

AUDIT REPORT



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

Audit Report on the Payment of Commercial Rent Taxes by Economic Development Corporation Concessionaires

FP03-068A

November 12, 2003



To the Citizens of the City of New York
 THE CITY OF NEW YORK
 OFFICE OF THE COMPTROLLER
 1 CENTRE STREET
 NEW YORK, N.Y. 10007-2341

Ladies and Gentlemen:

 WILLIAM C. THOMPSON, JR.
 COMPTROLLER

Pursuant to Chapter 5, § 93, of the New York City Charter, we have examined whether the Economic Development Corporation monitors its concessionaires' payments of Commercial Rent Tax and whether it coordinates its efforts with those of the Department of Finance to identify concessionaires required to pay the tax and assists Finance in collecting the tax. The results of our audit, which are presented in this report, have been discussed with officials from the Economic Development Corporation and Finance Department, and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that City agencies coordinate their efforts to identify and pursue tax dollars owed to the City, and that private concerns conducting business on City property comply with the City's tax laws.

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

Very truly yours,

William C. Thompson, Jr.

William C. Thompson, Jr.

WCT/GR

Report: **FP03-068A**
 Filed: **November 12, 2003**

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

**Audit Report on the Payment of
Commercial Rent Taxes by Economic Development
Corporation Concessionaires**

FP03-068A

AUDIT REPORT IN BRIEF

This audit determined whether the Economic Development Corporation (EDC) monitors City Commercial Rent Tax (CRT) payments by its concessionaires and whether it coordinates its efforts with those of the Department of Finance to identify those concessionaires who are required to pay the tax and assists the Department of Finance in collecting the tax.

Audit Findings and Conclusions

After reviewing the payment histories of 16 concessionaires and their subtenants, we found that four concessionaires and three subtenants of two other concessionaires owe the City \$268,392 in CRT, interest, and penalties.¹ Three of the concessionaires (Express Industries Group, Inc., Wall Street Racquet Club, Inc., and Maggio Beef Corp.) who owe CRT are no longer EDC concessionaires. Had EDC effectively coordinated with the Department of Finance (Finance) in identifying concessionaires who are required to pay CRT, it is likely that the CRT due from these entities would have been collected. In addition, the four concessionaires who failed to pay CRT as well as nine other concessionaires who were required to file CRT returns, did not file the returns for at least the last three tax years. In fact, only three concessionaires filed and paid CRT on a timely basis.

During our review of the subtenants of EDC concessionaire Seaport Marketplace, Inc., we found that The Glazier Group, Inc., the owner of Bridgewater, operates four other restaurants below 96th Street in Manhattan, including Michael Jordan's Steak House, The Monkey Bar, Twenty Four Fifth, and The Strip House. Although these restaurants are not EDC concessions, we noted that The Glazier Group, Inc., did not file CRT returns and pay the taxes for these establishments for at least the last three tax years. For Michael Jordan's Steak House alone, The Glazier Group Inc., owes \$114,482 in CRT, interest, and penalties for the audit

¹ The amount due consists of \$152,554 in commercial rent tax for tax years 2000, 2001, and 2002 and interest and penalties totaling \$115,838 calculated as of October 15, 2003.

period. (We were able to calculate the amount due from Michael Jordan's Steak House based on rent information provided by the Metropolitan Transportation Authority, the owner of the restaurant site property).

Audit Recommendations

To address these issues, we recommend that EDC:

- Alert Finance when a concessionaire's rent exceeds the CRT threshold, to ensure that the concessionaire complies with filing requirements and pays all taxes due.
- Provide the necessary documentation to enable Finance to collect the CRT owed by concessionaires.
- Consider the non-payment of CRT when making decisions on whether to renew or enter into a new lease with concessionaires.

In addition, we recommend that the Department of Finance:

- Pursue collection of the amounts owed by the concessionaires and subtenants cited in this report.
- Notify EDC of concessionaires who owe CRT, and consider requesting that any security deposits from the concessionaires be used to satisfy the amounts due.
- Attach liens to the business property of those concessionaires who owe CRT.

In their responses, both EDC and the Department of Finance officials described steps that have been taken or will be taken to address the report's findings and recommendations.

INTRODUCTION

Background

The New York City Economic Development Corporation (EDC) is a local development corporation organized in 1966 in accordance with the not-for-profit corporation law of the State of New York. EDC works with the private and public sectors on economic development initiatives to revitalize businesses, create jobs, and generate revenue for the City. In addition, EDC markets, sells, and leases City-owned commercial and industrial properties; plans and prepares sites for development; and carries out capital improvements in neighborhood shopping districts and public spaces. EDC also manages and develops the City's marine terminals, airports, heliports, markets, railyards, and industrial parks. In that regard, EDC enters into agreements with private business and public sectors to operate various concessionaires (e.g.,

restaurants, food markets, sports clubs, marine terminals) on City property.² Most concession agreements require that the concessionaires comply with all laws, rules, or regulations of City, State, and federal entities.³

CRT falls under the purview of the Department of Finance (Finance). Finance's primary responsibility is to administer and enforce tax laws, collect taxes, judgments, and other charges from the public. CRT is imposed on tenants who occupy or use premises for the purpose of carrying on any trade, business, profession, or commercial activity south of the centerline of 96th Street in Manhattan.⁴ According to Title 19, Chapter 7, of the Rules of the City of New York, the definition of taxable premises include those occupied or used for the purpose of carrying on or exercising any trade, business, profession, vocation, or commercial activity, including automobile parking lots and garages, tennis courts, restaurants, and other enterprises.

As of June 1, 1999, the minimum annual rent subject to CRT was \$100,000. The minimum amount of rent subject to CRT was changed to \$150,000 on December 1, 2000, and to \$250,000 on June 1, 2001. For EDC concessionaires, the amount of fees paid to EDC is the "rent" used to determine whether payment of CRT is required.

Objectives

The objectives of this audit were to determine whether EDC monitors its concessionaires' payments of CRT and whether it coordinates its efforts with Finance to identify those concessionaires who are required to pay the tax and assists Finance in collecting the amounts due.

Scope and Methodology

The scope of this audit was June 1, 1999, to May 30, 2002, or CRT Years 2000, 2001, and 2002. To conduct this audit, we met with Finance officials to obtain an understanding of CRT regulations. We obtained from EDC a list of its concessionaires who operated south of the centerline of 96th Street in Manhattan during the audit period. The list provided by EDC contained 105 concessionaires. From this list and based on information provided by Finance, we identified a total of 16 concessionaires who were required to file and pay CRT during the audit period. In addition, we identified 63 subtenants who were required to file and pay CRT. Based on information provided by the subtenants and Finance, we determined whether the appropriate

² In this report, licensees, permittees, concessionaires, and other operators on City property through agreements with EDC are referred to as "concessionaires."

³ According to the "Compliance with Laws" section of most EDC concession agreements: "The operator covenants that it will comply with all federal, state and municipal laws, ordinances and regulations . . . including without limitation laws relating to sanitation, fire, environmental quality . . . and federal, state and municipal tax and withholding laws."

⁴ The Commercial Rent Tax Year is June 1–May 31.

CRT was paid during the audit period. We then calculated the amount of CRT, interest, and penalties owed by those concessionaires and their subtenants who did not pay CRT.⁵

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

Discussion of Audit Results

The matters covered in this report were discussed with EDC and Finance officials during and at the conclusion of this audit. A preliminary draft report was sent to EDC and Finance officials and discussed at an exit conference held on September 26, 2003. On October 9, we submitted a draft report to EDC and Finance officials with a request for comments. Written responses were received from EDC on October 21, 2003 and from Finance on October 22, 2003.

In their responses, both EDC and the Department of Finance officials described steps that have been taken or will be taken to address the report's findings and recommendations. The full texts of the responses received from EDC and Finance officials are included as addenda to this report.

⁵ The tax due was for tax years 2000, 2001, and 2002. The interest and penalties was calculated as of October 15, 2003.

FINDINGS

Lack of Coordination between EDC and Finance Resulted in \$268,392 in Unpaid CRT, Interest, and Penalties

After reviewing the payment histories of the 16 concessionaires and their subtenants who were required to file returns and pay CRT, we found that four of these concessionaires and three subtenants of two other concessionaires owe the City \$268,392 in CRT for 2000, 2001, and 2002 and interest, and penalties calculated as of October 15, 2003, as shown in Table I, following.

Table I
Entities Owing Commercial Rent Taxes,
Interest, and Penalties

Concessionaire/Subtenant	Amount Owed, Including Interest and Penalties			
	CRT Year 2000	CRT Year 2001	CRT Year 2002	Total Owed
Winking Group, LLC (Concessionaire)	\$0	\$11,323	\$0	\$11,323
Lockwood & Winant (subtenant of Fulton Market Fish Mongers Association of the City of New York)	\$10,113	\$5,249	\$0	\$15,362
Talbots, Inc. (subtenant of Seaport Marketplace, Inc.)	\$3,155	\$3,343	\$0	\$6,498
Bridgewater (subtenant of Seaport Marketplace, Inc.)	\$80,049	\$68,152	\$10,817	\$159,018
Express Industries Group, Inc. (Concessionaire)	\$10,418	\$0	\$0	\$10,418
Wall Street Racquet Club, Inc. (Concessionaire)	\$0	\$11,243	\$0	\$11,243
Maggio Beef Corp. (Concessionaire)	\$21,449	\$20,522	\$12,559	\$54,530
Totals	\$125,184	\$119,832	\$23,376	\$268,392

Three of the concessionaires (Express Industries Group, Inc., Wall Street Racquet Club, Inc., and Maggio Beef Corp.) who owe CRT are no longer EDC concessionaires. Had EDC effectively coordinated with Finance in identifying concessionaires who are required to pay CRT, it is likely that the CRT due from these entities would have been collected.

In addition, we found that the four concessionaires who failed to pay CRT as well as nine other concessionaires who were required to file CRT returns, did not file the returns for at least the last three tax years. In fact, we found that only three concessionaires filed and paid CRT on a timely basis.

Finance cannot place liens on real property to collect from delinquent concessionaires and their subtenants since those businesses operate on City-owned property. However, Finance

has the option of placing liens on the concessionaires' other business property. Nevertheless, when a concessionaire no longer has a contract with EDC, it is difficult to collect outstanding taxes. Therefore, to maximize the potential for collection, EDC and Finance must work together to identify in a timely manner those concessionaires who are required to pay CRT.

Other Issue

During our review of the subtenants of EDC concessionaire Seaport Marketplace, Inc., we found that The Glazier Group, Inc., the owner of the Bridgewater restaurant, operates four other restaurants below 96th Street in Manhattan, including Michael Jordan's Steak House, The Monkey Bar, Twenty Four Fifth, and The Strip House. Although these restaurants are not EDC concessions, we determined that The Glazier Group, Inc., did not file CRT returns and pay the taxes for these establishments for at least the last three tax years. In fact, for Michael Jordan's Steak House alone, The Glazier Group Inc., owes \$114,482 in CRT, interest, and penalties for the last three tax years. The interest and penalties was calculated as of October 15, 2003. (We were able to calculate the amount due from Michael Jordan's Steak House based on rent information provided by the Metropolitan Transportation Authority, the owner of the restaurant site property).

RECOMMENDATIONS

The Economic Development Corporation should:

1. Alert Finance when a concessionaire's rent exceeds the CRT threshold, to ensure that the concessionaire complies with filing requirements and pays all taxes due.

EDC Response: "EDC has established a liaison with DOF and will provide a current list of concessionaires whose rent exceeds the CRT threshold. Going forward, an Assistant Vice President of Leasing from EDC's Property Management Department will notify DOF when we enter into new leases that exceed the CRT threshold."

2. Provide the necessary documentation to enable Finance to collect the CRT owed by concessionaires.

EDC Response: "EDC will continue to provide all the necessary documentation DOF requires to assist them in their collection efforts."

3. Consider the non-payment of CRT when making decisions on whether to renew or enter into a new lease with concessionaires.

EDC Response: "It has been EDC's long-standing policy that a VENDEX be completed prior to entering into a new lease with any concessionaire, any unfavorable VENDEX information is considered prior to entering into a new lease agreement. If

the VENDEX has expired prior to renewal, a new VENDEX is requested. Non-payment of CRT is taken into consideration when renewal decisions are made.”

In addition, we recommend that the Department of Finance:

4. Pursue collection of the amounts owed by the four concessionaires and three subtenants cited in this report.

Finance Response: “Finance will pursue the collection of the amounts that Finance determines are owed by each concessionaire and subtenant.”

5. Notify EDC of concessionaires who owe CRT, and consider requesting that any security deposits from the concessionaires be used to satisfy the amounts due.

Finance Response: “Finance will work with EDC to ensure that after EDC has recovered amounts due to EDC out of a concessionaire’s security deposit, that any remaining portion of the security deposit will not be returned to the concessionaire until outstanding tax warrants are satisfied.

“Finance will notify EDC of warrants docketed against concessionaires, but cannot notify EDC of amounts owed by concessionaires until a tax warrant is docketed. Finance docket tax warrants only after the issuance of a statutory Notice of Determination, and taxpayers exhaust their legal remedies through the Finance Conciliation Bureau and/or the New York City Tax Appeals Tribunal. Before these steps are completed, there is no sum certain that Finance could accurately provide to EDC. Once a tax warrant is docketed, Finance has a number of options available to collect the amount due. Should those options prove fruitless, Finance may levy on the security deposit being held by EDC.

“In practicality, our automated Collection processes would not identify tax warrants as those specifically of EDC concessionaires. However, should we become aware of an EDC security deposit available to satisfy a Finance tax warrant, and provided that levying on that security deposit does not jeopardize the operations of EDC, Finance will levy on that security deposit to satisfy the CRT warrant.”

6. Attach liens to the business property of those concessionaires who owe CRT.

Finance Response: “A tax warrant constitutes a lien on both real and personal property of the judgement debtor. This would include unencumbered business property owned by the debtor. As mentioned in our response to recommendation #2, once it is legally permissible, Finance docket a tax warrant, and thereafter pursues collection through a variety of means.”



New York City
Economic Development
Corporation

BY FAX AND HAND DELIVERY

October 21, 2003

Greg Brooks, Deputy Comptroller
Policy, Audits, Accountancy & Contracts
City of New York
Office of the Comptroller
1 Centre Street
New York, New York 10007-2341

Re: Audit # FP03-068A
Draft Audit Report on the Payment of Commercial Rent Taxes by
Economic Development Corporation Concessionaires
Dated October 9, 2003

Dear Mr. Brooks:

This is our response to your draft Audit Report on the Payment of Commercial Rent Taxes by Economic Development Corporation Concessionaires.

The following are the recommendations included in the report and our comments:

The Economic Development Corporation:

1. Alert Finance when a concessionaire's rent exceeds the CRT threshold, to ensure that the concessionaire complies with the filing requirements and pays all taxes due.

EDC has established a liaison with DOF and will provide a current list of concessionaires whose rent exceeds the CRT threshold. Going forward, an Assistant Vice President of Leasing from EDC's Property Management Department will notify DOF when we enter into new leases that exceed the CRT threshold.

2. Provide the necessary documentation to enable Finance to collect the CRT owed by concessionaires.

EDC will continue to provide all the necessary documentation DOF requires to assist them in their collection efforts.

3. Consider the non-payment of CRT when making decisions on whether to renew or enter into a new lease with concessionaires.

It has been EDC's long-standing policy that a VENDEX be completed prior to entering into a new lease with any concessionaire, any unfavorable VENDEX information is considered prior to entering into a new lease agreement. If the VENDEX has expired prior to renewal, a new VENDEX is requested. Non-payment of CRT is taken into consideration when renewal decisions are made.

If you have any questions, please call me at (212) 312-3587.

Sincerely yours,



John V. Cirolia
Chief Financial & Administrative Officer

cc: Andrew M. Alper (EDC)
Deo Singh (EDC)
Tanya Tesa (EDC)
Christopher Malin (EDC)
Martha E. Stark, Commissioner, Department of Finance
Susan Kupferman, Director, Mayor's Office of Operations



**FINANCE
NEW • YORK**
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

BY FAX AND HAND-DELIVERY

October 22, 2003

Mr. Greg Brooks
Deputy Comptroller
Office of the Comptroller
1 Centre Street
New York, NY 10007-2341

Re: Audit # FP03-068A

**Draft Audit Report on the Payment of Commercial Rent Taxes by Economic
Development Corporation Concessionaires
Dated October 9, 2003**

Dear Mr. Brooks,

I am writing in response to your draft report on the above-captioned audit.

Thank you for your audit recommendations. The audit was helpful to our operations because it highlights areas where we can improve.

In response to the audit, we have designated a liaison from our Audit Division to work with the Economic Development Corporation (EDC) to identify concessionaires that are not in compliance with their Commercial Rent Tax (CRT) obligations.

The draft report suggests that Finance implement three recommendations. Below are the recommendations made in the draft report, and Finance's comments:

The Department of Finance should:

1. Pursue collection of the amounts owed by the four concessionaires and three subtenants cited in this report.

Finance will pursue the collection of the amounts that Finance determines are owed by each concessionaire and subtenant.

2. Notify EDC of concessionaires who owe CRT and request that any security deposits from the concessionaires be used to satisfy the amounts due.

Finance will work with EDC to ensure that after EDC has recovered amounts due to EDC out of a concessionaire's security deposit, that any remaining portion of the security deposit will not be returned to the concessionaire until outstanding tax warrants are satisfied.

Finance will notify EDC of warrants docketed against concessionaires, but cannot notify EDC of amounts owed by concessionaires until a tax warrant is docketed. Finance docket tax warrants only after the issuance of a statutory Notice of Determination, and taxpayers exhaust their legal remedies through the Finance Conciliation Bureau and/or the New York City Tax Appeals Tribunal. Before these steps are completed, there is no sum certain that Finance could accurately provide to EDC. Once a tax warrant is docketed, Finance has a number of options available to collect the amount due. Should those options prove fruitless, Finance may levy on the security deposit being held by EDC.

In practicality, our automated Collection processes would not identify tax warrants as those specifically of EDC concessionaires. However, should we become aware of an EDC security deposit available to satisfy a Finance tax warrant, and provided that levying on that security deposit does not jeopardize the operations of EDC, Finance will levy on that security deposit to satisfy the CRT warrant.

3. Attach liens to the business property of those concessionaires that owe CRT.

A tax warrant constitutes a lien on both real and personal property of the judgment debtor. This would include unencumbered business property owned by the debtor. As mentioned in our response to recommendation #2, once it is legally permissible, Finance docket a tax warrant, and thereafter pursues collection through a variety of means.


Greg Brooks
October 22, 2003
Page 3

Commissioner Stark is committed to two critical goals as the City's tax collector. First, educating taxpayers about City taxes. Improving voluntary compliance with applicable tax laws is the cornerstone of tax administration. Most people when informed of the tax laws comply with them. The second important goal is to aggressively pursue taxpayers who knowingly violate City tax laws by not filing and/or paying.

In furtherance of these objectives, Finance will work with all City agencies to ensure that the tax laws and payment obligations are well understood by the agency and that they are communicated to their concessionaires and other contractors. This communication is especially important for taxes that are unique to New York City, such as the Commercial Rent Tax. We believe that education and outreach is important and we will work jointly with our colleagues in government.

If you have any questions concerning this response, please feel free to call me at (212) 669-4878.

Sincerely,



Carla Van de Walle

cc: Martha E. Stark, Commissioner, Department of Finance
Andrew M. Alper, President, Economic Development Corporation
Susan Kupferman, Director, Mayor's Office of Operations