.00	0.00	\$15.19	2
TOTAL INTEREST AND PENALTIES THROUGH FY-90											0.00	0.00	\$11.42	2

Percentage fees Due FY-90

PERIOD FY	GROSS FOOD	REVENUE BOATS	PERCENTAGE FEES DUE	MINIMUM FEES DUE	DOE DATE	AMOUNT PAID	DATE PAID	DAYS OVERDUE	AMOUNT OVERDUE	INTEREST PERIOD COVERED FROM: TO:	2% PENALTY (ONE-TIME)	2% INTEREST (MONTHLY)	COMMENTS
FY91 AT 10% AT 12%													
JULY/90	\$326,038.73	\$31,866.62	\$36,198.61	\$5,416.67	07/20/90	\$5,416.67	07/13/90	0	0.00	07/13/90 08/06/90	0.00	0.00	\$11.15 2
AUGUST/90	341,608.47	22,977.47	36,918.14	\$5,416.67	08/20/90	5,416.67	08/07/90	0	0.00	08/06/90 09/19/90	0.00	0.00	\$20.77 2
SEPTEMBER/90	368,129.20	24,520.52	39,755.38	\$5,416.67	09/20/90	5,416.67	09/19/90	0	0.00	09/19/90 10/17/90	0.00	0.00	\$13.60 2
ADJUSTMENTS: 7/90-9/90 N/A \$33,332.74 \$16,292.30 \$16,029.00 \$15,089.94 \$10,059.90													
OCTOBER/90	241,750.30	11,897.71	25,602.76	\$16,544.25	10/20/90	16,544.25	10/17/90	0	0.00	10/17/90 11/19/90	0.00	0.00	\$16.33 2
NOVEMBER/90	87,271.34	4,036.57	9,211.52	\$16,544.25	11/20/90	16,544.25	11/19/90	0	0.00	11/19/90 12/24/90	0.00	0.00	\$17.70 2
DECEMBER/90	87,135.85	512.03	8,775.03	\$16,544.25	12/20/90	16,544.25	12/24/90	4	16,544.25	12/20/90 12/24/90	330.89	45.00	\$0.00 2
JANUARY/91	22,837.54	0.00	2,283.75	\$16,544.25	01/20/91	16,544.25	12/24/90	0	0.00	12/24/90 02/19/91	0.00	0.00	\$43.79 2
FEBRUARY/91	19,434.10	0.00	1,943.41	\$16,544.25	02/20/91	6,544.00	02/19/91	0	0.00	02/19/91 02/25/91	0.00	0.00	33.33 4
MARCH/91	46,343.11	4,186.68	5,186.71	\$16,544.25	03/20/91	10,000.00	02/25/91	5	10,000.25	02/20/91 02/25/91	260.01	\$19.06 2	
APRIL/91	192,577.49	14,664.79	21,017.52	\$16,544.25	04/20/91	6,544.25	03/11/91	0	0.00	03/20/91 04/01/91	0.00	0.00	140.00 4
MAY/91	442,286.68	31,492.74	48,097.80	\$16,544.25	05/20/91	19,000.00	04/01/91	36	1,788.44	03/11/91 04/16/91	200.00	\$42.92 2	
JUNE/91	634,969.97	29,277.92	67,010.28	\$16,544.25	06/20/91	16,544.25	04/16/91	0	0.00	04/16/91 05/06/91	0.00	0.00	\$24.42 2
TOTAL	\$2,610,882.79	\$173,522.74	\$301,910.91	\$216,531.25				40	1,895.38	06/07/91 07/17/91	0.00	0.00	\$50.54 2
Percentage fees Due FY-91 TOTAL INTEREST AND PENALTIES THROUGH FY-91 \$1,249.10 \$1,945.92													

PERIOD FY	GROSS FOOD	REVENUE BOATS	PERCENTAGE FEES DUE	MINIMUM FEES DUE	DUE DATE	AMOUNT PAID	DATE PAID	DAYS OVERDUE	AMOUNT OVERDUE	INTEREST COVERED FROM: TO:	2% PENALTY (ONE-TIME)	2% INTEREST (MONTHLY)	COMMENTS	
														AT 11%
JULY/91	5624,788.61	542,024.33	74,169.81	\$18,869.43 2,325.18	07/20/91 07/20/91	\$15,544.25 2,325.18	07/17/91 08/12/91	0 23 26	0.00 2,325.18 2,628.08	08/12/91 07/17/91 08/12/91	0.00 46.50	0.00 35.65 \$35.15	4 2	
AUGUST/91	439,148.44	35,828.47	52,964.14	18,869.43 4,650.36	08/20/91 08/20/91	14,219.07 4,650.36	08/12/91 08/11/91	0 22 30	0.00 4,650.36 2,224.44	08/20/91 08/12/91 08/11/91	0.00 93.01	0.00 68.21 \$44.49	4 2	
SEPTEMBER/91	462,291.07	25,647.49	47,579.59	18,869.43 6,975.54	09/20/91 09/20/91	11,893.89 6,975.54	09/11/91 10/11/91	0 21 30	0.00 6,975.54 2,506.10	09/20/91 08/11/91 10/11/91	0.00 139.51	0.00 97.65 \$50.12	4 2	
OCTOBER/91	213,388.26	9,150.03	24,655.61	18,869.43 6,975.54	10/20/91 10/20/91	11,893.89 6,975.54	10/11/91 11/12/91	0 23 32	0.00 6,975.54 2,802.69	10/20/91 10/11/91 11/12/91	0.00 139.51	0.00 166.96 \$59.79	4 2	
NOVEMBER/91	53,157.61	721.50	5,941.13	18,869.43 6,975.54	11/20/91 11/20/91	11,893.89 6,975.54	11/12/91 11/18/91	0 0 26	0.00 0.00 2,862.48	11/20/91 11/12/91 11/12/91	0.00 0.00	0.00 0.00 \$53.43	2	
DECEMBER/91	83,672.73	0.00	9,204.00	18,869.43	12/20/91	18,869.43	12/10/91	0 42	0.00 2,915.91	12/10/91	0.00	0.00 \$81.65	2	
JANUARY/92	13,422.14	0.00	1,476.44	18,869.43	01/20/92	18,869.43	01/21/92	1 23	18,869.43 3,387.53	01/20/92 01/21/92	377.39	12.58 \$51.94	1 2	
FEBRUARY/92	20,238.25	0.00	2,225.11	18,869.43	02/20/92	18,869.43	02/13/92	0 25	0.00 9,439.47	02/13/92	0.00	0.00 \$57.32	2	
MARCH/92	32,820.05	438.81	3,667.25	18,869.43	03/20/92	18,869.43	03/09/92	0 56	0.00 3,496.79	03/09/92	0.00	0.00 \$130.55	2	
APRIL/92	103,444.75	6,876.98	12,272.33	18,869.43	04/20/92	18,869.43	05/04/92	14 8	18,869.43 4,180.84	04/20/92 05/04/92	377.39	176.11 \$22.30	1 2	
MAY/92	457,122.83	30,015.00	54,165.46	18,869.43	05/20/92	18,869.43	05/12/92	0 20	0.00 4,203.14	05/20/92	0.00	0.00 \$56.04	2	
JUNE/92	642,159.35	32,321.23	74,839.29	18,869.43	06/20/92	18,869.43	06/09/92	0 8	0.00 4,259.18	06/09/92	0.00	0.00 \$22.72	2	
TOTAL	\$3,085,525.12	\$189,023.94	\$369,200.86	\$354,335.32									\$2,895.58 \$4,281.90	
Percentage fees Due FY-92														
TOTAL INTEREST AND PENALTIES FY-92													\$2,895.58	
TOTAL INTEREST AND PENALTIES THROUGH FY-92													\$4,281.90	

PERIOD	GROSS FOOD	REVENUE BOATS	PERCENTAGE FEES DUE	MINIMUM FEES DUE	DUE DATE	AMOUNT PAID	DATE PAID	DAYS OVERDUE	AMOUNT OVERDUE	INTEREST PERIOD COVERED		2% PENALTY (ONE-TIME)	2% INTEREST (MONTHLY)	COMMENTS
										FROM	TO			
AT 11%														
AT 13%														
JULY/92	\$733,186.15	\$47,376.17	\$65,809.66	\$18,669.43	07/20/92	\$18,669.43	08/17/92	0	0.00	06/17/92	08/04/92	0.00	\$137.02	2
AUGUST/92	466,984.46	36,186.89	56,662.05	\$18,669.43	08/20/92	\$18,669.43	08/04/92	0	0.00	08/04/92	09/11/92	0.00	\$111.95	2
SEPTEMBER/92	661,165.98	36,632.06	77,490.54	22,409.95	09/20/92	22,409.95	09/16/92	0	0.00	08/11/92	10/18/92	0.00	\$105.72	2
ADJUSTMENTS: 7/92 - 9/92				\$7,651.34	N/A	\$7,651.34	09/11/92							3
				\$70.20		\$70.20	01/16/92							3
OCTOBER/92	295,989.97	11,741.45	34,085.29	22,700.05	10/20/92	22,700.05	10/16/92	0	0.00	10/16/92	11/10/92	0.00	\$77.28	2
NOVEMBER/92	61,145.78	274.37	6,761.70	22,700.05	11/20/92	22,700.05	11/10/92	0	0.00	11/10/92	12/11/92	0.00	\$97.42	2
DECEMBER/92	108,546.18	0.00	11,840.30	22,700.05	12/20/92	22,700.05	12/11/92	0	0.00	12/11/92	01/11/93	0.00	\$99.43	2
JANUARY/93	17,192.23	0.00	1,691.15	22,700.05	01/20/93	22,700.05	01/11/93	0	0.00	01/11/93	02/16/93	0.00	\$117.86	2
FEBRUARY/93	18,172.52	0.00	1,998.98	22,700.05	02/20/93	22,700.05	02/16/93	0	0.00	02/16/93	04/02/93	0.00	\$150.86	2
MARCH/93	48,407.57	1,896.35	5,570.05	22,700.05	03/20/93	15,000.00	04/02/93	13	22,700.05	03/20/93	04/02/93	454.00	196.73	1
						7,700.05	04/14/93	25	7,700.05	04/02/93	04/14/93	0.00	139.18	4
						5,968.54	04/14/93	15	5,968.54	04/14/93	04/29/93	0.00	\$39.69	2
						5,575.03		0	5,575.03			0.00	0.00	5
APRIL/93	290,663.75	33,569.04	36,339.85	22,700.05	04/20/93	8,207.95	04/14/93	9	14,492.10	04/20/93	04/29/93	289.64	86.95	4
						14,492.10	04/29/93	14	5,951.82	04/29/93	05/13/93	0.00	\$55.55	2
MAY/93	466,561.32	29,692.69	55,184.21	22,700.05	05/20/93	22,700.05	05/18/93	0	0.00	05/18/93	06/16/93	0.00	\$136.17	2
JUNE/93	657,448.88	54,004.50	79,339.86	22,700.05	06/20/93	22,700.05	06/16/93	0	0.00	06/16/93	07/20/93	0.00	0.00	2
TOTAL	\$3,828,517.75	\$253,367.57	\$345,074.74	\$266,892.70				34	6,149.54				\$199.25	2
Percentage fees Due FY-93													\$2,000.89	
													\$6,282.79	

PERIOD FY	GROSS FOOD	REVENUE BOATS	PERCENTAGE FEES DUE	MINIMUM FEES DUE	DUPLICATE DATE	AMOUNT PAID	DATE PAID	DAYS OVERDUE	AMOUNT OVERDUE	INTEREST PERIOD COVERED	2% PENALTY (ONE TIME)	2% INTEREST (MONTHLY)	COMMENTS
FY94 AT 11% AT 14%													
JULY/93	\$714,403.38	\$49,038.79	\$85,449.80	\$22,700.05	07/20/93	\$22,700.05	07/20/93	0	0.00	07/20/93 08/17/93	0.00	\$117.28	2
AUGUST/93	549,728.46	34,086.19	65,893.46	\$22,700.05	08/20/93	\$22,700.05	08/17/93	0	0.00	08/17/93 10/12/93	0.00	\$238.94	2
SEPTEMBER/93	675,570.67	35,333.49	79,286.46	\$22,700.05	09/20/93	\$22,700.05	10/12/93	22	22,700.05	09/20/93 10/12/93	454.00	332.93	1
OCTOBER/93	308,319.84	13,218.01	35,765.71	28,379.67	10/20/93	5,679.82	10/12/93	0	0.00	10/12/93 12/02/93	0.00	0.00	4
NOVEMBER/93	57,803.18	2,435.10	6,699.26	28,379.67	11/20/93	28,379.67	12/27/93	37	28,379.67	11/20/93 12/27/93	567.59	700.03	1
DECEMBER/93	143,534.98	0.00	15,788.85	28,379.67	12/20/93	28,379.67	01/10/94	14	5,234.12	12/27/93 01/10/94	0.00	\$48.85	2
JANUARY/94	35,447.69	0.00	3,899.25	28,379.67	01/20/94	28,379.67	02/18/94	29	28,379.67	12/20/93 01/10/94	567.59	\$147.77	2
FEBRUARY/94	26,161.66	0.00	2,877.78	28,379.67	02/20/94	28,379.67	03/08/94	18	6,443.38	02/18/94 03/08/94	567.59	\$63.37	2
MARCH/94	61,996.52	5,236.03	7,552.99	28,379.67	03/20/94	28,379.67	04/07/94	7	7,905.74	04/07/94 04/14/94	0.00	\$340.56	1
APRIL/94	225,455.18	24,388.67	26,211.71	28,379.67	04/20/94	28,379.67	04/14/94	0	0.00	04/07/94 04/14/94	0.00	\$36.89	2
MAY/94	729,096.69	40,089.86	85,814.62	28,379.67	05/20/94	28,379.67	05/20/94	38	7,942.63	04/14/94 05/20/94	0.00	\$190.62	2
JUNE/94	921,936.59	38,142.97	106,753.08	28,379.67	06/20/94	28,379.67	06/08/94	20	8,133.25	05/20/94 06/08/94	0.00	\$108.44	2
TOTALS	\$4,448,458.34	\$246,018.31	\$523,772.98	\$346,217.29	06/20/94	28,379.67	06/08/94	0	0.00	06/08/94 06/27/94	0.00	\$398.90	2
Percentage Fees Due FY - 94													
TOTAL INTEREST AND PENALTIES THROUGH FY-94 \$8,340.60													

Comments Explained

1. This calculation is for interest and penalty charged on the minimum fee payment only during the interest period covered.
2. This calculation is for interest on the total interest and penalties charged during the interest period covered.
3. These are adjustments to the minimum fee payment due based on 75% of the prior year's percentage fees due. No interest or penalty is charged for late payment since TAM paid the fee amount that was owed at the time.
4. The interest calculated is for the remaining balance due on the minimum fee payment during the interest period covered.
5. Late fee paid is used to reduce the total interest and penalties due as of the date it is paid.

TAM CONCESSIONS, INC.
 SCHEDULE OF PAYMENTS (PERCENTAGE FEES)
 JULY 1, 1989 - JUNE 30, 1994

Audit # FN94-241A
 FILENAME:PAY520

MONTH/YEAR	PERCENTAGE FEES DUE	DUE DATE	AMOUNT PAID	DATE PAID	DAYS OVERDUE	AMOUNT OVERDUE	INTEREST PERIOD COVERED		2% PENALTY (ONE-TIME)	2% INTEREST (MONTHLY)	COMMENTS
							FROM	TO			
FY 90											
JULY/90	N/A	N/A	N/A	N/A	0	\$0.00			\$0.00	\$0.00	
AUGUST/90	N/A	N/A	N/A	N/A	0	\$0.00			\$0.00	\$0.00	
SEPTEMBER/90	\$11,707.20	09/20/90	\$11,707.20	10/02/90	12	\$11,707.20	09/20/90	10/02/90	\$234.14	\$95.53	1
					10	\$329.67	10/02/90	10/12/90	\$0.00	\$2.20	2
OCTOBER/90	\$11,000.00	10/20/90	\$11,000.00	10/12/90	0	\$0.00			\$0.00	\$0.00	
					38	\$331.87	10/12/90	11/19/90	\$0.00	\$8.41	2
NOVEMBER/90	\$11,000.00	11/20/90	\$11,000.00	11/19/90	0	\$0.00			\$0.00	\$0.00	
					35	\$340.28	11/19/90	12/24/90	\$0.00	\$7.94	2
DECEMBER/90	\$11,000.00	12/20/90	\$11,000.00	12/24/90	4	\$11,000.00	12/20/90	12/24/90	\$220.00	\$29.92	1
					105	\$598.14	12/24/90	04/08/91	\$0.00	\$41.87	2
JANUARY/91	N/A	N/A	N/A	N/A	0	\$0.00			\$0.00	\$0.00	
					0	\$640.01			\$0.00	\$0.00	2
FEBRUARY/91	N/A	N/A	N/A	N/A	0	\$0.00			\$0.00	\$0.00	
					0	\$640.01			\$0.00	\$0.00	2
MARCH/91	\$20,000.00	03/20/91	\$5,000.00	04/08/91	19	\$20,000.00	03/20/91	04/08/91	\$400.00	\$258.40	1
					3	\$15,000.00	04/08/91	04/11/91	\$0.00	\$31.32	3
					10	\$1,329.73	04/08/91	04/18/91	\$0.00	\$8.86	2
APRIL/91	\$30,000.00	04/20/91	\$20,000.00	04/18/91	0	\$0.00			\$0.00	\$0.00	
					11	\$10,000.00	04/20/91	05/01/91	\$200.00	\$73.33	3
					25	\$1,411.92	04/18/91	05/13/91	\$0.00	\$23.53	2
MAY/91	\$35,000.00	05/20/91	\$25,000.00	05/13/91	0	\$0.00			\$0.00	\$0.00	
					0	\$0.00			\$0.00	\$0.00	
					0	\$0.00			\$0.00	\$0.00	
					9	\$1,435.46	05/13/91	05/22/91	\$0.00	\$8.61	2
JUNE/91	\$55,000.00	06/20/91	\$15,000.00	05/22/91	0	\$0.00			\$0.00	\$0.00	
					0	\$0.00			\$0.00	\$0.00	
					0	\$0.00			\$0.00	\$0.00	
					0	\$0.00			\$0.00	\$0.00	
					0	\$0.00			\$0.00	\$0.00	
					125	\$1,444.07	05/22/91	09/24/91	\$0.00	\$120.34	2

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TOTAL INTEREST AND PENALTIES THROUGH FY-90											\$1,564,411
MONTH/YEAR	PERCENTAGE FEES DUE*	DUE DATE	AMOUNT PAID	DATE PAID	DAYS OVERDUE	AMOUNT OVERDUE	INTEREST PERIOD COVERED		2% PENALTY (ONE TIME)	2% INTEREST (MONTHLY)	COMMENTS
							FROM	TO			
TOTALS											\$204,707.20
FY-91	\$103,379.91	08/25/91	\$25,000.00	09/24/91	30	\$103,379.91	08/25/91	09/24/91	\$2,067.60	\$2,108.95	1
		09/24/91	\$10,000.00	09/30/91	6	\$78,379.91	09/24/91	09/30/91		\$330.23	3
		09/30/91	\$68,379.91	10/21/91	21	\$68,379.91	09/30/91	10/21/91		\$961.94	3
					363	\$7,033.12	09/24/91	09/11/92		\$1,655.13	2
TOTAL INTEREST AND PENALTIES FY-91											\$7,323.64
FY-92	\$136,767.70	08/25/92	\$66,063.70	09/11/92	17	\$136,767.70	08/25/92	09/11/92	\$2,735.35	\$1,581.03	1
		09/11/92	\$4,641.50	09/29/92	18	\$70,704.00	09/11/92	09/29/92		\$900.24	3
		09/29/92	\$33,031.50	11/20/92	52	\$66,062.50	09/29/92	11/20/92		\$2,321.36	3
		11/20/92	\$10,000.00	12/21/92	31	\$33,031.00	11/20/92	12/21/92		\$730.62	3
		12/21/92	\$3,000.00	12/31/92	10	\$23,031.00	12/21/92	12/31/92		\$158.41	3
		12/31/92	\$20,031.00	01/21/93	21	\$20,031.00	12/31/92	01/21/93		\$282.65	3
					396	\$17,397.94	09/11/92	10/12/93		\$4,593.06	2
TOTAL INTEREST AND PENALTIES FY-92											\$13,302.74
FY-93	\$181,674.14	08/25/93	\$181,674.14	10/12/93	48	\$181,674.14	08/25/93	10/12/93	\$3,633.48	\$5,929.84	1
					261	\$31,554.32	10/12/93	06/30/94		\$5,490.45	2
TOTAL INTEREST AND PENALTIES FY-93											\$15,053.78
FY-94**	\$183,216.95	08/25/94	\$80,000.00	09/31/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
			\$50,000.00	09/09/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
			\$15,000.00	10/14/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
			\$38,216.95	11/23/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTALS											\$809,745.90
TOTAL INTEREST AND PENALTIES THROUGH FY-94											\$37,044.78

* Percentage fees due for Fiscal Year 1990 became payable in Fiscal Year 1991 on a monthly basis as per an agreement dated October 4, 1990 between TAM and the Dept. Of Parks And Recreation.

** No interest or penalties charged on payments made for fiscal year 1994 percentage fees due since payments were made after end of audit period (June 30, 1994).

Comments Explained

1. This calculation is for interest and penalty charged on the percentage fee payment only during the interest period covered.
2. This calculation is for interest on the total interest and penalties charged during the interest period covered.
3. The interest calculated is for the remaining balance due on the percentage fee payment during the interest period covered.

TAM CONCESSIONS, INC.
SCHEDULE OF RENT DUE, PENALTIES, & INTEREST (AUDIT ADJUSTMENTS)
JULY 1, 1989 - JUNE 30, 1994

Audit # FN94-241A
FILENAME:PAY620

MONTH/YEAR FY-90	AREA	AUDIT ADJUSTMENT	RENT PERCENTAGE	RENT DUE	TOTAL DUE	DATE DUE	INTEREST COVERED		PERIOD	2% PENALTY (ONE-TIME)	2% INTEREST (MONTHLY)	COMMENTS
							FROM	TO				
JULY/90	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
AUGUST/90	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
SEPTEMBER/90	Promotions Base Salary	2,085.43 2,858.09	10% 10%	208.54 285.81		09/20/90 09/20/90	09/20/90 09/20/90	10/20/90 10/20/90	4.17 5.72	4.17 5.72		1 1
OCTOBER/90	Promotions Base Salary	2,085.43 2,858.09	10% 10%	208.54 285.81	514.13	10/20/90 10/20/90	10/20/90 10/20/90	11/20/90 11/20/90	4.17 5.72	10.63 4.31 5.91		2 1 1
NOVEMBER/90	Promotions Base Salary	2,085.43 2,858.09	10% 10%	208.54 285.81	1,098.21	11/20/90 11/20/90	11/20/90 11/20/90	12/20/90 12/20/90	4.17 5.72	20.78 4.17 5.72		2 1 1
DECEMBER/90	Promotions Base Salary	2,085.43 2,858.09	10% 10%	208.54 285.81	1,574.12	12/20/90 12/20/90	12/20/90 12/20/90	03/20/91 03/20/91	4.17 5.72	94.45 12.51 17.15		2 1 1
JANUARY/91	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
FEBRUARY/91	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
MARCH/91	Promotions Base Salary	2,085.43 2,858.09	10% 10%	208.54 285.81	2,202.46	03/20/91 03/20/91	03/20/91 03/20/91	04/20/91 04/20/91	4.17 5.72	45.52 4.31 5.91		2 1 1
APRIL/91	Promotions Base Salary	2,085.43 2,858.09	10% 10%	208.54 285.81	2,762.44	04/20/91 04/20/91	04/20/91 04/20/91	05/20/91 05/20/91	4.17 5.72	55.25 4.17 5.72		2 1 1
MAY/91	Promotions Base Salary	2,085.43 2,858.09	10% 10%	208.54 285.81	3,331.81	05/20/91 05/20/91	05/20/91 05/20/91	06/20/91 06/20/91	4.17 5.72	68.86 4.31 5.91		2 1 1
JUNE/91	Promotions Base Salary	2,085.43 2,858.09	10% 10%	208.54 285.81	3,915.13	06/20/91 06/20/91	06/20/91 06/20/91	08/25/91 08/25/91	4.17 5.72	172.27 9.18 12.58		2 1 1
TOTALS		39,548.16		3,954.82	TOTAL RENT, PENALTIES, INTEREST THROUGH FY-90			Total Interest and Penalties FY-90	4,613.99	\$658.57		

YEAR	AREA	AUDIT ADJUSTMENT	RENT PERCENTAGE	RENT DUE	TOTAL DUE	DATE DUE	INTEREST PERIOD COVERED		2% PENALTY (ONE-TIME)	2% INTEREST (MONTHLY)	COMMENTS	
							FROM	TO				
FY-91	Promotions	18,235.17	10%	1,823.52	4,613.38	08/25/91	08/25/92		36.47	1,125.67	2	
	Base Salary	47,383.49	10%	4,738.35		08/25/91	08/25/92		94.77	1,156.16	1	
Total Interest and Penalties FY-91										\$2,856.00		
FY-92	Reported vs G/L	23,993.07	11%	3,299.24	14,033.25	08/25/92	08/25/93		65.98	3,414.76	2	
	Promotions	20,897.80	11%	2,298.76		08/25/92	08/25/93		45.98	802.81	1	
	Base Salary	49,753.96	11%	5,472.94		08/25/92	08/25/93		109.46	559.36	1	
	Meats Discount	11,457.88	11%	1,260.37		08/25/92	08/25/93		25.21	1,331.75	1	
	Sales Grat. Disb.	6,706.09	11%	737.67		08/25/92	08/25/93		14.75	306.69	1	
	Total Interest and Penalties FY-92										\$6,856.25	
	Total Interest and Penalties FY-93										6,995.44	2
	FY-93	Reported vs G/L	(13,920.01)	11%	(1,531.20)		08/25/93	06/30/94		62.22	640.91	1
		Promotions	28,283.73	11%	3,111.21		08/25/93	06/30/94		176.46	1,817.49	1
		Base Salary	80,207.05	11%	8,822.78		08/25/93	06/30/94		120.45	1,240.68	1
Meats Discount		54,752.14	11%	6,022.74		08/25/93	06/30/94					
Parties		(490.94)	11%	(54.00)		08/25/93	06/30/94					
Fast Food		(68.37)	11%	(7.52)		08/25/93	06/30/94		0.64	6.61	1	
Cafe		291.59	11%	32.07		08/25/93	06/30/94		29.72	306.08	1	
Sales Grat. Disb.		13,507.44	11%	1,485.82		08/25/93	06/30/94					
Total Interest and Penalties FY-93										\$13,396.71		
Total Interest and Penalties FY-94												
FY-94**	Reported vs G/L	5,591.92	11%	615.11	63,237.06	08/25/94	N/A		N/A	N/A		
	Promotions	30,100.62	11%	3,311.07		08/25/94	N/A		N/A	N/A		
	Base Salary	75,011.02	11%	8,251.21		08/25/94	N/A		N/A	N/A		
	Meats Discount	64,277.07	11%	7,070.48		08/25/94	N/A		N/A	N/A		
	Parties	57,490.09	11%	6,323.91		08/25/94	N/A		N/A	N/A		
	Fast Food	84.65	11%	9.31		08/25/94	N/A		N/A	N/A		
	Cafe	3,939.81	11%	433.38		08/25/94	N/A		N/A	N/A		
	Boats	32.79	11%	3.61		08/25/94	N/A		N/A	N/A		
	Sales Grat. Disb.	20,693.61	11%	2,276.30		08/25/94	N/A		N/A	N/A		
	Total Interest and Penalties FY-94										\$24,769.52	
TOTALS											\$91,531.43	

* Percentage fees due for Fiscal Year 1990 became payable in Fiscal Year 1991 on a monthly basis as per an agreement dated October 4, 1990 between IAM and the Dept. Of Parks And Recreation.

** No interest or penalties charged for audit adjustments for Fiscal Year 1994 since percentage fees become due after the end of the audit period (June 30, 1994).



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10021

Henry J. Stern
Commissioner

Joanne G. Imohiosen
Assistant Commissioner
Revenue

May 17, 1995

Mr. Roger D. Liwer
Deputy Comptroller for Audits & Engineering
The City of New York
Office of the Comptroller
161 William Street, Room 200
New York, NY 10038-2607

Re: Audit Report on Licensing Fees Due from TAM Concessions,
Inc. and Compliance with its License Agreement
July 1, 1989 to June 30, 1994
Audit Report No. FN 94-241A

Dear Mr. Liwer:

This letter responds to the findings and recommendations presented in the subject audit of TAM Concessions, Inc. (TAM).

The audit report recommends that TAM pay an assessment of \$174,261, comprised of license fees on adjusted Gross Receipts totaling \$69,757, and Penalties and Interest charges amounting to \$104,504. Of this total assessment Parks agrees with, and has billed TAM for \$89,669, consisting of \$38,746 in additional license fees and \$50,923 in penalty and interest charges. A copy of Parks' Notice To Cure to TAM is attached for your information.

Attachment A of the Notice to Cure summarizes the items with which Parks agrees with the audit findings, and have billed TAM. Our position on Meals Discounts, Promotional Meals and the A.I.D.'s Research charity event, is that these components represent operating and marketing expenses, rather than elements of revenue. TAM properly reported the total revenue which they received for discounted meals, and since no income was realized for promotional meals or the charity event, no fees should be assessed against these expense categories.

Roger Liwer
May 17, 1995
Page 2

Furthermore, it would be totally insensitive to assess a fee against the value of a charity event which would not have taken place at the facility had the site and food not been donated. The contribution by TAM clearly represents a goodwill promotional gesture that will benefit the business.

As a point of information it should be noted that TAM, through their marketing and advertising strategies, has nearly doubled their income from F/Y 90 to F/Y 94, and license fees paid to Parks have increased 100%, from \$264 thousand in F/Y 90 to \$528 thousand in F/Y 94. TAM's business plan covering the operation of their Loeb Boathouse facility has proven to be very successful, and Parks and the City have also greatly benefitted economically from their prosperity.

The attached Schedules I, II and III, represent a recalculation of the assessed Penalty and Interest charges summarized in audit report Appendices II, III and IV. In accordance with Article 38 of the General Provisions of TAM's license agreement, our computations included no penalty and interest charges for late payments of 10 days or less. Also, interest charges were not immediately compounded against principal plus penalty amounts during the first 30 days. Interest was applied after the first month which had been covered by the initial 2% penalty.

The audit states that Parks enforcement of TAM's contract has been inadequate because the late payment penalty provisions were not strictly enforced. In the past, TAM's pattern of paying late, although chronic, had not been a serious issue. Parks therefore took a more liberal approach in exercising late penalties. However, after recognizing that TAM was not making any effort to correct their payment deficiency we became stricter in our enforcement of the late payment provision. From March 1993 to June 1994, Parks has assessed, and TAM has paid almost \$7,000 in late penalties.

The revised Penalty and Interest total of \$50,923 represents a substantial and equitable assessment against TAM as retribution for their late payment practices. We will continue to monitor the timeliness of TAM's payments, and will apply late penalties and interest when required.

Roger Liwer
May 17, 1995
Page 3

Recommendations 3, 4, and 5 of the audit report are addressed in our Notice To Cure to TAM. TAM has been instructed to include all amounts collected as Sales Gratuities in Gross Receipts reported to Parks, and to take corrective action to preclude any recurrence of the accounting deficiencies cited in the audit. We received TAM's certified financial statements for 1993 and 1994, and have requested in the future that they comply in a more timely manner.

We thank you for the efforts of your staff in performing this audit and for the disclosures and recommendations contained in the report.

Sincerely,



Joanne Imohiosen

cc: H. Stern



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10021

Henry J. Stern
Commissioner

Joanne G. Imohiosen
Assistant Commissioner
Revenue

May 16, 1995

CERTIFIED MAIL R.R.R.

Mr. Frank Cretella, CEO
TAM Restaurant Group
1163 Forest Avenue
Staten Island, NY 10310

Re: NOTICE TO CURE
Audit Report on Licensing Fees Due from TAM Concessions,
Inc. and Compliance with its License Agreement
July 1, 1989 to June 30, 1994
Audit Report No. FN 94-241A

Dear Mr. Cretella:

We have received a Draft report covering the subject audit of TAM Concessions, Inc. (TAM), whose corporate name has been changed effective 5/4/93, to TAM Restaurant Group. The findings and recommendations contained in that document are addressed below.

TAM was assessed \$174,261 of additional rent, comprised of license fees on adjusted Gross Receipts totaling \$69,757, and Penalties and Interest amounting to \$104,504. Of the total assessment recommendation, Parks agrees that TAM owes at least \$89,669 consisting of \$38,746 in additional license fees and \$50,923 in penalty and interest charges.

The attached spreadsheet summary (Attachment A), identifies those findings where we concur with the audit report, and those adjustments which we take exception to. We have billed TAM for the additional fees associated with underreported gross receipts based on: erroneous Base Salary deductions; misposted Party and Cafe revenue (excluding the \$40,400 AID's research charity party); differences between amounts posted in TAM's general ledger and the amounts reported to Parks; and commissions erroneously deducted from revenue as Sales Gratuities.

Frank Cretella
May 16, 1995
Page 2

Our Agency response to the Comptroller will discuss Parks position to allow the exclusion of Meals Discounts, Promotional Meals, and Charity Party revenue from reportable Gross Receipts. However, pending the final resolution of these items, the unbilled balance of the audit adjustment assessment, which totals \$31,011, will remain open and may be charged to TAM at a later date.

The Penalty and Interest assessment of \$50,923 is based on our recalculation of the Comptroller's numbers in Appendices II, III and IV. Following is a summary of the above total:

Recalculated Penalties and Interest On

Minimum Fees	\$ 9,377
Audit Adjustments	13,796
Percentage Fees	<u>27,750</u>
TOTAL	<u>\$50,923</u>

The reduced total is attributable to the lower audit adjustment assessment, and the use of a different calculation methodology. Our computations excluded any late payments of ten days or less, and did not immediately apply interest against principal plus penalty totals for the entire late period; any imposed late penalty covered the first 30 days, during which interest charges were not applied. Again, until we reach a final resolution of this assessment with the Comptroller's Office, the unbilled penalty and interest balance in the amount \$53,581 will remain open and may be charged to TAM at a later date.

Pursuant to the above findings, hereby, we request that TAM Restaurant Group remit a check, made payable to CITY OF NEW YORK PARKS AND RECREATION, in the amount of \$89,669, within fifteen (15) days from the date of this letter. Failure to comply with this request shall represent a material breach of TAM's license agreement with the City.

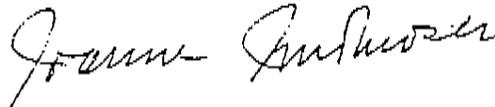
TAM shall also make certain that all amounts collected as Sales Gratuities are included in Gross Receipts reported to Parks, and that corrective action shall be taken by TAM to preclude any recurrence of the accounting deficiencies cited in the audit.

Frank Cretella
May 16, 1995
Page 3

Furthermore, we acknowledge receipt of TAM's annual certified financial statements for the years 1993 and 1994. We request that in the future TAM comply with this reporting requirement in a timely manner, within sixty (60) days after the end of each operating year.

We appreciate your cooperation and prompt reply to this Notice.

Sincerely,



Joanne Imohiosen

cc: J. Amodio, TAM

TAM CONCESSIONS, INC.
 COMPTROLLER'S AUDIT NO. FN94-241A
 ANALYSIS OF PRELIMINARY DRAFT FINDINGS

MONTH/ YEAR	AUDIT ADJUSTMENTS										TOTAL AUDIT ADJUSTMENTS
	BASE SALARY	MEALS DISCOUNT	PROMOTIONAL MEALS	PARTIES	CAFE	TOTAL PARTIES & CAFE	REPORTED G.R. VS.GIL	SALES GRATUITIES			
SEP 90	\$2,858.09		\$2,085.43								\$4,943.52
OCT 90	\$2,858.09		\$2,085.43								\$4,943.52
NOV 90	\$2,858.09		\$2,085.43								\$4,943.52
DEC 90	\$2,858.09		\$2,085.43								\$4,943.52
MAR 91	\$2,858.09		\$2,085.43								\$4,943.52
APR 91	\$2,858.09		\$2,085.43								\$4,943.52
MAY 91	\$2,858.09		\$2,085.43								\$4,943.52
JUN 91	\$2,858.09		\$2,085.43								\$4,943.52
FY 91	\$47,383.49		\$18,235.17								\$65,618.66
FY 92	\$49,753.96	\$11,457.88	\$20,997.80					\$29,993.07	\$6,706.09		\$118,808.80
FY 93	\$80,207.05	\$54,752.14	\$28,283.73	(\$490.94)	\$291.59	(\$199.95)		(\$13,920.01)	\$13,507.44		\$162,631.00
FY 94	\$75,011.02	\$64,277.07	\$30,100.62	\$57,490.09	\$3,939.81	\$61,429.90		\$5,591.92	\$20,693.61		\$257,104.14
TOTAL ADD'L G.R.'S	\$275,220.24	\$130,487.09	\$114,200.76	\$56,999.15	\$4,231.40	\$61,230.55		\$21,664.98	\$40,907.14		\$643,710.76
DISPUTED TOTALS	\$0.00	(\$130,487.09)	(\$114,200.76)	(\$40,400.00)	\$0.00	(\$40,400.00)		\$0.00	\$0.00		(\$285,087.85)
ADJUSTED BALANCE	\$275,220.24	\$0.00	\$0.00	\$16,599.15	\$4,231.40	\$20,830.55		\$21,664.98	\$40,907.14		\$359,622.91
ADDITIONAL RENT DUE PER COMPTROLLER	\$29,571.76	\$14,353.59	\$12,212.88	\$6,269.91	\$465.45	\$6,735.36		\$2,383.15	\$4,499.79		\$69,756.53
DISPUTED FEES	\$0.00	(\$14,353.59)	(\$12,212.88)	(\$4,444.00)	\$0.00	(\$4,444.00)		\$0.00	\$0.00		(\$31,010.47)
ADJUSTED BALANCE	\$29,571.76	\$0.00	\$0.00	\$1,825.91	\$465.45	\$2,291.36		\$2,383.15	\$4,499.79		\$39,746.06

TAM CONCESSIONS, INC.
RECALCULATION OF PENALTIES & INTEREST
JULY 1, 1989 - JUNE 30, 1994

PERIOD COVERED	DUE DATE	MINIMUM FEES DUE	DATE PAID	DAYS LATE	AMOUNT PAID	2% PENALTY	2% INTEREST	BALANCE	FY BALANCE
FY 90									
7/10-8/9/89	7/10/89	\$5,000.00	7/13/89	3	(\$5,000.00)	\$0.00	\$0.00	\$0.00	\$0.00
8/10-9/9/89	8/10/89	\$5,000.00	8/15/89	5	(\$5,000.00)	\$0.00	\$0.00	\$0.00	\$0.00
9/10-10/9/89	9/10/89	\$5,000.00	9/26/89	16	(\$5,000.00)	\$100.00	\$0.00	\$100.00	\$100.00
10/10-11/9/89	10/10/89	\$5,000.00	10/17/89	7	(\$5,000.00)	\$0.00	\$2.00	\$102.00	\$102.00
11/10-12/9/89	11/10/89	\$5,000.00	11/20/89	10	(\$5,000.00)	\$0.00	\$2.04	\$104.04	\$104.04
12/10/89-1/9/90	12/10/89	\$5,000.00	12/28/89	18	(\$5,000.00)	\$100.00	\$2.08	\$206.12	\$206.12
1/10-2/9/90	1/10/90	\$5,000.00	1/22/90	12	(\$5,000.00)	\$100.00	\$4.12	\$310.24	\$310.24
2/10-3/9/90	2/10/90	\$5,000.00	3/5/90	23	(\$5,000.00)	\$100.00	\$6.20	\$416.45	\$416.45
3/10-4/9/90	3/10/90	\$5,000.00	3/28/90	18	(\$5,000.00)	\$100.00	\$8.33	\$524.78	\$524.78
4/10-5/9/90	4/10/90	\$5,000.00	4/18/90	8	(\$5,000.00)	\$0.00	\$10.50	\$535.27	\$535.27
5/10-6/9/90	5/10/90	\$5,000.00	5/15/90	5	(\$5,000.00)	\$0.00	\$10.71	\$545.98	\$545.98
6/10-7/9/90	6/10/90	\$5,000.00	6/12/90	2	(\$5,000.00)	\$0.00	\$10.92	\$556.90	\$556.90
TOTALS FY 90		\$60,000.00			(\$60,000.00)	\$500.00	\$56.90		

FY 91									
Beginning Balance								\$556.90	
7/10-8/9/90	7/10/90	\$5,416.67	7/13/90	3	(\$5,416.67)	\$0.00	\$11.14	\$568.04	
8/10-9/9/90	8/10/90	\$5,416.67	8/7/90	0	(\$5,416.67)	\$0.00	\$11.36	\$579.40	
9/10-10/9/90	9/10/90	\$5,416.67	9/19/90	9	(\$5,416.67)	\$0.00	\$11.59	\$590.99	
10/10-11/9/90	10/10/90	\$16,544.25	10/17/90	7	(\$16,544.25)	\$0.00	\$11.82	\$602.81	
11/10-12/9/90	11/10/90	\$16,544.25	11/19/90	9	(\$16,544.25)	\$0.00	\$12.06	\$614.86	
12/10/90-1/9/91	12/10/90	\$16,544.25	12/24/90	14	(\$16,544.25)	\$330.89	\$12.30	\$958.04	
1/10-2/9/91	1/10/91	\$16,544.25	12/24/90	0	(\$16,544.25)	\$0.00	\$19.16	\$977.21	
2/10-3/9/91	2/10/91	\$16,544.25	2/19/91	9	(\$6,544.00)	\$330.89	\$19.54	\$11,327.88	
3/10-4/9/91	3/10/91	\$16,544.25	2/25/91	15	(\$10,000.00)	\$0.00	\$0.00	\$1,327.88	
4/10-5/9/91	4/10/91	\$16,544.25	3/11/91	1	(\$6,544.25)	\$330.89	\$26.56	\$11,685.33	
5/10-6/9/91	5/10/91	\$16,544.25	4/1/91	21	(\$10,000.00)	\$0.00	\$0.00	\$1,685.33	
6/10-7/9/91	6/10/91	\$16,544.25	4/16/91	6	(\$16,544.25)	\$0.00	\$33.71	\$1,719.03	
TOTALS FY 91		\$165,148.26			(\$165,148.01)	\$992.66	\$238.68		\$1,231.58

TAM CONCESSIONS, INC.
RECALCULATION OF PENALTIES & INTEREST
JULY 1, 1989 - JUNE 30, 1994

PERIOD COVERED	DUE DATE	MINIMUM FEES DUE	DATE PAID	DAYS LATE	AMOUNT PAID	2% PENALTY	2% INTEREST	BALANCE	FY BALANCE
FY 92									
Beginning Balance								\$1,788.48	
7/10-8/9/91	7/10/91	\$18,869.43	7/17/91	7	(\$16,544.25)	\$377.39	\$35.77	\$4,526.82	
			8/12/91	33	(\$2,325.18)	\$0.00	\$90.54	\$2,292.17	
8/10-9/9/91	8/10/91	\$18,869.43	8/12/91	2	(\$14,219.07)	\$377.39	\$0.00	\$7,319.92	
			9/11/91	32	(\$4,650.36)	\$0.00	\$146.40	\$2,815.96	
9/10-10/9/91	9/10/91	\$18,869.43	9/11/91	1	(\$11,893.89)	\$377.39	\$0.00	\$10,168.89	
			10/11/91	31	(\$6,975.54)	\$0.00	\$203.38	\$3,396.73	
10/10-11/9/91	10/10/91	\$18,869.43	10/11/91	1	(\$11,893.89)	\$377.39	\$0.00	\$10,749.66	
			11/12/91	33	(\$6,975.54)	\$0.00	\$214.99	\$3,989.11	
11/10-12/9/91	11/10/91	\$18,869.43	11/12/91	2	(\$11,893.89)	\$0.00	\$0.00	\$10,964.65	
			11/18/91	8	(\$6,975.54)	\$0.00	\$0.00	\$3,989.11	
12/10/91-1/9/92	12/10/91	\$18,869.43	12/10/91	0	(\$18,869.43)	\$0.00	\$79.78	\$4,068.89	
1/10-2/9/92	1/10/92	\$18,869.43	1/21/92	11	(\$18,869.43)	\$377.39	\$81.38	\$4,527.66	
2/10-3/9/92	2/10/92	\$18,869.43	2/13/92	3	(\$18,869.43)	\$0.00	\$90.55	\$4,618.21	
3/10-4/9/92	3/10/92	\$18,869.43	3/9/92	0	(\$18,869.43)	\$0.00	\$92.36	\$4,710.58	
4/10-5/9/92	4/10/92	\$18,869.43	5/4/92	24	(\$18,869.43)	\$377.39	\$94.21	\$5,182.18	
5/10-6/9/92	5/10/92	\$18,869.43	5/12/92	2	(\$18,869.43)	\$0.00	\$103.64	\$5,285.82	
6/10-7/9/92	6/10/92	\$18,869.43	6/9/92	0	(\$18,869.43)	\$0.00	\$105.72	\$5,391.54	
TOTALS FY 92		\$226,433.16			(\$226,433.16)	\$2,264.33	\$1,338.72		\$3,603.06
FY 93									
Beginning Balance								\$5,391.54	
7/10-8/9/92	7/10/92	\$18,869.43	6/17/92	0	(\$18,869.43)	\$0.00	\$107.83	\$5,499.37	
8/10-9/9/92	8/10/92	\$18,869.43	8/04/92	0	(\$18,869.43)	\$0.00	\$109.99	\$5,609.36	
9/10-10/9/92	9/10/92	\$22,499.95	9/11/92	1	(\$22,409.95)	\$0.00	\$112.19	\$5,721.55	
10/10-11/9/92	10/10/92	\$22,700.05	10/16/92	6	(\$22,700.05)	\$0.00	\$114.43	\$5,835.98	
11/10-12/9/92	11/10/92	\$22,700.05	11/10/92	0	(\$22,700.05)	\$0.00	\$116.72	\$5,952.70	
12/10/92-1/9/93	12/10/92	\$22,700.05	12/11/92	1	(\$22,700.05)	\$0.00	\$119.05	\$6,071.75	
1/10-2/9/93	1/10/93	\$22,700.05	1/11/93	1	(\$22,700.05)	\$0.00	\$121.43	\$6,193.18	
2/10-3/9/93	2/10/93	\$22,700.05	2/16/93	6	(\$22,700.05)	\$0.00	\$123.66	\$6,317.05	
3/10-4/9/93	3/10/93	\$22,700.05	4/02/93	23	(\$15,000.00)	\$454.00	\$126.34	\$14,597.44	
			4/14/93	35	(\$7,700.05)	\$0.00	\$291.95	\$7,189.34	
			4/14/93		(\$454.01)	\$0.00	\$0.00	\$6,735.33	
4/10-5/9/93	4/10/93	\$22,700.05	4/14/93	4	(\$8,207.95)	\$454.00	\$0.00	\$21,681.43	
			4/29/93	19	(\$14,492.10)	\$0.00	\$0.00	\$7,189.33	
5/10-6/9/93	5/10/93	\$22,700.05	5/13/93	3	(\$22,700.05)	\$0.00	\$143.79	\$7,333.12	
6/10-7/9/93	6/10/93	\$22,700.05	6/16/93	6	(\$22,700.05)	\$0.00	\$146.66	\$7,479.78	
TOTALS FY 93		\$264,449.26			(\$264,903.27)	\$908.00	\$1,634.25		\$2,088.24

TAM CONCESSIONS, INC.
 RECALCULATION OF PENALTIES & INTEREST
 JULY 1, 1989 - JUNE 30, 1994

PERIOD COVERED	DUE DATE	MINIMUM FEES DUE	DATE PAID	DAYS LATE	AMOUNT PAID	2% PENALTY	2% INTEREST	BALANCE	FY BALANCE
<u>FY 94</u>									
Beginning Balance								\$7,479.78	
7/10-8/9/93	7/10/93	\$22,700.05	7/20/93	10	(\$22,700.05)	\$0.00	\$149.60	\$7,629.38	
8/10-9/9/93	8/10/93	\$22,700.05	8/17/93	7	(\$22,700.05)	\$0.00	\$152.59	\$7,781.96	
9/10-10/9/93	9/10/93	\$22,700.05				\$454.00	\$155.64	\$31,091.65	
10/10-11/9/93	10/10/93	\$28,379.67	10/12/93	32	(\$22,700.05)	\$0.00	\$621.83	\$9,018.44	
Late Fee Pd			10/12/93	2	(\$5,679.62)	\$567.59	\$0.00	\$32,281.08	
11/10-12/9/93	11/10/93	\$28,379.67	10/12/93	53	(\$9,693.48)	\$0.00	\$572.95	\$28,647.60	
12/10/93-1/9/94	12/10/93	\$28,379.67	12/2/93	47	(\$28,379.67)	\$567.59	\$0.00	\$35,520.50	
Late Fee Pd			12/27/93	31	(\$1,143.42)	\$0.00	\$712.03	\$35,467.77	
1/10-2/9/94	1/10/94	\$28,379.67	1/10/94	31	(\$28,379.67)	\$567.59	\$0.00	\$36,880.91	
Late Fee Pd			1/10/94	39	(\$564.59)	\$0.00	\$726.33	\$36,316.38	
2/10-3/9/94	2/10/94	\$28,379.67	2/18/94	26	(\$28,379.67)	\$567.59	\$0.00	\$9,230.63	
Late Fee Pd			3/8/94	28	(\$567.59)	\$567.59	\$173.26	\$8,663.04	
3/10-4/9/94	3/10/94	\$28,379.67	4/7/94	4	(\$28,379.67)	\$0.00	\$176.73	\$9,403.90	
Late Fee Pd			4/7/94	10	(\$567.59)	\$0.00	\$180.26	\$8,836.31	
4/10-5/9/94	4/10/94	\$28,379.67	4/14/94	0	(\$28,379.67)	\$0.00	\$183.87	\$9,013.03	
5/10-6/9/94	5/10/94	\$28,379.67	5/20/94	0	(\$28,379.67)	\$0.00	\$4,514.43	\$9,193.30	
6/10-7/9/94	6/10/94	\$323,517.18	6/9/94	0	(\$323,517.18)	\$3,859.56	\$0.00	\$9,377.16	
TOTALS FY 94								\$1,897.38	
TOTAL LATE PAYMENT PENALTIES AND INTEREST DUE ON MINIMUM FEES JULY 1, 1989 TO JUNE 30, 1994									\$9,377.16

Late Penalties were applied to Minimum Fees paid over 10 days late.
 Interest was calculated on the unpaid balance as of the 10th of each month.

SCHEDULE OF RENT DUE, PENALTIES, & INTEREST (AUDIT ADJUSTMENTS)

JULY 1, 1989 - JUNE 30, 1994 (RECALCULATION OF PENALTIES AND INTEREST)

MONTH/YEAR FY-90	AREA	AUDIT ADJUSTMENT	RENT PERCENTAGE	RENT DUE	TOTAL DUE	DATE DUE	INTEREST COVERED		2% PENALTY (ON TIME)	2% INTEREST (MONTHLY)	COMMENTS
							FROM	TO			
JULY/90	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
AUGUST/90	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
SEPTEMBER/90	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81		09/10/90 09/10/90	09/10/90 09/10/90	0.00 5.72	0.00 0.00		1 1
OCTOBER/90	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	291.53	10/10/90 10/10/90	10/10/90 10/10/90	0.00 5.72	6.02 0.00		2 1 1
NOVEMBER/90	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	589.08	11/10/90 11/10/90	11/10/90 11/10/90	0.00 5.72	11.78 0.00		2 1 1
DECEMBER/90	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	892.38	12/10/90 12/10/90	12/10/90 12/10/90	0.00 5.72	53.54 0.00		2 1 1
JANUARY/91	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
FEBRUARY/91	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
MARCH/91	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	1,246.89	03/10/91 03/10/91	03/10/91 03/10/91	0.00 5.72	25.81 0.00		2 1 1
APRIL/91	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	1,566.22	04/10/91 04/10/91	04/10/91 04/10/91	0.00 5.72	31.32 0.00		2 1 1
MAY/91	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	1,889.07	05/10/91 05/10/91	05/10/91 05/10/91	0.00 5.72	39.04 0.00		2 1 1
JUNE/91	Promotions Base Salary	0.00 2,858.09	10% 10%	0.00 285.81	2,219.63	06/10/91 06/10/91	06/10/91 06/10/91	0.00 5.72	97.66 0.00		2 1 1
TOTALS		22,864.73		2,286.47	2,286.47				2,815.68		

Total Interest and Penalties FY-90

\$329.21

SCHEDULE OF RENT DUE, PENALTIES, & INTEREST (AUDIT ADJUSTMENTS)
JULY 1, 1989 - JUNE 30, 1994 (RECALCULATION OF PENALTIES AND INTEREST)

YEAR	AREA	AUDIT ADJUSTMENT	RENT PERCENTAGE	RENT DUE	TOTAL DUE	DATE DUE	INTEREST COVERED		2% PENALTY (ONE-TIME)	2% INTEREST (MONTHLY)	COMMENTS
							FROM	TO			
FY-91	Promotions	0.00	10%	0.00	-2,615.68	08/15/91	08/15/91	08/15/92	0.00	638.23	2
	Base Salary	47,383.49	14%	4,738.35		08/15/91	08/15/91	08/15/92	94.77	1,061.39	1
Total Interest and Penalties FY-91											\$179,138
FY-92	Reported vs G/L	29,983.07	11%	3,299.24	9,146.42	08/15/92	08/15/92	08/15/93	65.98	2,226.11	2
	Promotions	0.00	11%	0.00		08/15/92	08/15/92	08/15/93	0.00	736.83	1
	Base Salary	49,733.96	11%	5,472.94		08/15/92	08/15/92	08/15/93	109.46	1,222.29	1
	Meals Discount	0.00	11%	0.00		08/15/92	08/15/92	08/15/93	0.00	0.00	1
	Sales Grat. Disb.	6,706.09	11%	737.67		08/15/92	08/15/92	08/15/93	14.75	164.75	1
	Total Interest and Penalties FY-92										
Total Interest and Penalties FY-91-92											4,933.53
FY-93	Reported vs G/L	(13,920.01)	11%	(1,531.20)	23,198.44	08/15/93	08/15/93	06/30/94	0.00	0.00	1
	Promotions	0.00	11%	0.00		08/15/93	08/15/93	06/30/94	176.46	1,999.85	1
	Base Salary	60,207.05	11%	6,622.78		08/15/93	08/15/93	06/30/94	0.00	0.00	1
	Meals Discount	0.00	11%	0.00		08/15/93	08/15/93	06/30/94	0.00	0.00	1
	Parties	(490.94)	11%	(54.00)		08/15/93	08/15/93	06/30/94	0.64	6.18	1
	Fast Food	(68.37)	11%	(7.52)		08/15/93	08/15/93	06/30/94	29.72	286.27	1
Cafe	291.59	11%	32.07		08/15/93	08/15/93	06/30/94				
Total Interest and Penalties FY-93											\$7,132.65
FY-94**	Reported vs G/L	5,591.92	11%	615.11	39,079.03	08/15/94	N/A	N/A	N/A	N/A	
	Promotions	0.00	11%	0.00		08/15/94	N/A	N/A	N/A	N/A	
	Base Salary	75,011.02	11%	8,251.21		08/15/94	N/A	N/A	N/A	N/A	
	Meals Discount	0.00	11%	0.00		08/15/94	N/A	N/A	N/A	N/A	
	Parties	17,090.09	11%	1,879.81		08/15/94	N/A	N/A	N/A	N/A	
	Fast Food	84.85	11%	9.31		08/15/94	N/A	N/A	N/A	N/A	
Cafe	3,939.81	11%	433.38		08/15/94	N/A	N/A	N/A	N/A		
Boats	32.79	11%	3.61		08/15/94	N/A	N/A	N/A	N/A		
Total Interest and Penalties FY-94											\$13,796.42
Total Interest and Penalties FY-90 TO FY-94											\$52,547.88
TOTALS											39,791.44

TOTAL RENT, PENALTIES, INTEREST THROUGH FY-94

TAM CONCESSIONS, INC.
SCHEDULE OF RENT DUE, PENALTIES, & INTEREST (AUDIT ADJUSTMENTS)
JULY 1, 1989 - JUNE 30, 1994 (RECALCULATION OF PENALTIES AND INTEREST)

* Percentage fees due for Fiscal Year 1990 became payable in Fiscal Year 1991 on a monthly basis as per an agreement dated October 4, 1990 between TAM and the Dept. Of Parks And Recreation.

** No interest or penalties charged for audit adjustments for Fiscal Year 1994 since percentage fees become due after the end of the audit period (June 30, 1994).

Comments Explained

1. This calculation is for interest and penalty charged on the audit adjustment only during the interest period covered.
2. This calculation is for interest and penalties on the sum of the audit adjustments to date and the interest and penalties to date for the interest period covered.

SCHEDULE III
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SCHEDULE OF PAYMENTS (PERCENTAGE FEES)
JULY 1, 1989 - JUNE 30, 1994
(RECALCULATION OF PENALTIES AND INTEREST)

MONTH/YEAR	PERCENTAGE FEES DUE*	DUE DATE	AMOUNT PAID	DATE PAID	DAYS OVERDUE	AMOUNT OVERDUE	INTEREST PERIOD COVERED		2% PENALTY (ONE TIME)	2% INTEREST (MONTHLY)	COMMENTS
							FROM	TO			
<u>FY-91</u>	\$103,379.91	08/15/91	\$25,000.00	09/24/91	40	\$103,379.91	08/15/91	09/24/91	\$2,067.60	\$702.98	1
		09/24/91	\$10,000.00	09/30/91	6	\$78,379.91	08/24/91	09/30/91		\$313.52	3
		09/30/91	\$68,379.91	10/21/91	21	\$68,379.91	09/30/91	10/21/91		\$957.32	3
					326	\$5,813.95	10/21/91	09/11/92		\$1,263.57	2
							TOTAL INTEREST AND PENALTIES FY-91			\$5,308.99	
<u>FY-92</u>	\$136,767.70	08/15/92	\$66,063.70	09/11/92	27	\$136,767.70	08/15/92	09/11/92	\$2,735.95	\$0.00	1
		09/11/92	\$4,641.50	09/29/92	18	\$70,704.00	09/11/92	09/29/92		\$848.45	3
		09/29/92	\$33,031.50	11/20/92	52	\$68,062.50	09/29/92	11/20/92		\$2,290.17	3
		11/20/92	\$10,000.00	12/21/92	31	\$33,031.00	11/20/92	12/21/92		\$682.64	3
		12/21/92	\$3,000.00	12/31/92	10	\$23,031.00	12/21/92	12/31/92		\$153.54	3
		12/31/92	\$20,031.00	01/21/93	21	\$20,031.00	12/31/92	01/21/93		\$280.43	3
					284	\$14,068.10	01/21/93	10/12/93		\$2,475.99	2
							TOTAL INTEREST AND PENALTIES FY-92			\$8,366.57	
<u>FY-93</u>	\$181,674.14	08/15/93	\$181,674.14	10/12/93	58	\$181,674.14	08/15/93	10/12/93	\$3,633.48	\$3,459.08	1
					261	\$23,636.64	10/12/93	06/30/94		\$4,112.78	2
							TOTAL INTEREST AND PENALTIES FY-93			\$11,205.33	
<u>FY-94**</u>	\$183,216.95	08/15/94	\$80,000.00	08/31/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
			\$50,000.00	09/09/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
			\$15,000.00	10/14/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
			\$38,216.95	11/23/94	N/A	N/A	N/A	N/A	N/A	N/A	N/A
					0	\$27,749.42	N/A	N/A	N/A	N/A	2
							TOTAL INTEREST AND PENALTIES FY-94			\$0.00	
TOTALS:	\$809,745.90		\$809,745.90				TOTAL INTEREST AND PENALTIES THROUGH FY-94			\$27,749.42	

* Percentage fees due for Fiscal Year 1990 became payable in Fiscal Year 1991 on a monthly basis as per an agreement dated October 4, 1990 between TAM and the Dept. Of Parks And Recreation.

** No interest or penalties charged on payments made for fiscal year 1994 percentage fees due since payments were made after end of audit period (June 30, 1994).

Comments Explained

1. This calculation is for interest and penalty charged on the percentage fee payment only during the interest period covered.
2. This calculation is for interest on the total interest and penalties charged during the interest period covered.
3. The interest calculated is for the remaining balance due on the percentage fee payment during the interest period covered.

SCHEDULE III
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SCHEDULE OF PAYMENTS (PERCENTAGE FEES)
JULY 1, 1989 - JUNE 30, 1994
(RECALCULATION OF PENALTIES AND INTEREST)

MONTH/YEAR	PERCENTAGE FEES DUE	DUE DATE	AMOUNT PAID	DATE PAID	DAYS OVERDUE	AMOUNT OVERDUE	INTEREST PERIOD COVERED		2% PENALTY (ONE TIME)	2% INTEREST (MONTHLY)	COMMENTS
							FROM	TO			
FY 90											
JULY/90	N/A	N/A	N/A	N/A	0	\$0.00			\$0.00	\$0.00	
					0	\$0.00			\$0.00	\$0.00	
AUGUST/90	N/A	N/A	N/A	N/A	0	\$0.00			\$0.00	\$0.00	
					0	\$0.00			\$0.00	\$0.00	
SEPTEMBER/90	\$11,707.20	09/10/90	\$11,707.20	10/02/90	22	\$11,707.20	09/10/90	10/02/90	\$234.14	\$0.00	1
					10	\$234.14	10/02/90	10/12/90	\$0.00	\$1.56	2
OCTOBER/90	\$11,000.00	10/10/90	\$11,000.00	10/12/90	2	\$11,000.00	10/10/90	10/12/90	\$0.00	\$0.00	1
					38	\$235.70	10/12/90	11/19/90	\$0.00	\$5.97	2
NOVEMBER/90	\$11,000.00	11/10/90	\$11,000.00	11/19/90	9	\$11,000.00	11/10/90	11/19/90	\$0.00	\$0.00	1
					35	\$241.68	11/19/90	12/24/90	\$220.00	\$5.84	2
DECEMBER/90	\$11,000.00	12/10/90	\$11,000.00	12/24/90	14	\$11,000.00	12/10/90	12/24/90	\$0.00	\$0.00	1
					105	\$487.32	12/24/90	04/08/91	\$0.00	\$32.71	2
JANUARY/91	N/A	N/A	N/A	N/A	0	\$0.00			\$0.00	\$0.00	
					0	\$500.03			\$0.00	\$0.00	
FEBRUARY/91	N/A	N/A	N/A	N/A	0	\$0.00			\$0.00	\$0.00	
					0	\$500.03			\$0.00	\$0.00	
MARCH/91	\$20,000.00	03/10/91	\$5,000.00	04/08/91	29	\$20,000.00	03/10/91	04/08/91	\$400.00	\$0.00	1
					3	\$15,000.00	04/08/91	04/11/91	\$0.00	\$30.00	3
					7	\$930.03	04/11/91	04/18/91	\$4.34	\$4.34	2
APRIL/91	\$30,000.00	04/10/91	\$20,000.00	04/18/91	8	\$30,000.00	04/10/91	04/18/91	\$600.00	\$0.00	1
					13	\$10,000.00	04/18/91	05/01/91	\$0.00	\$86.57	3
					12	\$1,621.03	05/01/91	05/13/91	\$12.97	\$12.97	2
MAY/91	\$55,000.00	05/10/91	\$25,000.00	05/13/91	3	\$55,000.00	05/10/91	05/13/91	\$0.00	\$0.00	1
					4	\$30,000.00	05/13/91	05/17/91	\$0.00	\$0.00	3
					3	\$15,000.00	05/17/91	05/20/91	\$0.00	\$0.00	3
					2	\$1,634.00	05/20/91	05/22/91	\$2.18	\$2.18	2
JUNE/91	\$55,000.00	06/10/91	\$15,000.00	05/22/91	0	\$0.00			\$0.00	\$0.00	
					0	\$0.00			\$0.00	\$0.00	
					0	\$0.00			\$0.00	\$0.00	
					0	\$0.00			\$0.00	\$0.00	
					125	\$1,636.18	05/22/91	09/24/91	\$136.95	\$136.95	2
TOTALS	\$204,707.20		\$204,707.20						\$1,772.53		

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FROM-

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-99(8)S
Sales Tax
January 28, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980730A

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Certain restaurants and bars may have both advertised and unadvertised policies to offer customers a free alcoholic beverage, by the drink or by the bottle, when the customer purchases a meal or other drinks for a fixed price. For example, an after dinner cordial or a bottle of wine will be provided at no extra charge to the customer when a restaurant meal is purchased for a fixed price. Another example is when a restaurant or bar has a Happy Hour or other provision which offers customers, for the price of one or more drinks, an additional drink at no extra charge. The total price paid by the customer for the food and/or drinks is a lesser amount than the sum of the charges for the items as displayed or separately stated on the menu. The price paid by the customer for the total meal and/or beverages is, however, usually significantly greater than the cost of the total meal and/or drinks, including the free drinks, to the restaurant or bar.

Applicable Law and Regulations

Section 1101(b)(4)(i) defines retail sale, in part, as:

A sale of tangible personal property to any person for any purpose, other than
(A) for resale as such. . . .

Section 1105(a) of the Tax Law imposes sales tax upon "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1105(d)(i) of the Tax Law imposes a tax on "[t]he receipts from every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state. . . ."

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Sales Tax
January 28, 1999

FROM-

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Section 1110 of the Tax Law provides, in part:

(a) Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail. . . .

With respect to the resale exclusion, Section 526.6(c) of the Sales and Use Tax Regulations provides, in part:

(1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

* * *

(4)(i) Tangible personal property which is purchased and given away without charge, for promotion or advertising purposes is not purchased for resale. It is a retail sale to the purchaser thereof, and is not a sale to the recipient of the property.

(ii) Tangible personal property which is purchased for promotional or advertising purposes and sold for a minimal charge which does not reflect its true cost, or which is not ordinarily sold by that person in the operation of his business, is a retail sale to the purchaser thereof, and not a sale to the recipient of the property.

(iii) A resale certificate may not be used by the person making the purchases described in subparagraphs (i) and (ii) of this paragraph for such purchases.

Example three:

A vendor purchases catalogs and distributes them to his potential customers for a minimal charge, which does not reflect the cost to him. He is the retail purchaser of the catalog, and is required to pay the tax thereon. He cannot charge his customer tax on the charge for the catalog.

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Opinion

The businesses referred to by Petitioner conform to the classification of "restaurants, taverns or other establishments" whose sales of food and drink fall within the purview of Section 1105(d) of the Tax Law. Therefore, receipts from their sales of such food and drink are subject to sales tax.

Provided such establishments are registered for sales tax purposes, they are not required to pay sales tax on their purchases of liquor, wine or beer for resale. In order for the resale rule to apply, the property to be resold must be purchased for the sole purpose of resale (see John B. Pike and Son, Inc., Adv. Op Comm. T.F., July 26, 1985, TSB-A-85(29)S. The withdrawal of such liquor, wine or beer for any other reason would subject the purchase to sales or use tax, since it is then deemed a retail sale to the purchaser thereof, i.e., the restaurant or bar. See Section 531.3(a)(2) of the Sales and Use Tax Regulations.

In I.C. Penney Co., Inc., Dec Tx App. Trib., June 30, 1988, TSB-D-89(25)S, the Tribunal analyzed Section 526.6(c)(4)(ii) of the Sales and Use Tax Regulations to resolve the issue of whether the sale of catalogs to a retailer that are subsequently transferred to its customers for less than the catalogs' cost is a sale for resale or a retail sale subject to tax under Section 1105(a) of the Tax Law. While Section 526.6(c)(4) does not specifically apply to the sale of free drinks taxable under Section 1105(d) of the Tax Law, the analysis set forth therein suggests a methodology to analyze whether the liquor, beer and wine purchased by a restaurant or bar are purchased exclusively for resale, or whether the restaurant or bar is the retail purchaser of these items when providing a "free" drink in conjunction with the sale of other fixed-price drinks or a meal at no extra charge.

The Tribunal opined in I.C. Penney that a retail sale of promotional materials occurs where the advertiser recovers at least 100% of its cost of the property it is selling. Under Section 1105(d) of the Tax Law, a vendor sells a hybrid of property and service when it sells food or drink (the tangible personal property) prepared and served on the premises (the service). See Matter of Burger King v. State Tax Comm., 51 NY2d 614. The vendor has costs for both the property and for the service, which it must recover in order to find that its purchase of the property was for resale, and therefore not taxable to the vendor. In this case, Petitioner indicated that the price paid by a customer for the total meal and/or beverages is usually significantly greater than the cost of the total meal and/or beverages, including the extra drink, to the restaurant or bar. Accordingly, the purchase of liquor, beer or wine by a restaurant or bar for use in providing a "free" drink in conjunction with the sale of other fixed-price drinks and/or meals at no extra charge would be exempt from tax as a purchase for resale, provided that the charge to the customer for the meal or drink(s), including the free drink or bottle of wine, is greater than the restaurant/bar's combined costs for the property (food and/or drink) used to make the meal or drinks being sold, plus the restaurant/bar's costs for the "free" drink, plus the restaurant/bar's costs for the labor to prepare and serve them.



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It is noted that when a restaurant or bar provides a drink in conjunction with the sale of a meal or another drink at no extra charge, the sales tax is to be computed on the actual amount paid by the customer for the two items. See Section 1101(b)(3) of the Tax Law and Section 526.5 of the Sales and Use Tax Regulations.



DATED: January 28, 1999

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.